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THE
STATUTES
RELATING TO THE
ECCLESIASTICAL AND ELEEMOSYNARY
INSTITUTIONS
OF
ENGLAND, WALES, IRELAND, INDIA, AND
THE COLONIES;
WITH THE DECISIONS THEREON.

BY ARCHIBALD JOHN STEPHENS,
BARRISTER AT LAW.

IN TWO VOLUMES.

VOL. I.

LONDON:
JOHN W. PARKER, WEST STRAND.

M.DCCC.XLV.

THE

STATUTES

RELATIVE TO THE

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VOL. I.

LONDON

JOHN W. PARKER, WEST-STRAND

PRINTED

TO

SIR WILLIAM WEBB FOLLETT, KNIGHT, M.P.,

HER MAJESTY'S ATTORNEY-GENERAL,

&c. &c. &c.

THE FOLLOWING PAGES

ARE,

BY HIS FRIENDLY PERMISSION,

RESPECTFULLY INSCRIBED.

P R E F A C E.

THE object of this publication is to supply the Clerical and Legal Professions with a complete collection of the Statutes relating to Ecclesiastical and Eleemosynary Institutions, in a form convenient for reference, and rendered the more useful for that purpose by notes of the decisions upon the various enactments.

The Statutes have been placed in one chronological series, commencing with the 9 Hen. 3, c. 1, and terminating with the 7 & 8 Vict. CAP. CVIII.

Where repealed Statutes affect existing interests, or illustrate the present Law, they have been printed at length: under other circumstances their titles only have been given, with references to the repealing Statutes.

A suggestion that the titles of the Statutes which apply to Scotland, should also be introduced, has been followed; but the Church of Scotland has not been otherwise noticed.

The cases under the *Church Discipline Act* have not been numerous, and those, with but few exceptions, have consisted of mere questions of fact, involving no principle of Ecclesiastical Law. It may be observed, however, that a strong feeling prevails against what are deemed the inefficient provisions of this Statute; as well as against the constitution of the Judicial Committee of the Privy Council, according to which doctrinal ques-

tions of faith are sometimes determined exclusively, and therefore, to the Clergy, unsatisfactorily, by members of the Legal Profession.

Every January a Supplement to these volumes will be published, which will comprise the Statutes and cases relating to Ecclesiastical and Eleemosynary Institutions, passed and decided during the preceding year, inclusive of the adjudications under the *Church Discipline Act*, and such extracts from Episcopal Charges as shall seem calculated to add to the practical utility of the Collection.

A Treatise upon Clerical Law has been written, and will be sent to Press during the next Long Vacation.

The Editor begs to tender his respectful acknowledgments to the Bishops of Exeter, Gloucester and Bristol, Lincoln, and Sodor and Man, for communications which have been incorporated in the following pages; and to the other members of the Episcopal Bench, for the readiness evinced by their Lordships to afford every information in their power.

61, *Chancery Lane*,

May 15, 1845.

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Throughout the text of these volumes, three different modes of printing the Chapters of the Statutes have been adopted, in order to distinguish the respective natures of the Statutes themselves: thus,

c. 88.....	is a Public General Act.
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The Statutes from the commencement to the Union of Great Britain and Ireland have been copied from the Quarto Edition by Ruffhead. The Statutes since the Union have been copied from the Octavo Edition.

It may be observed, that there are discrepancies in the printing of the *folio* and *octavo* editions of the Statutes. For example, in the *folio* edition, a statute is designated, 4 Vict. c. 5,—while in the *octavo* it is designated, 4 & 5 Vict. c. 5; yet both editions agree in the designation of 4 & 5 Vict. c. 36. Such a want of uniformity creates perplexity, and ought not to exist in editions printed by authority.

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LIST OF ABBREVIATIONS.

A. (a.) B. (b.)....	A. front, B. back of a leaf.	Beveridge, Pan- dect.....	Beveridge's Pandectæ Canonum.
A. & E.	Adolphus and Ellis's Reports.	Bing. Eccles. Ant.	Bingham's Ecclesiastical Antiquities.
Abr. Ca. Eq.	Abridgment of Cases in Equity.	Bing.	Bingham's Reports.
Acc., Ag., or Agr.	Accords or Agrees.	Bing. N. C.	Bingham's New Cases.
Act.	Acton's Reports.	Black. Com.	Blackstone's Commentaries.
Act. Reg.	Acta Regia.	Black. Hen.	Henry Blackstone's Reports.
Adams.	Adams on Ejectment.	Black. (Sir W.).	Sir W. Blackstone's Reports.
Add.	Addams's Reports.	Bligh	Bligh's Reports.
Al.	Aleyn's Reports.	Bligh N. S.	Bligh's New Series.
Alcock & Napier (Irish)	King's Bench and Exchequer Chamber Reports.	Bona (Cardinal), Liturg.	Bona (Cardinal), de Rebus Liturgicis.
Ambl.	Ambler's Reports.	Booth.	Booth's Real Actions.
Ancyr.	Ancyranus (Mar.) de Residentia Canonicorum.	Bosc.	Boscawen on Convictions.
And.	Anderson's Reports.	Boyle	Boyle on Charities.
Andr.	Andrews's Reports.	Br.	Brooke.
Anon.	Anonymous.	Bro. Abr.	Brooke's Abridgment.
Anst.	Anstruther's Reports.	Br. N. C.	Brooke's New Cases.
Archb. B. L.	Archbold's Bankrupt Laws.	Bract.	Bracton de Legibus.
Armstrong, Macartney, & Ogle (Irish)	Reports at Nisi Prius and at the Commission.	Bradby.	Bradby on Distresses.
Arund.	Constitutiones Thomæ Arundel, Archiep. Cant.	Bridg. (Sir John)	Bridgman's (Sir John) Reports.
Ashdowne	Ashdowne's Churchwarden and Overseer.	Bridg. (Sir Orl.)	Bridgman's (Sir Orlando) Reports.
Ass., or Lib. Ass.	Liber Assisarum, or Pleas of the Crown.	Bro. C. C.	Brown's Chancery Cases.
Ast. Ent.	Aston's Entries.	Bro. P. C.	Brown's Cases in Parliament.
Atk.	Atkyns's Reports in Chancery.	Bro. Vad. Mec.	Brown's Vade Mecum.
Atk. Parl. Tr.	Atkyns's Parliamentary Tracts.	Browne	Browne's Admiralty Civil Law.
Ayl. Par.	Ayliffe's Parergon.	Brownl.	Brownlow and Goldesborough's Reports.
Ayliffe's Hist.)	Ayliffe's History of the University Univ. Oxford.) of Oxford.	Buck.	Buck's Reports.
B., or C. B.	Common Bench.	Bull. N. P.	Buller's Nisi Prius.
B. & A.	Barnewall and Alderson's Reports.	Bulst.	Bulstrode's Reports.
B. & Ad.	Barnewall and Adolphus's Reports.	Bunb.	Bunbury's Reports.
B. & B.	Broderip and Bingham's Reports.	Burge	Burge's Colonial Law.
B. & C.	Barnewall and Cresswell's Reports.	Burgo' (John de) Pup. Oc.	Burgo' (John de) Pupilla Oculi.
B. & P.	Bosanquet & Puller's Reports.	Burn. Hist.	Burnett's (Bishop) History of the Reformation.
B. & P. N. R.	Bosanquet and Puller's New Re- ports.	Burn's E. L. by Phillimore	Burn's Ecclesiastical Law by Phillimore.
B. R.	Banco Regis.	Burn's Just.	Burn's Justice.
Bac. Abr.	Bacon's Abridgment.	Burr.	Burrow's Reports.
Ball & Beatty (Irish)	Ball and Beatty's Reports in Chan- cery.	Burton.	Burton's Diary.
Banc. Sup.	Upper Bench.	Bythew. Prec.	Bythewood's Precedents.
Barnard.	Barnardiston's K. B. Reports.	C. B.; C. P.	Common Pleas.
Barnard. C. C.	Barnardiston's Chancery Cases.	C. & D.	Corbett and Daniel's Reports.
Barnes.	Barnes's Notes of Practice.	C. & F.	Clark & Finnelly's Reports.
Barringt. Stat.	Barrington's Observations on the Statutes.	C. & J.	Crompton and Jervis's Reports.
Bart. El.	Barton's Elements.	C. & M.	Crompton and Meeson's Reports.
Bart. Prec.	Barton's Precedents.	C. & Marsh.	Carrington and Marshman's Re- ports.
Batty (Irish)	King's Bench Reports.	C. & P.	Carrington and Payne's Reports.
Beames' Ord.	Beames' General Orders of the High Court of Chancery.	C. C.	Chancery Cases.
Beav.	Beavan's Reports.	C. M. & R.	Crompton, Meeson, and Roscoe's Reports.
Bell's Law Dict.	Bell's Law Dictionary.	C. R.	Court of Review.
Bend.	Benlow or Bendlow's Reports.	C. T. F.	Cases temp. Finch.
Bend. & D.	Bendloe and Dalison's Reports.	C. T. H.	Cases temp. Hardw.
Bev. Leg. Pol.	Bever's Legal Polity of the Ro- man State.	C. T. K.	Cases temp. King.
		C. T. T.	Cases temp. Talbot.
		Ca.	Case, or Placita.
		Caldw. on Arb.	Caldwell on Arbitration.
		Cald. P. L.	Caldwell's Poor Laws.

Calth.	Calthorpe's Reports.	Cas. Pra.	Cases of Practice.
Calvin (Kahl) } Lex. Jurid.	Calvin' (Kahl) Lexicon Juridi- cum.	Caus. (1)	
Camp.	Campbell's Reports.	Cave, Prim. } Christ.	Cave's Primitive Christianity.
Can.	Canons of the Church, made in 1603.	Ch. Pre.	Precedents in Chancery.
Cardwell's Sy- nod.	Cardwell's Synodalia.	Ch. Rep.	Reports in Chancery.
Carpzovii (Be- ned.) Prac. Crim. Sax.	Carpzovii (Bened.) Practica Cri- minalis Saxonica.	Chamb. Est.	Chambers's Estates and Tenures.
Cart.	Carter's Reports.	Chamb. Lea.	Chambers on Leases.
Carth.	Carthew's Reports.	Chamb. L. & T.	Chambers's Landlord and Tenant.
Cary.	Cary's Reports.	Chevalier's trans- lat. Epist.	Chevalier's Translation of the Epistles.
Cas. B. R.	Cases tempore Gul. 3	Chich.	Constitutiones Henrici Chicheley Archiep. Cant.
Cas. L. & E.	Cases in Law and Equity.	Chitt.	Chitty's Reports.
		Chitt. & Hul.	Chitty and Hulme on Bills of Ex- change.

(1) *Caus.* :—The systems of Roman Civil Law, before the age of the Emperor Justinian, were chiefly these. 1. *Leges Regiæ*; collected by Papirius. 2. *Leges Decemvirales*, or the Laws of the Twelve Tables. 3. *Jus Civile Flavianum*; to which the *Jus Civile Ælianum* was a supplement. 4. *Edictum Perpetuum Juliani*. 5. The Codes of Gregory, Hermogenes, and Theodosius.

The Imperial, or Civil Law, as reformed by Justinian, consists of four parts. 1. The Institutions. 2. The Digests or Pandects. 3. The Code. 4. The Novels.

The Institutions are contained in four books: each book is divided into titles; and each title into paragraphs; of which the first, described by the letters *pr.*, or *princip.*, is not numbered. The Digests or Pandects are in fifty books: each book is distributed into titles; each title into laws; and, very frequently, laws into paragraphs, of which the first is not numbered. The Code is comprised in twelve books; each of which is divided, like the Digests, into titles and laws; and, sometimes, laws into paragraphs. The Novels are distinguished by their number, chapter, and paragraph.

The old way of quoting was much more troublesome, by only mentioning the number or initial words, of the paragraph or law, without expressing either the number of book or title. Thus § *si adversus* 12. *Inst. de Nuptiis*, means the twelfth paragraph of the title in the Institutions *de Nuptiis*, which paragraph begins with the words *si adversus*; and which a modern civilian would cite thus, I. 1. 10. 12. So, l. 30. *D. de R. J.* signifies the 30th law of the title in the Digests *de Regulis Juris*: according to the modern way, thus, D. 50. 17. 30. Again, l. 5. § 3. *ff. de Jurejur.* means the 3rd paragraph of the 5th law of the title in the Digests *de Jurejurando*: according to the modern way, thus, D. 12. 2. 5. 3. And here note, that the Digests are sometimes referred to, as in the last instance, by a double *f*; and at other times by the Greek Π or π .

The Ecclesiastical or Canon Law is chiefly comprised, 1, in the Decree; 2, in the Decretals. The Decree has three parts; namely, (1) distinctions; (2) causes; (3) a treatise concerning consecration. The Decretals also are in three parts; namely, (1) Gregory's Decretals in five books; (2) the sixth Decretal; (3) the Clementine Constitutions. The Extravagants of John XXII. and other later Popes, were added as Novel Constitutions to the rest.

The method of quoting the Roman Canon Law is as follows. The Decree, as previously stated, consists of three parts; of which the first contains 101 distinctions, each distinction being subdivided into canons: thus 1 *dist. c. 3. Lex* (or 1 *d. Lex*) is the first distinction, and third canon, beginning with the word *lex*. The second part of the Decree contains thirty-six causes; each cause comprehending several questions, and each question several canons: thus, 3. *qu. 9. c. 2. Caveant*, is cause the third, question the ninth, and canon the second, beginning with *caveant*. The third part of the Decree contains five distinctions, and is quoted as the first part, with the addition of the words *de consecratione*; thus, *de Consecr. dist. 2. can. Quia corpus* (or *can. Quia corpus* 35. *dist. 2. d. Consecr.*) means the second distinction, and the thirty-fifth canon, of the treatise *de Consecratione*, which canon begins with *quia corpus*.

The Decretals are in three parts; of which the first contains Gregory's Decretals, in five books; each book being divided into titles, and each title into chapters: and these are cited by the name of the title, and the number of the chapter, with the addition of the word *extra*, or the capital letter X: thus, *c. 3. Extra de Usuris*; is the third chapter of the title in Gregory's Decretals, which is inscribed *de Usuris*; which title, by looking into the index, is found to be the 19th of the 5th book. Thus, also, *c. cum contingat* 36. X. *de Offic. et Pot. Jud. Del.* is the 36th chapter, beginning with *cum contingat*, of the title, in Gregory's Decretals, which is inscribed, *de Officio et Potestate Judicis Delegati*; and which, by consulting the index, we find is the 29th title of the 1st book. The sixth Decretal, and the Clementine Constitutions, each consisting of five books, are quoted in the same manner as Gregory's Decretals; only, instead of *Extra*, or X, there is subjoined *in sexto*, or *in 6.* and in *Clementinis*, or in *Clem.*, according as either part is referred to: thus, *c. Si gratiose* 5. *de Rescript.* in 6. is the 5th chapter, beginning with *si gratiose*, of the title *de Rescriptis*, in the 6th Decretal; the title so inscribed being the 3rd of the 1st book: and *Clem. 1. de Sent. et Re Judic.* (or *de Sent. et R. J. ut calumniis. in Clem.*), (or *c. ut calumniis. 1. de Sent. et R. J. in Clem.*), is the 1st chapter of the Clementine Constitutions, under the title *de Sententiâ et Re Judicatâ*; which chapter begins with *ut calumniis*, and belongs to the 11th title of the 2nd book.

The Extravagants of John XXII. are contained in one book, divided into fourteen titles: thus, *Extravag. Ad Conditorem. Joh. 22. de V. S.* means the chapter beginning with *ad conditorem*, of the Extravagants of John XXII.; title, *de Verborum Significationibus*. Lastly, the Extravagants of later Popes are called *Communes*: being distributed in five books, and these again into titles and chapters: thus, *Extravag. Commun. c. Salvator. de Præbend.* is the chapter, beginning with *salvator*, among the *Extravagant Communes*; title, *de Præbendis*.—Geldart's HALLIFAX on the Civil Law, 1—4; vide etiam post. 558.

Chitt. & Hul. St.	{ Chitty and Hulme's Statutes of Practical Utility.	D'Anv. Ab.	D'Anvers's Abridgment.
Chitt. Burn's J.	Chitty's Burn's Justice.	Dav.	Davis's Reports.
Chitt. Com. L.	Chitty's Commercial Law.	Deacon.	Deacon's Bankrupt Cases.
Chitt. Crim. L.	Chitty's Criminal Law.	Decret.	Vide Caus.
Chitt. Pl.	Chitty's Pleading.	Degge.	Degge's Parson's Counsellor.
Chitt. Pre.	Chitty's Prerogative.	De Lolme, by Stephens	{ De Lolme on the English Constitution, by Stephens.
Chitty's Man.	Chitty on the Rights of Manors.	Dering's (Sir Ed.) Disc.	{ Dering's (Sir Edward) Discourse of Proper Sacrifice.
Christian, B. L.	Christian's Bankrupt Laws.	Prop. Sac.	
Cl. Ass.	Clerk's Assistant.	Devoti (Cardinal)	Devoti (Cardinal), Institutiones
Clarendon's (Ld.) Hist.	{ Clarendon's (Lord) History of the Rebellion.	Instit. Canon.	Canonicæ.
Clayt.	Clayton's Reports.	D'Ewes	D'Ewes' Journal.
Clerk's Instruct.	Clerk's Instructor.	Dial. de Scacc.	Dialogues de Scaccario.
Clift.	Clift's Entries.	Dick.	Dickin's Reports.
Co.	Coke's Reports.	Dict.	Dictum.
Co. Cop.	Coke's Copyholder.	Dig.	Digest.
Co. Ent.	Coke's Entries.	Dist.	Vide Caus.
Co. Inst.	{ 2nd, 3rd, & 4th Parts of Lord Coke's Institutes of the Laws of England.	Doct. & Stud.	Doctor and Student.
Co. Lit.	Coke on Littleton (1st Institute).	Dods.	Dodson's Admiralty Reports.
Cod.	Vide Caus.	Dom. Proc.	{ Domini Proctor; Cases in the House of Lords.
Code Nap.	Code Napoleon.	Doug.	Douglas's Reports. K. B.
Com.	Comyn's Reports.	Doug. Elect.	Douglas's Election Cases.
Com. Con.	Comyn on Contracts.	Dow	Dow's Reports.
Com. Dig.	Comyn's Digest.	Dow & C.	Dow and Clark's Reports.
Com. L. & T.	{ Comyn's Law of Landlord and Tenant.	Dowl. P. C.	Dowling's Practice Cases.
Comb.	Comberbach's Reports.	Dowl. P. C. N. S.	{ Dowling's Practical Cases. New Series.
Comp. Par. Off.	Complete Parish Officer.	Dub.	Dubitatur.
Const. Clar.	Constitutions of Clarendon.	Ducange.	Ducange, Gloss.
Cont.	Contra.	Duck	{ Duck de Usu et Authoritate Juris Civilis Romanorum.
Coo. Mort.	Coote on Mortgages.	Dugdale, Sir Wil-	Sir William Dugdale's Antiquities
Cooke & Alcock (Irish)	{ King's Bench, and Exchequer Chamber Reports.	liam (Warwick)	{ of Warwickshire.
Cooke's B. L.	Cooke's Bankrupt Laws.	Dugd. Orig.	Dugdale's Origines Judiciales.
Coop. C. C.	Cooper's Chancery Cases.	Dugd. Sum.	Dugdale's Summonses.
Coop. (C. P.)	{ Cooper's (Charles Purton) Points of Practice.	Duke	Duke's Charitable Uses.
Coop. (C. P.) C.	{ Cooper's (Charles Purton) Cases T. B. temp. Brougham.	Durn. & E.	{ Durnford and East, or Term Reports.
Coop. Eq. P.	Cooper's Equity Pleading.	Dwarris.	Dwarris on Statutes.
Cot. Ab. Rec.	Cotton's Abridgment of Records.	Dyer.	Dyer's Reports.
Court. Reg.	Courtney's Register.	E.; E. T.	Easter Term.
Cov. Rec.	Coventry on Recoveries.	E. & Y.	Eagle and Younge's Tithe Cases.
Cowp.	Cowper's Reports.	Eagle's Tithe Acts	{ Eagle on the Tithe Acts.
Cox, C. C.	Cox's Chancery Cases.	Eagle on Tithes.	Eagle's Treatise on Tithes.
Cr. & Ph.	Craig & Phillips's Reports.	East	East's Reports.
Cramm. Regist.	Cranmer's Register.	East P. C.	East's Pleas of the Crown.
Crawford & Dix (Irish)	{ Reports in Courts of Law and Equity.	Eccles. Cas.	{ Ecclesiastical Cases by Stillingfleet.
Cro.	Keilwey's Reports, by Croke.	Eccles. Notes of Cases	{ Notes of Cases in the Ecclesiastical and Maritime Courts.
Cro. Car.	Croke's Reports temp. Car.	Eden	{ Eden's Reports of Northington's Cases.
Cro. Eliz.	Croke's Reports temp. Eliz.	Edwards	Edwards' Admiralty Reports.
Cro. Jac.	Croke's Reports temp. Jac.	Eq. Ca. Abr.	Equity Cases Abridged.
Crompt. J. C.	Crompton's Jurisdctions of Courts.	Ersk. Inst.	{ Erskine's Institute of the Law of Scotland.
Cruise's Dig.	Cruise's Digest.	Espen (Van)	Espen (Van), Jus. Canon.
Cunning.	Cunningham's Reports.	Esp. Ev.	Espinasse's Evidence.
Curt.	Curteis's Ecclesiastical Reports.	Esp. N. P. C.	Espinasse's Nisi Prius Cases.
D. & C.	Deacon and Chitty's Reports.	Evans' Col. Stat.	Evans' Collection of Statutes.
D. & D. P. C.	{ Dowling and Dowling's Practical Cases.	Exp.	Expired.
D. & L.	Danson and Lloyd's Reports.	Extra.	Vide Caus.
D. & M.	Davidson and Merivale's Reports.	Far.	Farresley's Reports.
D. & R.	Dowling and Ryland's Reports.	Fearne.	Fearne on Remainders.
D. & R. N. P. C.	{ Dowling and Ryland's Nisi Prius Cases.	Fell, Mer. G.	Fell, on Mercantile Guarantees.
D. & W.	Drury and West's Reports.	Ff.	Vide Caus.
Dal.	Dalison's Reports.	Field. Pen. Stat.	Fielding's Penal Laws.
Dalr. Feud.	Dalrymple's Feudal Law.	Finch.	Finch's Reports.
Dalton	Dalton's Justice.	Finch. Law.	Finch's Common Law.
Daniel	Daniel's Reports.	Fitz. Abr.	Fitzherbert's Abridgment.

Fitz. N. B.	Fitzherbert's Natura Brevium.	Hopp. Com. Inst.	Hoppii Comment. ad Institutione
Fitzg.	Fitzgibbon's Reports.	Just.	Justinianeas.
Fleetw. (Bishop)	Fleetwood's (Bishop) Works.	How. St. Tr.	Howell's Collection of State Trials.
Fleta.	Fleta, seu Commentarius Juris Anglicani.	Huber's Com- ment.	Huber's Commentaries.
Fonbl. Eq.	Fonblanque on Equity.	Hudson & Brooke (Irish)	King's Bench and Exchequer Chamber Reports.
Forrest.	Forrest's Reports.	Hugh. Ent.	Hughes' Entries.
Forrester	Cases tempore Talbot.	Hullock	Hullock on Costs.
Fortesc.	Fortescue's Reports.	Hutt.	Hutton's Reports.
Foster, C. C.	Foster's Crown Cases.	Infra & Supra.	Below, and above.
Fox & Smith (Irish)	Reports in the Court of King's Bench and Court of Error.	Irish Circ. Rep.	Irish Circuit Reports.
Fra. Max.	Francis's Maxims.	Islip.	Constitutiones Simonis Islip Archiep. Cant.
Freem. C. C.	Freeman's Chancery Cases.	J. & W.	Jacob & Walker's Reports.
Freem. K. B.	Freeman's Reports, King's Bench.	Jacob.	Jacob's Reports.
Full. Church Hist.	Fuller's Church History.	Jarman.	Jarman on Wills.
G. & D.	Gale and Davison's Reports.	Jebb & Symes (Irish)	King's Bench and Exchequer Chamber Reports.
G. & J.	Glyn and Jameson's Reports.	Jenk. Cent.	Jenkins's Reports.
Gaill. Pract. Quest.	Gaill (Andr.) Practicæ Questiones.	Johnson's Canons	Johnson's Collection of Ecclesias- tical Laws and Canons.
Gibson's Codex.	Gibson's Codex Juris Ecclesiastici Anglicani.	Jon. (Sir T.)	Sir Thomas Jones's Reports.
Gilb.	Gilbert's Reports in Equity.	Jon. (Sir W.)	Sir William Jones's Reports.
Gilb. C. P.	Gilbert's Common Pleas.	Jones (Irish)	Exchequer Reports.
Gilb. Ch.	Gilbert's Chancery.	Jones & Carey (Irish)	Exchequer Reports.
Gilb. Dis.	Gilbert on Distresses.	Just. Inst.	Justinian's Institutes.
Gilb. Ev.	Gilbert's Law of Evidence.	K. B.	King's Bench.
Gilb. Ex.	Gilbert's Executions.	Kebl.	Keble's Reports.
Gilb. L. & E.	Gilbert's Cases in Law and Equity.	Keen	Keen's Reports.
Gilb. Ten.	Gilbert's Tenures.	Keil.	Keilway's Reports.
Gilb. Us.	Gilbert's Uses.	Kel. (Sir J.)	Sir John Kelynge's Reports.
Glanv.	Glanville de Legibus.	Kel. W.	William Kelynge's Reports.
Glanv. Elect.	Glanville's Elect. Reports.	Ken.	Kenyon's Reports.
Godb.	Godbolt's Reports.	Kenn.	Kennett's (Bp.) Chronicle Ec- clesiastical and Civil.
Godolph. Rep.	Godolphin's Repertorium.	Kenn. Hist.	Kennett's (Bp.) History of Eng- land.
Golds.	Goldsborough's Reports.	Kenn. Par. Ant.	Kennett's Parochial Antiquities.
Gow's N. P. C.	Gow's Nisi Prius Cases.	Kenn. Impropr.	Kennett's Impropropriations.
Grindal (Archbi- shop)	Grindal, Life of Archbishop.	Kitch.	Kitchin on Courts.
Grot. de J. B. et P.	Grotius de Jure Belli et Pacis.	Knapp.	Knapp's Reports.
Gwillim.	Gwillim's Tithe Cases.	Kyd on Corp.	Kyd on Corporations.
H. T.	Hilary Term.	L. C.	Lord Chancellor.
Hagg.	Haggard's Ecclesiastical Reports.	L. & G.	Lloyd and Gould's Reports.
Hale, C. L.	Hale's Common Law.	Lamb.	Lambard's Eirenarcha.
Hale's P. C.	Hale's Pleas of the Crown.	Lane.	Lane's Reports.
Hallam, Const. Hist.	Hallam's Constitutional History.	Latch.	Latch's Reports.
Hallifax.	Hallifax's Analysis of the Civil Law.	Law Journ. N. S.	Law Journal, New Series.
Hanm.	Hanmer's Notes of Cases, by Lord Kenyon.	Leach, C. C.	Leach's Crown Cases.
Hans. Parl. Deb.	Hansard's Parliamentary Debates.	Lee (Sir G.)	Ecclesiastical Reports, by Sir George Lee.
Hardr.	Hardres' Reports.	Leon.	Leonard's Reports.
Hardw.	Cases tempore Hardwicke.	L'Estrange, All. Div. Off.	L'Estrange, Alliance of Divine Offices.
Harg. Co. Lit.	Coke upon Littleton, by Har- grave.	Lev.	Levinz's Reports.
Hawk. P. C.	Hawkins's Pleas of the Crown.	Lev. Ent.	Levinz's Entries.
Hayes (Irish)	Exchequer Reports.	Lewin, C. C.	Lewin's Crown Cases.
Hayes & Jones (Irish)	Exchequer Reports.	Lex Mercat.	Lex Mercatoria Rediviva, by Beawas.
Heinec. Ant. Rom.	Heineccii Antiquitates Romanæ.	Ley.	Ley's Reports.
Hetl.	Hetley's Reports.	Lib. Ass.	Liber Assisarum, or Pleas of the Crown.
Highm. Lun.	Highmore on Lunacy.	Lib. Feud.	Liber Feudorum.
Highmore	Highmore on Mortmain.	Lib. Int.	Liber Intrationum. Old Book of Entries.
Hob.	Hobart's Reports.	Lib. Pl.	Liber Placitandi.
Holt.	Reports temp. Holt.	Lib. Reg.	Register Book.
Holt Lib.	Holt on Libel.	Lil. Pr. Reg.	Lilly's Practical Register.
Holt's N. P. C.	Holt's Nisi Prius Cases.	Lill. Ent.	Lilly's Entries.
Hooker's Eccles. Pol.	Hooker's Ecclesiastical Polity.	Lilly.	Lilly's Reports.
		Litt.	Littleton's Reports.

Lit. Ten.	Littleton's Tenures.	N. & M.	Neville and Manning's Reports.
Lofft.	Lofft's Reports.	N. & P.	Neville and Perry's Reports.
Longfield & Townsend (Irish)	Exchequer Reports.	N. Benl.	New Bendloe.
Lonsdale's C. L.		N. Nov.	Novellæ (Juris Civilis).
Luder.	Lonsdale's Criminal Law.	N. R.	Bosanquet and Puller's New Reports.
Lumley.	Luder's Elect. Cases.	Nares.	Nares on Convictions.
Lutw.	Lumley on Annuities.	Nels.	Nelson's Reports.
Lyndwood.	Lutwyche's Reports.	Nicholls Common Prayer.	Nicholls on the Common Prayer.
M. & Ayr.	Lyndwood, Provinciale seu Constitutiones Angliæ.	No. N.	Novæ Narrationes.
M. & B.	Montagu and Ayrton's Reports	Nolan.	Nolan's Poor Laws.
M. & C.	Montagu and Bligh's Reports.	Nol.	Nolan's Reports.
M. & G.	Mylne and Craig's Reports.	Nol. Sett.	Nolan's Settlement Cases.
M. & K.	Manning and Granger's Reports.	Northington.	Northington's Reports.
M. & M.	Mylne and Keene's Reports.	Noy.	Noy's Reports.
M. & McAr.	Moody and Malkins's Nisi Prius Reports.	O. Benl.	Old Bendloe.
M. & P.	Montagu and MacArthur's Reports.	Off. Br.	Officina Brevium.
M. & R.	Moore and Payne's Reports.	Off. Ex.	Office of Executors.
M. & Ry.	Meeson & Roscoe's Reports.	O'Leary.	O'Leary on Tithe Rent Charge.
M. & Rob.	Manning and Ryland's Reports	Ord. Ch.	Orders in Chancery.
M. & S.	Moody and Robinson's Nisi Prius Reports.	Oughton' Ordo Judic.	Oughton' Ordo Judiciorum.
M. & Sc.	Maule and Selwyn's Reports.	Ow.	Owen's Reports.
M. & W.	Moore and Scott's Reports.	P. C.	Pleas of the Crown.
M. T.	Meeson and Welsby's Reports.	P. & D.	Perry and Davison's Reports.
Mad. Fir. Bur.	Michaelmas Term.	P. & K.	Perry and Knapp's Reports.
Mad. Form.	Maddox's Firma Burgi.	P. R. C. P.	Practical Register in Common Pleas.
Mad. Hist. Exch.	Maddox's Formulæ Anglicanum.	P. Wms.	Peere Williams's Reports.
Madd.	Maddox's History of the Exchequer.	Pal. Con.	Paley on Conviction.
Madd. & G.	Maddock's Reports.	Paley P. & A.	Paley's Law of Principal and Agent.
Malyne.	Maddock and Geldart's Reports.	Palm.	Palmer's Reports.
Mansel on Limit.	Malyne's Lex Mercatoria.	Park.	Parker's Reports.
Manw.	Mansel on Limitations.	Park Ins.	Park on Insurance.
March.	Manwood's Forest Laws.	Park. Reg.	Parker, Register of Archbishop.
Marsh.	March's Reports.	Pasch.	Easter Term.
Mason.	Marshall's Reports.	Patch Mort.	Patch on Mortgages.
Mason, De Minist.	Mason's Vindiciæ Ecclesiæ Anglicanæ.	Peake's Ev.	Peake's Evidence.
M'Clel.	Mason's De Ministerio Anglicano.	Peake's N. P. C.	Peake's Cases at Nisi Prius.
M'Cl. & Y.	M'Cleland's Reports.	Peake's Ad. Ca.	Peake's Additional Cases.
Meriv.	M'Cleland and Younge's Reports.	Pecch.	Constitutiones Johannis Peccham (Archiep.)
Merew. & Steph.	Merivale's Reports.	Pecc. Reg.	Peccham, Register of Archbishop.
Mireh.	Merewether and Stephens' History of Boroughs.	Peckw.	Peckwell's Election Cases.
Mirehouse on Advow.	Mirehouse on Tithes.	Perkins.	Perkins's Conveyancing.
Mirror.	Mirehouse on Advowsons.	Petersdorff's Abr.	Petersdorff's Abridgment.
Mirror of Parl.	Horne's Mirror of Justices.	Phill.	Phillimore's Reports.
Mitf. Pl.	Mirror of Parliament.	Phillips' Ev.	Phillips' Law of Evidence.
Mod.	Mitford's Pleading.	Pig.	Pigot's Recoveries.
Mod. Int.	Modern Reports in Law and Equity.	Pl.	Placita.
Mod. Intri.	Modus Intriandi.	Plac. Parl.	Placita Parliamentaria.
Molloy.	Molloy de Jure Maritimo.	Plowd.	Plowden's Reports.
Mont. & B.	Montague and Bligh's Reports.	Plowd. on Tithes.	Plowden's Treatise on Tithes.
Mont. Eq. Pl.	Montagu's Equity Pleading.	Pollexf.	Pollexfen's Reports.
Mont. Part.	Montagu on Partnership.	Poph.	Popham's Reports.
Montesquieu.	Montesquieu, Esprit des Loix.	2 Poph.	Cases at the end of Popham's Reports.
Montg.	Montagu's Reports.	Pow. Mort. by Cov.	Powell on Mortgages by Coventry.
Moody's C. C. R.	Moody's Crown Cases Reserved.	Poynt. Mar.	Poynter on Marriages.
Moore (J. B.)	J. B. Moore's Reports.	Pr.	Private.
Moore's P. C. Ca.	Moore's Privy Council Cases.	Pr. Reg. Ch.	Practical Register in Chancery.
Moore (Sir F.)	Sir Francis Moore's Reports.	Prac. Chan.	Practice in Chancery. 1672.
Mos.	Moseley's Reports.	Pre. Ch.	Precedents in Chancery.
MS.	Manuscript.	Preston.	Preston on Estates.
MS. C. C. R.	Manuscript Crown Cases Reserved.	Price.	Price's Reports.
MS. Sum.	Lord Hale's Summary of Pleas of the Crown, with MS. Notes and Additions.	Priv. Lond.	Privilegia Londini.
		Pult.	Pulton de Pace Regis et Regni. 1609.
		Q. B.	Queen's Bench Reports, New Series, by Adolphus and Ellis.
		Quo War.	Quo Warranto.

R. & M.	Ryan and Moody's Reports.	Sel. Pr.	Sellon's Practice.
R. & M. C. C. R.	Ryan and Moody's Crown Cases Reserved.	Seld.	Selden's Judicature in Parliament.
R. & R.	Russell and Ryan's Crown Cases Reserved.	Seld. Tit. of Hon.	Selden's Titles of Honour.
R. T. Hard.	Reports temp. Hardwicke.	Selden, Hist.	Selden's History of Tithes.
R. T. H.	Reports temp. Holt.	Selden's Baron.	Selden's Privileges of the Baronage of England.
Railw. Ca.	Railway Cases.	Selw. N. P.	Selwyn's Law of Nisi Prius.
Rast. Ent.	Rastall's Entries and Statutes.	Semb.	Semble, seems.
Raym. (Sir T.)	Sir T. Raymond's Reports.	Sew. Corp. Acts.	Sewell's Corp. Acts.
Ld. Raym.	Lord Raymond's Reports.	Shaw, P. L.	Shaw's Parish Law.
Reeves	Reeves' English Law.	Shelf. on Mort.	Shelford on Mortmain.
Ref. Leg.	Reformatio Legum.	Shep. Touchst.	Sheppard's Touchstone.
Reg. Brev.	Register of Writs.	Show. (Sir B.)	Shower's Reports.
Reg. Chich.	Register of Archbishop Chicheley.	Show. P. C.	Shower's Cases in Parliament.
Reg. Conv.	Register of Convocation.	Sid.	Siderfin's Reports.
Reg. Gen.	Regulæ Generales.	Sim.	Simons's Reports.
Reg. Jud.	Registrum Judiciale.	Simeon.	Simeon on Elections.
Reg. Plac.	Regula Placitandi.	Skin.	Skinner's Reports.
Reg. Reynol.	Register of Archbishop Reynolds.	Smith.	Smith's Reports.
Reg. Winch.	Register of Archbishop Winchelsey.	Smith & Batty's (Irish)	King's Bench Reports.
Rep.	Repealed.	Smythe (Irish)	Common Pleas and Exchequer Chamber Reports.
Rep.	Coke's Reports.	Som.	Somers' (Lord) Tracts.
Rep. Ch.	Reports in Chancery.	Spel. Conc.	Spelman's Concilia.
Rep. Dig. Peer.	Reports from the Lords' Committees, touching the Dignity of a Peer of the Realm.	Spel. Gloss.	Spelman's Glossary.
Rep. Eq.	Gilbert's Reports in Equity.	St. Tr.	State Trials.
Rep. Jur.	Repertorium Juridicum.	Stark. Ev.	Starkie on Evidence.
Rep. Q. A.	Reports tempore Queen Anne.	Stark. N. P. C.	Starkie's Nisi Prius Cases.
Res.	Resolved.	Starkie	Starkie on Libel.
Reyn.	Constitutiones Walæri Reynold. Archiep. Cant.	Stat. West.	Statutes Westminster.
Ridg.	Ridgeway's Reports.	Staundf. P. C.	Staundford's Pleas of the Crown and Prærogative.
Ridg. Lapp. and Sch. (Irish)	Ridgeway's, Lapp's, and Schoales's Reports.	Steer by Clive	Steer's Parish Law, by Clive.
Rigge on Regis.	Rigge on Registering Deeds.	Steph. Plead.	Stephen on Pleading.
Rob.	Robinson's Admiralty Reports.	Steph. Corp.	Stephens on Corporations.
Rob. App.	Robertson's Appeal Cases.	Steph. Elect.	Stephens on the Law of Parliamentary Elections.
Rob. Ent.	Robinson's Entries.	Steph. N. P.	Stephens on Nisi Prius.
Rogers' E. L.	Rogers' Ecclesiastical Law.	Stilling. Ca.	Stillingfleet's Ecclesiastical Cases.
Rol. Abr.	Rolle's Abridgement.	Str.	Strange's Reports.
Roll.	Roll of the Term.	Strat.	Constitutiones Johannis Stratford Archiep. Cant.
Rolle.	Rolle's Reports.	Stry. Cranm.	Strype's Life of Cranmer.
Roper	Roper on Husband and Wife.	Stry. Park.	Strype's Parker.
Rosc. Crim. Ev.	Roscoe on Criminal Evidence.	Stry. Ref.	Strype's Reformation.
Rosc. Ev.	Roscoe on Evidence.	Sty.	Style's Reports.
Rose	Rose's Reports.	Sudb.	Constitutiones Simonis Sudbury.
Rot. Parl.	Parliament Roll.	Sugden on Powers	Sugden (Sir E.) on Powers.
Runn. Eject.	Runninton on Ejectment.	Sugden's V. & P.	Sugden's (Sir E.) Law of Vendors and Purchasers.
Rushworth	Rushworth's Historical Collections.	Swanst.	Swanston's Reports.
Russell	Russell on Crimes, by Greaves.	Swinburne.	Swinburne on Wills.
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Ruth. Inst. Nat. Law.	Rutherford's Inst. of Nat. Law.	T. R.	Term Reports.
Rym. Fœd.	Rymer's Fœdera.	T. R. E.	Tempore Regis Edwardi.
S.	Section.	T. T.	Trinity Term.
S. C.	Same case.	Talb.	Cases tempore Talbot.
S. C. C.	Select Chancery Cases.	Taml.	Tamlyn's Reports.
S. P.	Same point.	Taunt.	Taunton's Reports.
S. & D.	Shaw and Dunlop's Cases in Court of Session.	Taylor's El.	Taylor's Elements of the Civil Law
S. & S.	Simons's and Stuart's Reports.	Terms of the L.	Terms of the Law.
Salk.	Salkeld's Reports.	Thes. Brev.	Thesaurus Brevium.
Sand. U. & T.	Sanders on Uses and Trusts.	Tidd.	Tidd's Practice.
Saund.	Saunders's Reports.	Tidd's App.	Tidd's Appendix.
Sav.	Savile's Reports.	Tidd's N. P.	Tidd's New Practice.
Say.	Sayer's Reports.	Toller	Toller's Law of Executors, by Whitmarsh.
Sayer	Sayer on Costs.	Tom. Dict.	Tomlin's Law Dictionary.
Sch & Lef.	Schoales and Lefroy's Reports.	Toth.	Tothill's Reports.
Scott.	Scott's Reports.	Touchst. by Atherley.	Sheppard's Touchstone, by Atherley.
Scott's N. R.	Scott's New Reports.	Towns. Jud.	Townsend's Judgments.
Sel. Ca. Ch.	Select Cases in Chancery.		

Tr. Eq.....	Treatise of Equity.	Whart. Observ. {	Wharton's Observations on
Tr. per Pais.....	Trials per Pais.		Strype's Cranmer.
Trem. P. C.....	Tremaine's Pleas of the Crown.	Whitg. Reg.	Whitgift, Register of Archbishop.
Trin.....	Trinity Term.	Wightw.	Wightwick's Reports.
Turn.	Turner's (Ch.) Reports.	Wilkins' Concil. {	Wilkins' Concilia Magnæ Bri-
Turn. & R.	Turner and Russell's Reports.		tanniæ et Hiberniæ.
Tyr. & Tynd.Dig. {	Tyrwhitt and Tyndale's Digest of	Willes	Willes's Reports.
	Statutes.	Williams	Williams on the Clergy.
Tyrw.	Tyrwhitt's Reports	Williamson Exec. {	Williams on Executors.
Ulpian	Ulpian.	Wilm.	Wilmot's Notes.
V. C.....	Vice-Chancellor.	Wils.....	Wilson's K. B. and C. P. Reports.
V. & B.	Vesey and Beame's Reports.	Wils. C. C.	Wilson's Chancery Cases.
Vaugh.....	Vaughan's Reports.	Winch.....	{ Constitutiones Roberti Winchel-
Vent.....	Ventris's Reports.		sey Archiep. Cant.
Vern.....	Vernon's Reports.	Winch. Reg.	{ Winchelsey, Register of Arch-
Vernon & Scri-	Vernon and Scriven's Reports.		bishop.
ven (Irish)		Winch (Sir H.) {	Winch's Reports.
Ves.	Vesey's (jun.) Reports.	Wms. Prec.....	Williams's Precedents.
Ves. Sen.....	Vesey's (sen.) Reports.	Wood's Inst.	{ Wood's Institutes of the Laws of
Vin. Abr.....	Viner's Abridgment.		England.
Vin. Supp.	Supplement to Viner.	Wood. Lect.....	{ Wooddeson's Lectures on the Law
Vin. Inst	Viner's Institutes.		of England.
Vinnius Com-	Vinnius' Commentaries.	Woodfall, L. & T. {	Woodfall's Law of Landlord and
ment.			Tenant by Wollaston.
Von Espen, Jus	Von Espen, Jus Ecclesiasticum	Wr. Ten.....	Wright's Tenures.
Eccles. Univ. {	Universum.	Wy. Pr. R.	Wyatt's Practical Register.
Vulteius Test. {	Vulteius, de Testamentis Ordi-	Y. & C.	Younge and Collier's Reports.
	mandis.	Y. & C., N. C.....	Younge and Collier, New Cases.
W. & S.	Wilson and Shaw's Reports.	Y. & J.	Younge and Jervis's Reports.
Wake Conv.....	Wake's Convocation.	Y. B.	{ Year Books. The Year Books are
Warh. Reg.	Warham, Register of Archbishop.		quoted by the year of each king's
Watson	Watson's Clergyman's Law.		reign.
Went. Off. Ex....	Wentworth's Office and Duty of	Yelv.	Yelverton's Reports.
	Executors.	Younge.	Younge's Reports.
West.	West's Reports.		

ADDENDA, ERRATA, ET CORRIGENDA.

Page

204. insert, as a note to Stat. 28 Hen. 8, c. 6 (Ir.), "This statute has been repealed by Stat. 28 Geo. 3, c. 32."
440. note (1), insert "Stat. 23 Eliz. c. 1, has been repealed by Stat. 7 & 8 Vict. c. 102."
444. note (1), insert "Stat. 27 Eliz. c. 2, has been repealed by Stat. 7 & 8 Vict. c. 102."
461. note (1), insert "Stat. 35 Eliz. c. 1, has been repealed by Stat. 7 & 8 Vict. c. 102."
463. note (1), insert "Stat. 35 Eliz. c. 2, has been repealed by Stat. 7 & 8 Vict. c. 102."
539. note (1), insert "Stat. 3 Car. 1, c. 2, has been repealed by Stat. 7 & 8 Vict. c. 102."
632. note (1), insert "Stat. 1 G. & M. c. 9, has been repealed by Stat. 7 & 8 Vict. c. 102."
632. after line 50, insert "Stat. 1 G. & M. c. 15, has been repealed by Stat. 7 & 8 Vict. c. 102."
633. after line 33, insert "Stat. 1 G. & M. c. 17, has been repealed by Stat. 7 & 8 Vict. c. 102."
805. insert, as a note to the words *in the presence of two or more credible witnesses*, "Where certain persons by indentures of lease and release, conveyed lands to C., upon trust that he might convey the same to certain persons therein named, upon such trusts as appeared and were expressed and declared by an indenture of bargain and sale already prepared, and intended to bear date the day following, which lease was subsequently executed, and the trusts declared were for certain charitable purposes: it was held, that the deeds of lease and release, not having been attested by two witnesses, were void under the Mortmain Act, although the bargain and sale declaring the uses was duly attested and enrolled pursuant to the act. *Doe d. Barbour v. Munro*, 12 M. & W. 845."
862. after line 15, insert "Stat. 3 Geo. 3, c. 18 (Ir.), has been repealed by Stat. 7 & 8 Vict. c. 97 (Ir.)."
967. after line 42, insert "Stat. 40 Geo. 3, c. 75 (Ir.), has been repealed by Stat. 7 & 8 Vict. c. 97 (Ir.)."
1358. note (1), insert "The defects alluded to in this note have been rectified by Stat. 6 & 7 Vict. c. 10."
1385. insert, as a note to Stat. 9 Geo. 4, c. 31, s. 23, "A chaplain in ordinary of the queen is exempt from arrest on final process. *Winter v. Dibdin*, 13 M. & W. 25."
1505. note (1), insert "In *Fellowes v. Clay (Clerk)*, (4 Q. B. 313,) a difference of opinion existed among the judges, whether under Stat. 2 & 3 Gul. 4, c. 100, s. 1, a lay landowner can sustain a claim of exemption from tithe by proof of non-payment for one of the periods there named, without other proof of any legal origin of the exemption."
1797. note (2), insert "In *Doe d. Yorke v. Walker*, (12 M. & W. 591,) it appeared that a testator, by his will, dated in February, 1837, devised all his lands in B. to two trustees, to the use of Y. for life, with remainders over: he also bequeathed to the same trustees and Y. certain sums of money on certain trusts therein mentioned, and appointed them executors; and he gave to the three, legacies of 100*l.* each for their [trouble in the execution of his will. By a codicil dated in February, 1838, (after Stat. 1 Vict. c. 26, came into operation,) after reciting the devises and bequests contained in his will, and that he had since determined to appoint C. an additional trustee for the purposes in his will mentioned, he gave and devised all his messuages, lands, &c., described in and devised by his will, and also the several sums of money therein mentioned to C., his heirs, executors, &c., upon the trusts in the will mentioned, and nominated him one of the executors of his will; and directed and declared, that it should be read and construed in the same manner, and have the same operation and effect, as if C. had been named a trustee and executor with the other trustees; and bequeathed to him the like legacy of 100*l.* And in all other respects, the testator ratified and confirmed his said will: it was held, that the will was republished by the codicil, and passed real estates purchased by the testator after the date of the will and of the codicil."
2093. At the termination of note (1), insert "In *Bluck v. Rackham*, [*Ex relat.* the learned Reporter of the Ecclesiastical Notes of Cases,] [which was an appeal from the Consistorial court of Norwich, in a proceeding against the Rev. John Bluck, Rector of Walsoken, Norfolk, to recover a penalty under the 32nd section of the Residence and Plurality Act, (Stat. 1 & 2 Vict. c. 106,) for non-residence on his benefice for more than three months, and not exceeding six months, in the year ending 31st December, 1842; such penalty being one-third of the annual value of

his living: the chancellor of the court of Norwich had pronounced that the party proceeding, (Mr. Matthew Rackham, of the city of Norwich, duly nominated by the bishop,) had proved the contents of his allegation, and that Mr. Bluck had incurred the forfeiture: on behalf of this gentleman (the appellant in the court of Arches) it was objected, that this was a criminal proceeding, and that all criminal proceedings against clergymen of the church of England must be carried on under the Church Discipline Act, and by articles; it was also contended, that the proof of non-residence had gone no further than showing, that he had not resided at the parsonage-house, there being, in fact, no residence attached to the rectory: upon such facts] Sir *Herbert Jenner Fust*, (Arches court, May 10, 1845,) held, that neither of these objections was sustainable. The first objection, he observed, raised this question, whether Stat. 1 & 2 Vict. c. 106, was repealed by the Church Discipline Act; if not, the bishop had the power of proceeding in his court by himself or his nominee for the penalties incurred under the former act. He (the learned judge) was of opinion, that this was not a criminal proceeding, though the statute under which it was brought was a penal statute. By the 117th section of the act, penalties incurred by persons not being spiritual persons, or by spiritual persons not holding benefices, were to be sued for and recovered by action for debt in any of her majesty's courts of record at Westminster; and an action for debt was not a criminal proceeding. That non-residence was an offence under the general ecclesiastical law, there could be no doubt; under that law a party offending might be proceeded against, and punished by ecclesiastical censure, monition, suspension, or deprivation. But a new jurisdiction had been created, and though it might be argued, that a party might thus be proceeded against twice for the same offence, by articles under the general ecclesiastical law, and for a penalty under the Residence Act, it was time enough to consider that question when such double proceeding took place. Could it be contended, that a married clergyman could not be proceeded against for a separation by his wife, as well as in a criminal suit for the offence? It never could have been the intention of the legislature to repeal Stat. 1 & 2 Vict. c. 106, by the Church Discipline Act, and he was of opinion, that this was not a criminal proceeding, but in fact and in substance a civil proceeding to recover a penalty. The only question that remained, therefore, was whether there was sufficient proof that the party had been absent from his benefice for more than three months in the year 1842. Now there was the evidence of the person who performed his duty during his absence, and of others whom he told he was going to a watering-place for some months, or who met him going to Wisbeach in a carriage with luggage, and (unless it was required that the party proceeding was to look into every house in the parish) there was a sufficient *primâ facie* case against Mr. Bluck to call upon him to show that he is within any of the exemptions specified in the act, or to rebut the proof, and show that he was resident within the parish. If the proof were required to be more stringent, no party could sue, and the act would be a nullity; but Mr. Bluck had set up no defence, either in plea or by interrogatories; and on the whole the court was of opinion, that the learned judge in the court below had done right in pronouncing that the party had forfeited one-third of the annual value of his benefice, the amount of which must be ascertained by the registrar in the court below. He (Sir H. Jenner Fust) pronounced against the appeal, affirmed the sentence appealed from, remitted the cause, and condemned the party in the costs of the appeal."

STATUTA HENRICI III.

A.D. 1216—1272.

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I. Stat. 9 Hen. 3, c. 1	1	VIII. Stat. 20 Hen. 3, c. 2	3
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I. STAT. 9 HENRICI 3, c. 1. A.D. 1225.

STAT. 9 HEN.
3, c. 1.

"A Confirmation of Liberties."

IN primis concessimus Deo & hac presenti Carta nostra confirmavimus pro nobis & heredibus nostris imperpetuum quod ecclesia Anglicana libera sit & habeat omnia jura sua integra & libertates suas illesas. Concessimus etiam & dedimus [*desunt " & dedimus" in Rec. Dunel.*] omnibus liberis hominibus regni nostri pro nobis & heredibus nostris imperpetuum has libertates subscriptas habendas & tenendas eis & heredibus suis de nobis & heredibus nostris imperpetuum [*deest "imperpetuum"*].

"First, we have granted to God (1), and by this our present Charter have confirmed, for us and our heirs for ever, that the church of England *shall be free* (2), and shall have all her whole rights and liberties inviolable. We have granted also, and given to all the freemen of our realm, for us and our heirs for ever, these liberties underwritten, to have and to hold to them and their heirs, of us and our heirs for ever."

2 Inst. 1.

Confirmed by
9 Hen. 3, c. 37,
52 Hen. 3, c. 5,
and 42 Edw. 3,
c. 1.

II. STAT. 9 HENRICI 3, c. 5 (3). A.D. 1225.

STAT. 9 HEN.
3, c. 5.

"Guardians shall maintain the Inheritance of their Wards; and of Bishopricks, &c."

Custos autem quamdiu custodiam terre hujusmodi [*deest "hujusmodi"*] habuerit sustentet domos parcos vivaria [*deest "vivaria"*] stagna molendina & cetera ad terram illam pertinentia de exitibus terre ejusdem & reddat heredi cum ad plenam etatem pervenerit terram suam totam instauratam de carucis & de omnibus aliis rebus ad minus sicut illam [*"secundum quod"*] recepit. Hec omnia observentur de custodiis archiepiscopatum episcopatum abbatiarum prioratum ecclesiarum & dignitatum vacantium que ad nos pertinent excepto

"The keeper, so long as he hath the custody of the land of such an heir, shall keep up the houses, parks, warrens, *ponds, †mills, and other things pertaining to the same land, with the issues of the said land; and he shall deliver to the heir, when he cometh to his full age, all his land stored with ploughs, and all other things, at the least as he received it. All these things shall be observed in the custodies of archbishopricks, bishopricks, abbeys, priories, churches, and dignities vacant, *which appertain to us*(4); except

10 Hen. 7, f.
30.

2 Inst. 14.

* Add *fish*.

† Add *pools*.

No waste shall be committed in wards' lands.

Enforced by
3 Edw. 1, c. 21.
See 36 Edw. 3,
c. 13.
12 Car. 2, c. 24.
31 Hen. 8, c.
13.

(1) *To God*:—When anything is granted for God, it is deemed in law to be granted to God; and whatsoever is granted to his church, for his honour, and the maintenance of his religion and service, is granted for and to God.

(2) *Shall be free*:—i. e., shall be restored to all her lawful rights, and freed from all usurpations and encroachments upon those rights.

(3) Virtually repealed by St. 12 Car. 2, c. 24.

(4) *Which appertain to us*:—Cum vacaverit archiepiscopatus, episcopatus, vel abbatia, vel prioratus, in dominio regis, esse debet

in manu ipsius, et inde percipiet omnes redditus et exitus, sicut dominicos redditus suos. In 1302, when William de Gainesburgh was made Bishop of Worcester by Papal provision, and exhibited a bull, containing, among other things, that the Pope had committed to him, *administrationem spiritualium et temporalium episcopatus predicti*; the King not only obliged him to make an express renunciation *quoad temporalia*, but also fined him 1000 marks, for admitting a bull so prejudicial to the rights of the crown. 2 Spel. 435.

STAT. 9 HEN. this, that such custody *shall not be* quod custodie hujusmodi vendi non
3, c. 5. *sold*(1). debent.

STAT. 9 HEN.
3, c. 13.

III. STAT. 9 HENRICI 3, c. 13(2). A.D. 1225.

"Assises of Darrein Presentment."

STAT. 9 HEN.
3, c. 14.

IV. STAT. 9 HENRICI 3, c. 14. A.D. 1225.

"How Men of all Sorts shall be amerced, and by whom."

"No man of the church shall be *amerced*(3) after the quantity of his spiritual *benefice*(4), but after his *lay tenement*(5), and after the quantity of his offence." Nulla ecclesiastica persona amercietur secundum quantitatem beneficii sui ecclesiastici sed secundum laicum tenementum suum & secundum quantitatem delicti.

STAT. 9 HEN.
3, c. 32.

V. STAT. 9 HENRICI 3, c. 32. A.D. 1225.

"Lands shall not be aliened to the Prejudice of the Lord's Service."

Co. Litt. 43(a).
2 Inst. 65.
Altered by 18
Edw. 1, St. I.
c. 2.
Obs. by 12 Car.
2, c. 24.

"No freeman from henceforth shall give or sell any more of his land, but so that of the residue of the lands the lord of the fee may have the service due to him, which belongeth to the fee." Nullus liber homo det decetero amplius alicui vel vendat de terra sua quam ut de residuo terre sue sufficiatur possit fieri domino feodi servitium ei debitum quod pertinet ad feodum illud.

STAT. 9 HEN.
3, c. 33.

VI. STAT. 9 HENRICI 3, c. 33. A.D. 1225.

"Patrons of Abbeys shall have the custody of them in the time of Vacation."

STAT. 9 HEN.
3, c. 36.

VII. STAT. 9 HENRICI 3, c. 36(6). A.D. 1225.

"No Land shall be given in Mortmain."

Fitz. Mortm. 1,
3.
Bro. Mort. 36.
2 Inst. 74.
Amended by 7
Edw. 1, St. II.
13 Edw. 1, St.
I. c. 32.
18 Edw. 1, St.
I. c. 3.
27 Ed. 1, St. II.
18 Edw. 3, St.
III. c. 3.
15 Rich. 2, c. 5.
23 Hen. 8, c. 10.
1 & 2 Ph. & M. c. 8. 39 Eliz. c. 5. 21 Jac. 1, c. 1. 13 & 14 Car. 2, c. 12. 7 & 8 Gul. 3, c. 37. 9 Geo. 2, c. 36.

"It shall not be lawful from henceforth to any to *give his lands* (7) to any religious house, and to take the same land again to hold of the same house. Nor shall it be lawful to any house of religion to take the lands of any, and to lease the same to him of whom he received it. If any from henceforth give his lands to any religious house, and thereupon be convict, the gift shall be utterly void, and the land shall accrue to the lord of the fee (8)." Nec liceat decetero alicui dare terram suam domui religiose ita quod illam resumat de eadem domo tenendam. Nec liceat alicui domui religiose terram alicujus sic accipere quod tradat illam illi a quo eam recepit tenendam. Si quis autem decetero terram suam alicui domui religiose sic dederit & super hoc convincatur donum suum penitus cassetur & terra illa domino illius [*"suo illius"*] feodi incurratur.

(1) *Shall not be sold*:—Fleta saith, *vendi non debent nec legari*; yet by Stat. 14 Edw. 3, St. IV. c. 4, the king could commit such temporalities during the vacation. 2 Inst. 15.

(2) Repealed by Stat. 3 & 4 Gul. 4, c. 27.

(3) *Amerced*:—Here appeareth a privilege of the church, that if an ecclesiastical person be amerced, though amerciements belong to the king, yet he shall not be amerced in respect of his ecclesiastical promotion or benefice, but in respect of his lay fee, and according to the quantity of his fault, which is to be afforded. 2 Inst. 29. Bract. lib. 3, fol. 116. Fleta, lib. 1, c. 43.

(4) *Benefice*:—That is, any ecclesiastical promotion or spiritual living. 2 Inst. 29.

(5) *Lay tenement*:—And if a spiritual person be amerced above the quantity of his lay tenement, he shall have a writ to prohibit the levying of it. Gibson's Codex, 13.

By Stat. 1 & 2 Vict. c. 106, s. 36, the widow of any spiritual person holding any benefice to which a house of residence is annexed, may continue in such residence, enjoying therewith the curtilage and garden, for two months after the decease of her husband.

(6) *Vide post* Stat. 51 Geo. 3, c. 115.

(7) *To give his lands*:—Before this statute, spiritual bodies, once incorporated, might have been endowed, *perpetuis futuris temporibus*, without licence from the king or any other.

(8) The statute was made in consequence of

VIII. STAT. 20 HENRICI 3, c. 2. A.D. 1235.

STAT. 20 HEN.
3, c. 2.*"Widows may bequeath the Crop of their Lands."*

II. Item, omnes vidue de cetero possunt legare blada sua de terra sua, tam de dotibus suis, quam de aliis terris & tenementis suis: salvis servitiis dominorum, que de dotibus & aliis tenementis suis debentur.

"Also from henceforth widows may bequeath the crop of their ground, as well of their dowers, as of other their lands and tenements, saving to the lords of the fee, all such services as be due for their dowers and other tenements."

Kel. 125.
Fitz. Bar. 149,
294.

2 Inst. 80.

IX. STAT. 20 HENRICI 3, c. 9. A.D. 1235.

STAT. 20 HEN.
3, c. 9.*"He is a Bastard that is born before the Marriage of his Parents (1)."*

VIII. Ad breve [domini] R. de bastardia, Utrum aliquis natus ante matrimonium habere poterit hereditatem, sicut ille qui natus est post, responderunt omnes episcopi, Quod nolunt, nec possunt, ad istud respondere; quia hoc esset contra communem formam ecclesie. Ac rogaverunt omnes episcopi magnates, ut consentirent, quod nati ante matrimonium essent legitimi, sicut illi qui nati sunt post matrimonium, quantum ad successionem hereditariam, quia ecclesia tales habet pro legitimis. Et omnes comites & barones una voce responderunt, quod nolunt leges Anglie mutare, que usitate sunt, & approbate. [Et ideo dominus rex habet consilium suum sub qua forma procedendum est ad inquisitionem in curia sua de talibus sic natis in marg.]

"To the king's writ of bastardy, Whether one being born before matrimony may inherit in like manner as he that is born after matrimony, all the bishops answered, That they would not, nor could not, answer to it; because it was directly against the common order of the church. And all the bishops instanced the lords, that they would consent, that all such as were born afore matrimony should be legitimate, as well as they that be born after matrimony, as to the succession of inheritance, forasmuch as the church accepteth such for legitimate. And all the earls and barons with one voice answered, that they would not change the laws of the realm, which hitherto have been used and approved."

Fitz. Bastardy,
21, 22, 25, 27,
28, 30, 33.
1 Hen. 6, c. 3.
11 Hen. 4, 84.
39 Edw. 3, 14.
44 Edw. 3, 12.
12 Co. 72.

2 Inst. 96.

X. ORDIN. 38 HENRICI 3. A.D. 1254.

ORDIN.
38 HEN. 3.*"The Sentence (2) of Curse given by the Bishops, against the Breakers of the Great Charter."*

XI. STAT. 52 HENRICI 3, c. 10. A.D. 1267.

STAT. 52 HEN.
3, c. 10.*"Certain Persons exempt from Appearance at Sheriffs' Turns."*

De turnis, vicecomitum provisum est, ut necesse non habeant ibi venire archi-

"For the turns (3) of sheriffs (4) it is provided, that archbishops, bishops,

two causes; one, that the services that were due out of such fees, and which in the beginning were created for the defence of the realm, were unduly withdrawn; secondly, the chief lords lost their escheats, wardships, reliefs, and the like; for which causes, lords at the creation of the seigniorie had a clause in the deed of feoffment, *quod licitum sit donatorio rem datam dare, vel vendere cui voluerit, exceptis viris religiosis, et Judæis*. Bract. lib. 1, fol. 13. 2 Inst. 75.

"But the ecclesiastical persons (who in this were to be commended, that they had ever the best learned men in the law that they could get, of their counsel,) found many ways to creep out of this statute: viz. religious men, as abbots, priors, and other ecclesiastical persons regular, to purchase

lands holden of themselves, or take leases for a long term of years, and many other devices they had to escape out of this statute; and bishops, parsons, and other ecclesiastical persons secular, took themselves to be out of this statute." 2 Inst. 75.

(1) Vide *Doe d. Birtwhistle v. Vardill*. 5 B. & C. 452. 1 West, 500. 6 Bing. N. C. 385. 1 Scott's N. R. 828.

(2) It seems, that the authority of parliament was necessary to warrant the prelates in pronouncing the Sentence, because it concerned temporal causes as well as spiritual.

(3) Vide Merewether and Stephens' Hist. of Boroughs, tit. Tourn. 2401.

(4) The turns of sheriffs:—Nor consequently, were ecclesiastics bound to appear at the leet, or view of frankpledge. 2 Inst. 121.

STAT. 52 HEN. 3, c. 10. abbots, priors, earls, barons, *nor any religious men*(1) or women, *shall not need to come thither*(2), *except their appearance be especially required thereat for some other cause*(3)."

STAT. 52 HEN. 3, c. 12. XII. STAT. 52 HENRICI 3, c. 12(4). (*Statute of Marlebridge.*) A.D. 1267. "*Days given in Dower, Assise of Darrein Presentment, and Quare impedit.*"

32 Hen. 8, c. 21. "In a plea of dower, that is called *unde nihil habet*, from henceforth four days shall be given in 'the year at the least, and more if conveniently it may be, so that they shall have five or six days at the least in the year. *In assises of darrein presentment, and in a plea of quare impedit*(5), of churches vacant, *days shall be given from fifteen to fifteen*(6), or from three weeks to three weeks, as the place shall hap to be near or far. And *in a plea of quare impedit, if the disturber come not*(7), at the first day that he is summoned, nor cast no essoyn, then he shall be attached at another day; at which day if he come not, *nor cast no essoyn*(8), he shall be distrained by the great distress above given; and if he come not then, by his default *a writ shall go to the bishop*(9)

Process in
quare impedit.

(1) *Nor any religious men*:—Religiosi, in the proper sense, were taken for those that were regulars, as having been professed in some of the religious orders, as abbots, priors, and the like; but ecclesiastical persons that were seculars, that is, who did not live under the rules of any of the religious orders, as bishops, deans, archdeacons, prebends, parsons, vicars, and such like, were also within this statute. 2 Inst. 121.

(2) *Shall not need to come thither*:—That is, they were not compellable to come, but left to their own liberty. And if any man were grieved in anything contrary to the purview of this statute, he had an action grounded upon the statute for his remedy and relief therein; which actions appear in the Register. Ibid. 121, 122.

(3) *Except their appearance be especially required thereat for some other cause*:—As to be a witness or the like. Ibid. 121.

(4) *Vide* Stat. 3 & 4 Gul. 4, c. 27, s. 36.

(5) *In assises of darrein presentment, and in a plea of quare impedit*:—This act extended not to a writ of *quare non admisit*, nor to an *incumbavit*; but only to the assise of *darrein presentment* and *quare impedit*; and the reason thereof was, for fear of the lapse. 2 Inst. 124.

(6) *Days shall be given from fifteen to fifteen*:—By assent of parties, a longer day may be given than is prescribed by this statute, but that assent must be entered of record. Ibid.

By the common law, great delays were

episcopi, episcopi, abbates, priores, comites, barones, nec aliqui viri religiosi, nec mulieres, nisi eorum presentia ob aliquam causam specialiter exigatur.

In placito vero dotis [*de dote*] quod vocatur unde nihil habet, dentur de cetero quatuor dies per annum ad minus, & plures si commode fieri possit, ita quod habeant quinque vel sex per annum ad minus. In assisis autem ultime presentacionis, & in placito quare impedit de ecclesiis vacantibus, dentur dies de quindena in quindenam, vel de tribus septimanis in tres septimanas, prout locus propinquus fuerit, vel remotus. In placito vero quare impedit, si ad primum diem, ad quem summonitus fuerit, non venerit nec essoynium miserit impeditor, attachietur ad alium diem, quo die si non venerit, nec essoyn' miserit, distringatur per magnum districtionem superius dictam; & si tunc non venerit, per ejus defaultam scribatur episcopo loci, quod reclamatio impeditoris illa vice

disallowed in four kinds of actions, viz., in all writs of dower, *quare impedit*, assise of *darrein presentment*, and assise of *novel disseisin*; and therefore no protection was allowed, or *essoine de servitio regis* cast in any of them. Ibid.

(7) *In a plea of quare impedit, if the disturber come not*:—At the common law, in a *quare impedit*, the process was summons, attachment, and distress infinite; which was mischievous in respect of the lapse: therefore it was provided, that if he appear not at the grand distress, judgment shall be given for the plaintiff, and a writ to the bishop awarded. Ibid.

(8) *Nor cast no essoyn*:—Of essoins there have been five kinds: 1. *De servitio regis*. 2. *In terram sanctam*. 3. *Ultra mare*. 4. *De malo lecti*, called in the old books *Essonium de resiantisa*. 5. *De malo venendi*; and this last is the common essoyn, which is intended in this act. Ibid. 125.

In a *quare impedit*, or *darrein presentment*, (the latter of which is now abolished,) an essoyn *de service le roy, ad terram sanctam*, or *ultra mare*, lieth not, for doubt of the lapse; but a common essoyn lieth. Ibid.

(9) *A writ shall go to the bishop*:—Upon these words of this statute, the plaintiff shall have a writ to the bishop without the making of any title. Ibid.

And he shall also have a writ to inquire of damages. Ibid.

If the bishop be out of the realm, a writ to the bishop may be awarded to his vicar

conquerenti non obsistat, salvo im-
peditori alias jure suo, cum inde loqui
voluerit. Eadem lex de attachamentis
faciendis de omnibus brevibus, ubi at-
tachamenta jacent, quoad districtiones
faciendas firmiter observetur; ita tamen,
quod secundum attachamentum fiat per
meliores plegios, & postmodum ultima
districcio.

of the same place, that the claim of the
disturber for that time shall not be
prejudicial to the plaintiff; saving to
the disturber his right at another time,
when he will sue therefore. The same
law, as to the making of attachments,
shall from henceforth be observed in all
writs where attachments lie, as in mak-
ing distresses, so that the second attach-
ment shall be made by better pledges,
and afterwards the last distress."

STAT. 52 HEN.
3, c. 12.

Fitz. Jour. 18,
19, 32.
11 Hen. 6, c. 4.
33 Hen. 6, c. 1.
Fitz. Brief al
evesque, 14,
21, 22, 27.
2 Inst. 123.
Altered by 32
Hen. 8, c. 21.
16 Car. 1, c. 6,

s. 13. 24 Geo. 2, c. 48, s. 4. In dower after issue joined there shall not be above fifteen days between the
teste and the return of the *venire*, &c.

XIII. STAT. 52 HENRICI 3, c. 27(1). A.D. 1267.

STAT. 52 HEN.
3, c. 27.

"*A Clerk bailed upon a Capital Offence, refuseth to answer.*"

XIV. STAT. 52 HENRICI 3, c. 28(2). A.D. 1267.

STAT. 52 HEN.
3, c. 28.

"*Remedies for Successors of Prelates for Wrongs done to their Predecessors, &c.*"

Provisum est etiam, quod si depreda-
ciones vel rapine alique fiant abbatibus,
prioribus, vel aliis prelatibus ecclesiasticis,
& ipsi jus suum de hujusmodi depreda-

"*It is provided* (3), that if any wrongs
or trespasses be done to *abbots, priors,*
or other prelates of the church (4), and
they have sued their right for such

A remedy for
prelates for
wrongs done
in the time of
their predecess-

general, for he is in the place of the bishop.
2 Inst. 125.

If the defendant appear at the grand dis-
tress, and take a day by *prece partium*,
and after make default, no writ shall be
awarded to the bishop, for this case, in respect
of his appearance, is out of the statute, but
a new distress shall be awarded. Ibid.

(1) The mischief before this statute was,
that if a man were bailed, or delivered by
plevin, although he did appear, yet if he
claimed the benefit of his clergy, the person
that bailed him or his pledges was amerced,
because he refused to answer to the felony.
Sed vide Stat. 28 Hen. 8, c. 1; Stat. 32
Hen. 8, c. 3; Stat. 6 Geo. 4, c. 25, s. 3;
placing clerks in orders on the same footing
with other persons, as to felonies, and for
limiting the effect of the benefit of clergy.

(2) *Vide* Stat. 3 & 4 Gul. 4, c. 27.

(3) *It is provided*:—There were two
mischiefs at the common law (as many
did hold); that in the case of abbots, priors,
and other regular and religious persons, if
goods of the monastery were taken away in
the life of the predecessor, after his death
his successor had no remedy for such tres-
passes; the other mischief was, that if in
the time of vacation, any intrusion were
made, the successor had no remedy to
recover the land with damages, though
thereof his predecessor died seised; and both
these are remedied by this act. 2 Inst. 151.

(4) *Abbots, priors, or other prelates of
the church*:—Lord Coke states, "that this
act extendeth only to abbots, priors, and
other prelates that be religious and regular,
and not to bishops and other persons ecclesi-
astical being secular; for in the second clause
of this act, *hujusmodi religiosorum* is men-

tioned for the distinction between religious and
secular. *Vide* 1 Inst. sect. 133. And the
reason of this diversity is, that the abbots,
priors, and other religious and regular persons,
are dead persons in law, and have capacity to
have lands and goods only for the use and be-
nefit of the house; and cannot make any testa-
ment; and therefore the church or religious
house is holden always one, in respect where-
of the succeeding abbot shall have an assise
for a disseisin done in the life of the prede-
cessor, and an action of waste for waste done
in his predecessor's time; but so shall not a
bishop, archdeacon, dean, parson, or the like,
that are ecclesiastical secular, because the
church by their death hath an alteration, and
is not always one, and they may make their
testament, for that they may have goods and
chattels to their own use.

"Also the bishop is of a higher degree
than the abbots and priors with which this
act begins." 2 Inst. 151.

Fitzherbert is of a contrary opinion to
Lord Coke, and includes archbishops and
bishops in the word *prelatibus*, and also in the
words *of such religious persons*, in the latter
clause, and says "that the bishop shall punish
a trespass done in time of vacation of the
bishopric, in cutting down of trees, &c.,
for of right the king cannot cut such trees;
but for hunting in the parks, or fishing in
the piscaries, it seemeth the king ought to
have the action for the trespass done in the
time of the vacancy: but if they do destroy
all the fish within the fish pools, or kill all
the deer in the parks, in the time of the
vacancy, it seemeth reasonable that by the
Statute of Marlebridge the successor shall
have an action for such trespass." Gibson's
Codex, 655.

STAT. 52 HEN.
3, c. 28.

sors, or during
the vacation.

Fitz. Trespass,
205, 211, 237,
242.

Fitz. Brief,
176, 296, 359,
623, 828.

2 Hen. 4, c. 4.

2 Inst. 151.
Regist. 72,
125.
Fitz. N. B.
112.

wrongs, and be prevented with death (1) before judgment given therein; *their successors shall have actions to demand* (2) *the goods* (3) *of their church* (4) out of the hands of such trespassers. Moreover, the successors shall have like action for such things as were *lately withdrawn* (5) by such violence from their house and church, before the death of their predecessors, though their said predecessors did not pursue their right during their lives. And if any intrude into the lands or tenements of such religious persons in the time of vacation, of which lands their predecessors died seised as in the right of their church (6), the successors shall have a writ to recover their seisin; and damages shall be awarded them, as in assise of *novel disseisin* is wont to be."

(1) *Prevented with death*:—So it was, if an abbot or prior were deposed, the successor had an action upon this statute, although the predecessor were alive, as well as if he had died, for as to that house, he was *civiliter mortuus*. 2 Inst. 151.

(2) *Their successors shall have actions to demand*:—Some have thought in respect of this word *repetenda*, that this must be intended of an action of detinue, or the like action, wherein the thing itself is to be recovered, but *de manibus hujusmodi transgressorum* make it evident, that it must be intended of a trespass *quare vi et armis*, for thereof was the doubt at the common law; for it is holden, that for goods taken from the predecessor of an abbot or prior, no action was given to the successor at the common law before this statute, for by the taking the property was divested. But in an action of account, debt, detinue, replevin, and the like action, which affirms the property to continue, the successor shall have an action at the common law. Ibid. 152.

(3) *Goods*:—If an obligation were taken from the predecessor, it was within this statute. The successor should have by the equity of this statute an action of trespass of cutting down of trees and carrying them away; wherein it is to be observed that acts, that give remedy for wrong done, shall be taken by equity. Ibid.

(4) *Their church*:—The action that the successor should bring upon this statute, should be *bona et catalla domus et ecclesiæ suæ tempore I. predecessoris sui*; which without question a bishop, dean, or other ecclesiastical secular cannot say. Ibid.

(5) *Lately withdrawn*:—Yet, if the taking of the goods were long before the death of the abbot or prior, his successor should have an action of trespass by this statute. Ibid.

When a new bishop is made, he may not *de jure* before his consecration claim the temporalities of his bishoprick, although that

tionibus prosequentes morte preveniantur, antequam justiciam inde fuerint assecuti; successores eorum habeant actionem ad bona ecclesie sue de manibus hujusmodi transgressorum repetend'. Similem [*similiter*] insuper habeant actionem successores de hiis, que domui & ecclesie sue recentur [*retenta*] ante obitum predecessorum suorum [4] per hujusmodi violenciam fuerint subtracta, licet predicti predecessores sui jus suum prosecuti non fuerint in vita sua. Si autem in terris & [et] tenementis hujusmodi religiosorum, de quibus eorum prelati obierint seisisi, ut de jure ecclesie sue, aliqui se intrudant tempore vacationis, eorum successores breve habeant ad recuperand' seisinam suam; & adjudicentur eis dampna sua, sicut in nova disseisina adjudicari consuevit.

ex gratia the king by his letters patent may grant them unto him after his confirmation, and before his consecration, and the grant then made is good; but after that he is consecrated, invested, and installed, he may sue for his temporalities out of the king's hands by a writ *de restitutione temporalium* directed to the escheator. Fitz. N. B. 169. Yet upon such writ, the temporalities are not *de jure* to be delivered until the metropolitan hath certified the time of his consecration, although that the freehold of the temporalities lie in him by the consecration. Watson's Clergyman's Law, c. 40, p. 423.

(6) *If any intrude into the lands or tenements of such religious persons in the time of vacation, of which lands their predecessors died seised as in the right of their church*:—This branch was also taken by equity, for by these words, the successor of an abbot, prior, or any other religious sovereign, should have an action of trespass for trees cut down and carried away in the time of vacation.

But a bishop shall not have an action of trespass in that case, as hath been said, for that this act extends not to him: and as the king hath the temporalities during the vacation, he therefore cannot have an action of trespass; but in the Register there is in that case an oier and terminator to be granted to hear the trespasses done in time of vacation of the bishoprick, as thereby appeareth; which seemeth in favour of the church to be granted by the common law, for it is not grounded upon this act. 2 Inst. 152.

"And the writ of intrusion lieth not for the successor of the bishop for an intrusion in time of vacation, for the king's possession (which he hath without office) preserveth the inheritance of the bishop, but it lieth by this statute, where one intrudes after the decease of an abbot or prior. Vide 1 Inst. sect. 443, for this manner of intrusion, while the freehold and inheritance is in consideration of law." 2 Inst. 152.

STATUTA EDWARDI I.

A.D. 1272—1307.

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I. STAT. 3 EDWARDI 1, c. 1(1). A.D. 1275.

"The Peace of the Church and the Realm shall be maintained. Religious Houses shall not be overcharged."

STAT. 3 EDW.
1, c. 1.

II. STAT. 3 EDWARDI 1, c. 2(2). A.D. 1275.

"A Clerk convict of Felony, delivered to the Ordinary, shall not depart without Purgation."

STAT. 3 EDW.
1, c. 2.

III. STAT. 3 EDWARDI 1, c. 5. A.D. 1275.

"There shall be no Disturbance of Free Elections (3)."

STAT. 3 EDW.
1, c. 5.

Et pur ceo qe elections deivent estre franchises, le roi defende sur sa greve forfeiture, qe nul haut homme, nautre, per poiardes armes, ne per manaces, ne distourbe defair fraunche election.

"And because elections ought to be free, the king commandeth upon great forfeiture, that no great man or other, by force of arms, nor by menacing, shall disturb any to make free election."

Elections shall
be free.Br. Amercement, 6, 13,
32, 35, 37.
2 Inst. 168.

See 9 Edw. 2, St. I. c. 14, relating to election of dignities of the church.

IV. STAT. 3 EDWARDI 1, c. 15(4). A.D. 1275.

"Which Prisoners be mainprenable, and which not. . . ."

STAT. 3 EDW.
1, c. 15.

Escomegne pris per priere levesque, ou per aperte malvete, ou treson qe touche le roi mesmes, ne soient en nul manere replevisables per le comune brief, ne sanz brief.

"Persons excommunicate, taken at the request of the bishop, or for manifest offences, or for treason touching the king himself, shall be in no wise replevisable by the common writ, nor without writ."

(1) This statute was superseded by Stat. 12 Car. 2, c. 24.

(2) Repealed by Stat. 7 & 8 Geo. 4, c. 27.

(3) Vide 1 Stephens on the Law of Par-

liamentary Elections, c. 12; *post.* 39 n. 4.

(4) Vide Stat. 5 Eliz. c. 23; Stat. 53 Geo. 3, c. 127; Stat. 2 & 3 Gul. 4, c. 93; Stat. 3 & 4 Gul. 4, c. 41, s. 28.

STAT. 3 EDW.
1, c. 21.

V. STAT. 3 EDWARDI 1, c. 21. A.D. 1275.

"No Waste shall be made in Wards' Lands, nor in Bishops', during the Vacation."

Bro. Wast. 32,
37, 49, 68,
107, 137.
Co. Litt. 54.

Bro. Wast. 58.
Regist. 72.
2 Inst. 201.
9 Hen. 3, St.
I. c. 4, 5.
Enforced by 6
Edw. 1, St. I.
c. 5.

13 Edw. 1, St.
I. c. 14.
20 Edw. 1, St.
II. concerning
waste.

28 Edw. 1, St. III. c. 18.

"In right of lands of heirs being within age, which be in ward of their lords; it is provided, that the guardians shall keep and sustain the land, without making destruction of any thing; and that of such manner of wards shall be done in all points, as is contained in the Great Charter of Liberties made in the time of King Henry, father to the king that now is, and that it be so used from henceforth. And in the same manner shall archbishopsricks, bishopsricks, abbeyes, churches, and all spiritual dignities, be kept in time of vacation."

En droit des terres des heirs deinz age, qi sont en la garde leurs seignurs; purveu est, qe le gardeins les gardent, & lour sustenent, saunz destruction faire en toute rien; & qe de cele manere des gardes soit fait en touz points, selonc ceo qil est contenu en la Graunde Charte des Fraunchises le Roi Henry, pier le roi qore est, & qe issint soit usee desoremes: & per mesme la manere soient gardes les erchevesques, evesques, abbacies, eglises, & dignitees, en temps de vacation.

Obs. by the 12 Car. 2, c. 24, as to wardship by reason of tenure.

STAT. 3 EDW.
1, c. 28.

VI. STAT. 3 EDWARDI 1, c. 28. A.D. 1275.

"Clerks shall not commit Maintenance."

There shall be no maintenance of any matter pending in the king's court.

Regist. 181,
182.
Rast. 119, 427,
&c.
Enforced by
13 Edw. 1, St.

"And that none of the king's clerks, nor of any justicer, from henceforth shall receive the presentment(1) of any church, for the which any plea or debate is in the king's court, without special license of the king; and that the king forbiddeth, upon pain to lose the church(2), and his service(3): and that no clerk of any justicer, or sheriff, take part in any quarrels of matters depending in the king's court, nor shall work any fraud, whereby common right may be delayed or disturbed; and if any so do, he shall be punished by the pain aforesaid, or more grievously, if the trespass do so require."

Et qe nul clerc le roi, ne de ses justices, ne reseive desoremes presentement desglise, dount plei ou contek soit en la court le roi, saunz especial congie le roi; & ceo defend il sur peine de perdre son service: et que nul clerc de justice, ne de viscont, ne mainteigne parties en queeles, nen busoignes qe sont en la court le roi ne fraude ne face, pur commune droiture delaier ou destourber; & si nul le fait, ill serra puny per la peine proscheinement avaunt dite, ou per plus grevous, si le trespass le requert.

I. c. 49. 28 Edw. 1, St. III. c. 11.

33 Edw. 1, St. II. & III. 1 Edw. 3, St. II. c. 14.

4 Edw. 3, c. 11. 20 Edw. 3, c. 4, and 1 Rich. 2, c. 4, which provides penalties against maintainers. 32 Hen. 8, c. 9, against

bracery and buying of titles, which farther enforces the statutes against maintenance.

STAT. 3 EDW.
1, c. 47.

VII. STAT. 3 EDWARDI 1, c. 47. A.D. 1275.

"In what case the Nonage of the Heir of the Disseisor or Disseisee shall not prejudice."

[Prelates being religious, shall have the writs of entry(4), as the heir of disseisor or disseisee hath during nonage.]

(1) *Receive the presentment*:—The mischief, before this act, was, that pending a suit for a church in the king's court, the one party or the other would present the chaplain of the king, or of some of the judges, the more to countenance the one party, and discourage the other; and at that time the mischief was greater, because if the clerk of an usurper was instituted, the true patron

had no remedy, but a writ of right of advowson. Gibson's Codex, 759.

(2) *Lose the church*:—i.e. the church shall be void, as unto him. Ibid.

(3) *And his service*:—i.e. that he be not after chaplain to the king, during one year. Ibid.

(4) *Vide* Stat. 3 & 4 Gul. 4, c. 27, s. 36.

VIII. STAT. 3 EDWARDI 1, c. 51(1). A.D. 1275.

STAT. 3 EDW.
1, c. 51.*"Assises and Darrein Presentments, at what time taken."*

Et pourceo que graunt charite seroit de faire droit a touz en tout temps miester serroit, qe per assentement des prelatz, assises de novelle disseisine, de mortdauncestre, & de darrein presentement fuses prises en le Advent, & en Septuagesime, & en Quaresme, auxibien come lem fait les enquestes, & ceo prie le roi as evesques.

"And forasmuch as it is great charity to do right unto all men at all times, (when need shall be,) *by the assent of all the prelates*(2) it was provided, that assises of *novel disseisin, mortdauncestor, and darrein presentment*, should be taken *in Advent, Septuagesima, and Lent*(3), even as well as enquests may be taken, and that [at the special request of the king, made unto the bishops."

2 Inst. 264.

IX. STAT. 4 EDWARDI 1, STAT. I. (*Stat. Extenta Manerii.*) A.D. 1276.STAT. 4 EDW.
1, St. I.*"Expressing a Survey of the Buildings, Lands, Commons, Parks, Woods, Tenants, &c."*

Item inquirendum est de ecclesiis que pertinent ad donacionem domini, quot & que sunt, & ubi, & quantum valent, & quantum quelibet ecclesia valet per annum per se, secundum verum valorem illius.

"XII. It is also to be inquired of churches that belong to the lords' gift, how many there be, and what, and where, and how much every church is *worth*(4) by the year, after the true estimation of the same."

Patronages.
Co. Litt. 374
(b).

X. STAT. 4 EDWARDI 1, St. III. c. 5(5). A.D. 1276.

STAT. 4 EDW.
1, St. III. c. 5.*"Bigamus(6) shall not be allowed his Clergy."*

XI. STAT. 6 EDWARDI 1, c. 4. A.D. 1278.

STAT. 6 EDW.
1, c. 4.*"In what case a Cessavit(7) is maintainable against a Tenant in Fee-farm."*

(1) *Vide* Stat. 3 & 4 Gul. 4, c. 27. Stephens on Nisi Prius, 2918.

(2) *By the assent of all the prelates* :—Which is expressed, not that the prelates assented alone, but to manifest that this act concerning the crossing of a canon of the church, was enacted by their assents. 2 Inst. 264.

(3) *Taken in Advent, Septuagesima, and Lent* :—The cause of the making of this statute doth manifestly appear by Britton, who being bishop of Hereford, and expert both in the common and canon law, in his chapter *De Challenge de Jurors*, Ca. 53, writes thus : "If sufficient jurors appear, some are removable for just challenges of the parties, and also for the time in case ; for all hours are not fit for all seasons : for it is forbidden by the canons of holy church, upon pain of excommunication, that from the Septuagesme until eight days after Easter, and from the beginning of Advent until eight days after the Epiphany, or in the days of the four times (that is the ember days appointed for public fasts four times in the year), or in the days of the great litanies, or in rogation or *gange days*, or in the week of Pentecost, or in the time of harvest, or of vintage, which endureth from the feast of St. Margaret, (which is the thirteenth of July,) until fifteen days after the feast of St. Michael the archangel, or in the solemn feasts of the acts of saints, no man be sworn upon the holy

evangelists, nor any secular plea be holden in the times aforesaid ; but that all these times be given for prayer to God, and to appease, debate, and to accord them, that be at discord, and to gather the fruits of the earth, whereof the people may live, which are works of piety and charity." 2 Inst. 264.

(4) *Is worth* :—Bracton, (lib. 2, c. 34,) speaking of this matter, saith, "Si autem advocatio ibi fuerit, extendatur, et apprecietur advocatio, simul cum aliis rebus hereditariis ; scil. pro quâlibet marcâ secundum valorem ecclesiæ, extendantur 12 denarii ; ut, si ecclesia singulis annis secundum communem æstimationem, valeat 100 marc' apprecietur advocatio ad 100 sol." *Vide etiam* Fleta et Britton.

(5) Altered by Stat. 1 Edw. 6, c. 12, and Stat. 1 Jac. 1, c. 11. Repealed by Stat. 9 Geo. 4, c. 31.

This statute was passed two years after the council of Lyons, viz. in 1276, and is a parliamentary declaration of the constitution there made. This, Lord Coke says, the judges required, because that constitution took from bigamists their clergy, and therefore their lives. 2 Inst. 274.

(6) *Bigamus* :—Is a person who has married two wives or more successively, or one widow. Gibson's Codex, 423.

(7) This writ was abolished by Stat. 3 & 4 Gul. 4, c. 27, s. 36.

STAT. 7 EDW.
1, ST. II.

XII. STAT. 7 EDWARDI 1, ST. II.(1). (*Statute of Mortmain.*) A.D. 1279.

"Who shall take the Forfeiture of Lands given in Mortmain(2)."

9 Hen. 3, St. I. c. 36.
1 Roll. 154, 157, 457.
2 Roll. 170.
9 Hen. 3, St. I. & II. c. 36.
8 Hen. 4, c. 15.
41 Edw. 3, c. 16, 21.
47 Ed. 3, c. 11.
Bro. Mortmain, 15, 16, 18, 20, 24, 27, 31, 38, 39, 41, 43.
50 Ed. 3, c. 22.
Fitz. Mortmain.
13 Co. Litt. 2 (b).
15 Ed. 4, c. 13.
Fitz. Formedon, 57.
Fitz. Quare imp. 163.
No land shall be aliened in mortmain upon pain of the forfeiture thereof.
2 Bulstr. 187.
3 Bulstr. 45.

"The king to the justices of his bench greeting, where of late it was provided, that religious men should not enter into the fees of any without licence and will of the chief lord, of whom such fees be holden immediately; and notwithstanding such religious men have entered as well into their own fees, as into the fees of other men, appropriating and buying them, and sometime receiving them of the gift of others, whereby the services that are due of such fees, and which at the beginning were provided for defence of the realm, are wrongfully *withdrawn* (3), and the chief lords do lease their eschetes of the same: We therefore, to the profit of our realm, intending to provide convenient remedy, by the advice of our prelates, earls, and other liege men of our kingdom, being of our council, have provided, made, and ordained, that no person, religious or other, whatsoever he be, *that will buy or sell any lands or tenements* (4), or under the colour of gift or lease, or that will receive by reason of any other title, whatsoever it be, lands or tenements, or by any other craft or engine will presume to appropriate to himself, under pain of forfeiture of the same, whereby such lands or tenements may any wise come into mortmain. We have provided also, that if any person, religious or other,

Rex justic' suis de banco salutem. Cum dudum provisum fuisset quod viri religiosi feoda aliquorum non ingrederentur sine licentia & voluntate capitulum dominorum de quibus feoda illa immediate tenentur & viri religiosi postmodum nichilominus tam feoda sua propria quam aliorum hactenus ingressi sint ea sibi appropriando & emendo & aliquando ex dono aliorum recipiendo per quod servicia que ex hujusmodi feodis debentur & que ad defensionem regni ab initio provisa fuerunt indebite subtrahuntur & domini capitales escaetas suas inde amittunt. Nos super hoc pro utilitate regni congruum remedium provideri volentes de consilio prelatorum comitum & aliorum fidelium regni nostri de consilio nostro existentium providimus statuimus & ordinavimus quod nullus religiosus aut alius quicumque terras aut tenementa aliqua emere vel vendere aut sub colore donationis aut termini vel alterius tituli cujuscumque ab aliquo recipere aut alio quovis modo arte vel ingenio sibi appropriare presumat sub forisfactura eorundem per quod ad manum mortuam terre & tenementa hujusmodi deveniant quoquo modo. Providimus etiam quod si quis religiosus aut alius contra presens statutum aliquo modo arte vel ingenio venire presumserit liceat nobis & aliis immediatis

(1) It has been questioned whether lay corporations were affected by this statute; and Lord Coke writes, that it did extend to them. Co. Litt. 2 (b). But others have inferred the contrary from Stat. 15 Rich. 2, c. 5. 2 Black. Comm. by Hov. 270, n. 4. Boyle on Charities, 249.

(2) According to the strictness of the feudal system, a vassal could not alienate his fief without the consent of his lord; but this consent was not more necessary in the case of an alienation to a religious house, than in that of an alienation to a common person; and when this strictness began to be relaxed in the latter case, it seems to have been equally relaxed in the former, for Bracton observes, that a gift might be made to *religious men*, as well as to others who were capable of a gift, unless the owner of the lands was restrained from alienating them, by an express exception to his power of alienation, in the charter by which he held the land; and he adds, that no reason or necessity induced a prohibition with respect to them, except the form of the original gift. Bract. lib. 2, cc. 3 & 10. On the relax-

ation of the feudal restraints on the power of alienating lands, the owner was at liberty to give a reasonable portion to any religious house.

Clauses in conveyances prohibiting the alienation of lands to the religious, of which Lord Coke states, (2 Inst. 75,) that he had seen many, appear to have been the first restraints imposed on alienations in mortmain.

(3) *Withdrawn*.—By reason of which withdrawing, the lands were said to come into mortmain, or a *dead hand*; for that a dead hand yieldeth no service.

(4) *That will buy or sell any lands or tenements, &c.*—The translation here, as in many other places in the printed books, seems to be imperfect. The sense is this: "It is ordained, that no person, religious or other, whatsoever he be, shall presume to buy or sell, or under any colour of gift or lease, or any other title whatsoever, to take of any person, or by any other means, by craft or engine, to appropriate unto himself any lands or tenements, whereby such lands and tenements may in any wise come into mortmain, on pain of forfeiture of the same."

capitalibus dominis feodi taliter alienati illud infra annum a tempore alienationis

do presume *either by craft or engine* (1) STAT. 7 EDW. 1, ST. 11. to offend against this statute, it shall be

(1) *Either by craft or engine*:—A man would have thought, that this would have prevented all new devices, but they found also an evasion out of this statute; for this statute extended but to gifts, alienations, and other conveyances made between them and others, *arte vel ingenio, &c.*: and therefore they gave over them, and they, pretending a title to the land, that they meant to get, brought a *precipe quod reddat*, against the tenant of the land, and he by consent and collusion made default, and thereupon they recovered the land and entered by judgment of law; *et sic fieret fraus statuto.* 2 Inst. 75.

When this new invention was provided for, and taken away by Stat. 13 Edw. 1, c. 32, yet they found out an evasion from all these statutes; for then they would neither get any land by purchase, gift, lease, or recovery, but they caused the lands to be conveyed by feoffment, or in other manner to divers persons and their heirs, to the use of them and their successors, by reason whereof they took the profits. But, by Stat. 15 Rich. 2, c. 5, this was enacted to be mortmain, within the forfeiture of Stat. 7 Edw. 1, St. II. 2 Inst. 75.

Notwithstanding this statute, grants to corporations, without any licence in mortmain, are good, for the purpose of vesting the lands in the grantees; for corporations, without such licence, have capacity to take, but not to retain. The penalty for such an alienation is forfeiture to the immediate lord, or, on his default, to the king, to whom a right of entry was given. This remark does not apply to conveyances to corporations for charitable uses within Stat. 9 Geo. 2, c. 36, which renders such as are not conformable to its provisions, void.

As to things not lying in tenure, as rents, commons, and the like, the king is entitled to have them, if aliened in mortmain immediately after office found; and until office found, they remain in the corporation. *Grendon v. Lincoln (Bishop of)*, Plowd. 502. Co. Litt. 2 (b).

Under Stat. 7 Edw. 1, c. 1, it was held, that if there were a lord and an abbot tenant, and the lord released to the abbot his seignior, this was mortmain, and the lord paramount should have the seignior by force of the statute. *Lillingston's case*, 7 Co. 38 (a). Fitz. N. B. 223. So, a grant of a rent charge to an abbot and his successors, even for a term of eighty years, was mortmain under this statute, for the words are not confined to lands, but prohibit the alienation of lands and tenements. Fitz. N. B. 511 (B). Vin. Abr. Mortmain, (B) pl. 14. Although it was argued in *Jesus College v. Gibbs*, 1 Y. & C. 147, (*vide etiam* Wood's Inst. 301,) that tithes were neither within this statute nor Stat. 15 Rich. 2, c. 5, the object of those statutes being to prevent the inheritance of lands from getting into the hands of religious houses.

An alienation by one abbot to another, was

within the statute; (Vin. Abr. Mortmain, (B) pl. 2;) so an appropriation of an advowson of which an abbot or bishop was seised in fee, in his own right, to him and his successors, was mortmain. Fitz. N. B. 512 (H). So if an abbot, or a dean and chapter, had a rent in fee issuing out of lands, and the tenant of the lands had granted by deed, that they and their successors should distrain for that rent in *other* lands, this was construed to be within the act. Ibid. 513 (G). The entry by an abbot or prior on the lands of his villain without licence, incurred a forfeiture in mortmain. Ibid. 513 (D). The statute extends as well to lands given to bodies politic, as to those purchased by them. Ibid. 513 (E). *Rex v. Jones*, 8 Mod. 202. Notwithstanding the statute, a citizen and freeman of London may by custom devise lands in mortmain; (Doct. & Stud. c. 10; 1 Roll. Abr. Court (m), 556; *Case del City de Londres*, 8 Co. 129 (a); because by subsequent statutes their customs were confirmed, (*Rex v. Tooley*, 2 Bulstr. 187; *vide* Stat. 23 Hen. 8, c. 10, s. 5;) but such custom is confined to lands in London. *Middleton v. Cater*, 4 Br. C. C. 409.

The taking of a lease for a very long term, as one hundred or two hundred years, is within the Mortmain Act; but a term for twenty or forty years, or even for ninety-nine years, appears not to be contrary to the statute. 3 Edw. 4, fol. 13 & 14. 4 Hen. 6, fol. 9, pl. 1. Bro. Mortmain, pl. 27, 39. Vin. Abr. Mortmain, (B) pl. 21. In *Jesus College v. Gibbs*, 1 Y. & C. 147, it seems to have been admitted, that a mere common husbandry lease taken by a religious body is not within the statute; from which it may be inferred, that a mere *covenant* for renewal would not make it so. Bro. Mortmain, pl. 39. Vin. Abr. Mortmain, (B) pl. 22. And it is said, that the plaintiff in replevin shall not be suffered to disclaim against an abbot, or other religious person, nor against their bailiff, by reason of mortmain. Bro. Mortmain, pl. 2, cit. 28 Hen. 6, c. 10. Vin. Abr. Mortmain, (E) pl. 1.

The grant of goods and chattels is not within the mortmain acts. Kitch. on Courts, 139 (b). The material distinction between an annuity and a rent is, that the former is a charge on the *personal* estate only, the latter on the real. Co. Litt. 2 (a), 144 (b), 20 (a). Com. Dig. *Annuity* (A). *Termes de la Ley, Annuities*. *Vide* *Priddy v. Rose*, 3 Meriv. 86. *Holderness (Earl of) v. Carmarthen (Lord)*, 1 Br. C. C. 377. *Stafford (Earl of) v. Buckley*, 2 Ves. sen. 171. *Aubin v. Daly*, 4 B. & A. 59. An annuity therefore does not fall within the prohibitions against mortmain, because it charges the person only.

The lord must enter for a forfeiture on an alienation in mortmain within a year, (*Stradling v. Morgan*, Plowd. 202 (b),) which is to be computed from the day next after the alienation. Vin. Abr. Mortmain, (C 3) pl. 5. But where lands are conveyed to the use of a party for life, with remainder to a corporation, the forfeiture does not accrue until the

STAT. 7 EDW.
1, ST. II.

Who shall take
the benefit of
the forfeiture.

Enforced and
amended by
13 Edw. 1, St.
I. c. 32.
18 Edw. 3, St.
III. c. 3.
34 Edw. 1, St.
III.

lawful to us and other chief lords of the fee immediate, to enter into the land so aliened, within a year from the time of the alienation, and to hold it in fee as an inheritance. And if the chief lord immediate be negligent, and will not enter into such fee within the year, then it shall be lawful to the next chief lord immediate of the same fee to enter into the same land within half a year next following, and to hold it as before is said; and so every lord immediate may enter into such land, if the next lord be negligent in entering into the same fee, as is aforesaid. And if all the chief lords of such fees, being of full age, within the four seas, and out of prison, be negligent or slack in this behalf, for one whole year, we, immediately after the year accomplished, from the time that such purchases, gifts, or appropriations hap to be made, shall take such lands and tenements into our hand, and shall infeoff other therein by certain services to be done to us for the defence of our realm; saving to the chief lords of the same fees their wards and eschetes, and other services thereunto due and accustomed. And therefore we command you, that ye cause the foresaid statute to be read before you, and from henceforth to be kept firmly and observed. Witness my self at Westminster the fifteenth day of November, the seventh year of our reign (1)."

death of the tenant for life. Vin. Abr. Mortmain, (B) pl. 19, (C) pl. 6. And where a remainder-man aliens in mortmain, the lord cannot enter, until the determination of the particular estate. Ibid. (C 3) pl. 4. The right of the lord to enter continued only for one year, and where the seigniority was limited for particular estates, the lord in remainder was bound by the laches of the particular tenant, in not entering within the year. Ibid. (C 3) pl. 1, 2. But descent within a year after the alienation in mortmain did not take away the right of entry within the year. So on an alienation of an advowson in mortmain, the king or other lord may present on the next avoidance within the year, though the church had been full six months before the *quare impedit* was brought. Ibid. pl. 3.

The heir of a tenant in tail, who had aliened in mortmain, was not barred, the statute *De donis*, 13 Edw. 1, c. 1, having passed after the statute of mortmain. Bro. Mortmain, pl. 10. Vin. Abr. Mortmain, (C) pl. 2. *Willion v. Barkley*, Plowd. 238.

The king cannot enter upon lands aliened in mortmain before office found. Vide *Doe*

hujusmodi ingredi & tenere in feodo & hereditate. Et si capital' dominus immediatus negligens fuerit & feod' hujusmodi ingredi noluerit infra annum tunc liceat proximo capitali domino mediato feodi illius infra dimidium annum sequentem feodum illud ingredi & tenere sicut predictum est & sic quilibet dominus mediatas faciat si propinquior dominus in ingreditendo hujusmodi feod' negligens fuerit ut predictum est. Et si omnes hujusmodi capitales domini hujusmodi feodi qui plene fuerint etatis & infra quatuor maria & extra prisonam per unum annum negligentes vel remissi fuerint in hac parte nos statim post annum completum a tempore quo hujusmodi emptiones donationes aut alias appropriationes fieri contigerit terras & tenementa hujusmodi capiemus in manum nostram & alios inde feoffabimus per certa servicicia nobis inde ad defensionem regni nostri facienda salvis capitilibus dominis feodorum illorum wardis escaetis & aliis ad ipsos pertinentibus ac serviciis inde debitis & consuetis. Et ideo vobis mandamus quod statutum predictum coram vobis legi & decetero firmiter teneri & observari faciatis. T. R. apud West' xv. die Novembr' anno &c. septimo.

d. *Hayne v. Redfern*, 12 East, 96. *Doe d. Evans v. Evans*, 5 B. & C. 587, n. c.

The inquiry, whether lands have been aliened in mortmain, is directed by commission under the great seal addressed to special commissioners, who are empowered to summon and examine witnesses, and to take an inquisition with a jury, which is to be returned into the court of chancery. Shelford on Mortmain, 9, 10.

(1) It is stated by Lord Coke, (2 Inst. 75,) that bishops, parsons, and other ecclesiastical persons, *secular*, were considered not to come within Stat. 9 Hen. 3, c. 36 (*ante*, 2); they are, however, expressly included in this statute, the words of which are, that "*no person, religious or other, whatsoever he be*," (Co. Litt. 2 (b)), and therefore an alienation without licence, to a parson or vicar and his successors, by which they will take in right of the church, is an alienation in mortmain, (Bro. Mortmain, pl. 3; Viner's Abr. Mortmain, (B) pl. 6,) although it is said, that a vicarage might have been endowed without the consent of the king. Ibid. pl. 23. *Cope v. Bedford*, Palm. 427.

XIII. STAT. 13 EDWARDI 1, ST. I. c. 1. A.D. 1235.

"In Gifts in Tail the Donor's Will shall be observed. The Form of a Formedon (1)."

STAT. 13 EDW.
1, ST. I. c. 1.

XIV. STAT. 13 EDWARDI 1, ST. I. c. 5 (2). A.D. 1285.

"Remedies to redress Usurpations of Advowsons of Churches, &c."

STAT. 13 EDW.
1, ST. I. c. 5.

Cum de advocationibus ecclesiarum non sint nisi tria brevia originalia videlicet breve de recto & duo de possessione scilicet. Ultime presentationis & quare impedit & hucusque usitatum fuerit in regno quod cum aliquis jus non habens presentandi presentaverit ad aliquam ecclesiam cujus presentatus sit admissus ipse qui verus est patronus per nullum aliud breve recuperare poterit advocatio-

"Whereas of advowsons of churches there be but three original writs, that is to say, one writ of right (3), and two of possession, which be *darrein presentment* and *quare impedit* (4); and hitherto it hath been used in the realm, *that when any having no right to present, had presented (5) to any church (6), whose clerk was admitted (7), he that was very patron could not recover his advowson (8), but only*

Three original writs of advowson.
2 Inst. 353.
1 Roll. 151, 156, 157, 158, 211, 462.
7 Ann. c. 18.
Rast. 101, 144, 496.
3 Bulstr. 40.
Hob. 240.

(1) Tithes which come to the crown by the Statutes of Dissolution, and are now vested in the lay impropiators, are subject to all the laws and incidents of other freehold property; they are assets for the payment of debts, and subject to dower and curtesy, *Hulme v. Pardoe*, McClel. 393; 13 Price, 684; and having become lay fees, they are tenements within the Stat. *De donis*, 13 Edw. 1, c. 1, (Co. Litt. 159 (a)), and may be entailed and limited to the heirs of the body. *Webb v. Batchelor*, 2 Lev. 139. Co. Litt. 6. *Lady Montague's case*, Cro. Jac. 301. *Rex v. Ellis*, 3 Price, 323. 3 Burn's E. L. by Phillimore, 724.

(2) *Vide* Stat. 3 & 4 Gul. 4, c. 27.

(3) *Writ of right*:—By this the inheritance of the advowson might be recovered, but the incumbent could not be removed. Regist. fol. 29 (b).

(4) *Quare impedit*:—This writ lies, where one hath an advowson, and the parson dies, and another presents a clerk, or disturbs the rightful patron to present; and it was founded, chiefly, for the sake of *purchasers* of advowsons, who could not have the writ of *darrein presentment*, (abolished by Stat. 3 & 4 Gul. 4, c. 27, s. 36,) but so that all who may have that writ, may have this of *quare impedit* if they please. 2 Inst. 356. *Thrale v. London (Bishop of)*, 1 Hen. Black. 376. Gibson's Codex, 784.

A purchaser may allege a presentation in him from whom he purchased the same. 2 Inst. 356. A presentation is always necessary in a *quare impedit*, except in some special case, as where a man founds a church, and before he presents is disturbed. *Rex v. Llandaff (Bishop of)*, Str. 1007.

(5) *That when any having no right to present, had presented*:—By this it appeareth, that no plenarty doth put the patron that hath title to present out of possession; but plenarty by collation doth put him, that had right to collate, out of possession. 2 Inst. 357.

(6) *Had presented to any church*:—This is intended of a church presentative. Ibid.

(7) *Whose clerk was admitted*:—Albeit that *admitted* in its proper sense is, when the bishop upon examination findeth him able, i. e. *idonea persona*, yet here it is taken for institution; because that before institution, the rightful patron is not put out of possession. And it is to be observed, that by the institution the church, as to all common persons, is full as to the spirituality, that is the cure of souls, which the bishop by the act of institution hath committed to him; but before induction the parson hath not the temporalities belonging to his rectory. Ibid.

But the church is not full against the king before induction; because in the king's case plenarty is to be intended of a full and complete plenarty, as well to the temporalities as to the spirituality. Ibid.

And if there be an usurpation upon the king by a complete plenarty; the king cannot present to the church, before he hath removed the incumbent by *quare impedit*, lest contentions might grow in the church between the several claimers of the benefice, to the disturbance or hindrance of divine service; and this was by the common law. Ibid.

In that case, the king is only put out of possession as to the bringing of an action; but the inheritance of the advowson is not divested out of him. Ibid.

(8) *He that was very patron could not recover his advowson*:—At the common law, if a stranger had presented his clerk, and he had been admitted and instituted to a church, whereof any subject had been lawful patron; the patron had no other remedy to recover his advowson, but a writ of right of advowson, wherein the incumbent was not to be removed. And so it was at the common law, if an usurpation had been had upon an infant, or *feme covert*, having an advowson by descent, or upon tenant for life, or the like; the infant, *feme covert*, and he in the reversion, were driven to their writ of right of advowson; for at the common law, if the church were once full, the incumbent could

STAT. 13 EDW.
1, St. I. c. 5.

Usurpation of churches during particular estates, shall not prejudice them in the reversion.
Kel. 1.
Fitz. Quare impedit, 43, 67, 87, 92, 96, 99, 105, 127, 142, 167.

by a writ of right (1), which should be tried by battail (2) or by great assise (3), whereby heirs within age, by fraud, or else by negligence of their wardens, and heirs both of great and mean estate, by negligence or fraud of tenants by the courtesie, women tenants in dower, or otherwise, for term of life, or for years, or in fee-tail, were many times disinherited of their advowsons, or at least (which was the better for them) were driven to their writ of right, in which case hitherto they were utterly disinherited; it is provided, that such presentments (4) shall not be so prejudicial to the right heirs (5), or to them unto whom such advowsons ought to revert after the death of any persons (6) (7). For as often as any, having no right, doth present during the time that such heirs are in ward, or during the estates of tenants in dower, by the courtesie, or otherwise for

nem suam quam per breve de recto quod habet terminari per duellum vel per magnam assisam per quod heredes infra etatem existentes per fraudem & negligentiam custodum heredes etiam sive majores sive minores per negligentiam vel fraudem tenentium in dotem per legem Anglie vel mulierum tenentium in dotem vel alio modo ad terminum vite vel annorum vel feodum talliatum multotiens exheredationem patiebantur de advocacionibus suis vel ad minus quod melius eis fuit ponebantur ad breve de recto & in casu omnino exheredati fuerunt hucusque statutum est quod hujusmodi presentationes non sint hujusmodi rectis heredibus aut illis ad quos post mortem aliquorum hujusmodi advocaciones reverti debent prejudiciales quia quotienscumque aliquis jus non habens tempore hujusmodi custodiarum presen-taverit vel tempore tenentium in dotem

not be removed, and plenary generally was a good plea in a *quare impedit* or assise of *darrein presentment*, and the reason of this was, to the intent, that the incumbent might quietly intend and apply himself to his spiritual charge; and the law did intend, that the bishop who had the cure of souls within his diocese, would admit and institute an able man for the discharge of the spiritual functions, and that the bishop would do right to every patron within his diocese. But at the common law, if any had usurped upon the king, and his presentee had been admitted, instituted, and inducted, (for without induction, the church had not been full against the king,) the king might have removed him by *quare impedit*, and have been restored to his presentation; for therein he hath a prerogative, that *nullum tempus occurrit regi*; but he could not present, for the plenary barred him of that, neither could he remove him in any way but by action, to the end the church might be the more quiet in the meantime; neither did the king recover damages in his *quare impedit* at the common law. But this statute hath altered the common law in all these cases. 1 Burn's E. L. by Phillimore, 37. 3 Black. Comm. 244.

(1) *But only by a writ of right*:—This is to be understood, where the patron that had a fee simple, and that he or some of his ancestors had presented; but if the patron claimed the fee simple of the advowson by purchase, and had never presented; there, he could have no writ of right of advowson, but before this statute had lost the advowson. And likewise if tenant in tail, or tenant for life, had suffered any usurpation, they had been remediless by the common law, because they could have no writ of right. 2 Inst. 357. The writ of right being abolished by Stat. 3 & 4 Gul. 4, c. 27, s. 36, the only remedy

now in case of disturbance is a *quare impedit*, which in practice had previously superseded the writ of right.

(2) *Which should be tried by battail*:—This is an ancient trial in our law, which the defendant might choose in divers cases, as especially here in a writ of right, (3 Black. Comm. 338,) but it was abolished by Stat. 59 Geo. 3, c. 46.

(3) *Or by great assise*:—This, in general, was a writ that was issued, where any man was put out of his lands or tenements, or of any profit to be taken in a certain place, and so disseised of his freehold.

(4) *It is provided, that such presentments*:—The words before-going, to which these have reference, extend to only heirs in ward; but these words are to be expounded of such presentations, as are within the same mischief; and therefore this act extends to heirs of advowsons, though they be out of ward. 2 Inst. 358.

(5) *Shall not be so prejudicial to the right heirs*:—This act relieveth only infants, that have advowsons by descent; for if an infant hath an advowson by purchase, he remaineth at the common law, and is not remedied by this act. Ibid.

And this being a law which suppresseth wrong, and advanceth right, doth bind the king, though he be not named in the act. Ibid.

(6) *Or to them unto whom such advowsons ought to revert after the death of any persons*:—That is, to those heirs that have the reversion of the advowson by descent; but the heir of him in the remainder is not within the purview of this act. Ibid.

(7) *After the death of any persons*:—That is, of tenant by the curtesy, tenant in dower, or otherwise for life, or for years, or in fee-tail. Ibid.

per legem Anglie vel alio modo ad terminum vite vel annorum vel per feodum talliatum in proxima vacatione postquam heres ad etatem pervenerit vel advocatio post mortem in forma predicta tenentium ad heredem plene etatis existentem revertitur habeat eandem actionem & exceptionem per breve de advocacione possessorium qualem haberet ultimus antecessor hujusmodi heredis plenam habens etatem in ultima vacatione tempore suo accidente ante mortem suam vel antequam dimissio facta fuerit ad terminum vel ad feodum talliatum ut predictum est. Hoc idem observetur de presentationibus factis ad ecclesias de hereditate uxorum tempore quo fuerunt sub potestate virorum suorum quibus per istud statutum subveniatur per remedium supradictum. Viris etiam religiosis episcopis archiepiscopis rectoribus ecclesiarum & aliis personis ecclesiasticis per istud idem statutum subveniatur Si quis jus presentandi non habens presentaverit ad ecclesias domibus suis prelatie dignitati aut personatui spectantes tempore quo vacaverint prelatie dignitates aut personatus hujusmodi.

Nec tamen ita large intelligatur istud statutum quod persone ad quarum remedium istud statutum est editum habeant recuperare supradictum dicentes quod custodes tenentes in dotem per legem Anglie vel aliter ad terminum vite vel annorum vel viri fide defenderunt placitum per ipsos vel contra ipsos motum Quia judicia in curia regis reddita per istud statutum non adnichilentur set stet judicium in suo robore quousque per judicium curie regis tanquam erroneum si error inveniatur annulletur vel assisa

term of life, or of years, or in tail; at the next avoidance, when the heir is come to full age, or when *after the death of the tenants* (1) before named the advowson shall revert unto the heir being of full age, he shall have such action by writ of *advowson possessorie*, as the last ancestor of such an heir should have had at the last avoidance happening in his time, being of full age before his death, or before the demise was made for term of life, or in fee-tail, as before is said. *The same shall be observed in presentations made unto churches, being of the inheritance of wives* (2), what time they shall be under the power of their husbands, which must be aided by this statute by the remedy aforesaid. *Also religious men, as bishops, archdeacons, parsons of churches, and other spiritual men, shall be aided by this statute* (3), in case any having no right to present do present unto churches belonging to prelaties, spiritual dignities, parsonages, or to houses of religion, what time such houses, prelaties, spiritual dignities, or parsonages be vacant.

“II. Neither shall this act be so largely understanden, that such persons, for whose remedy this statute was ordained, shall have the recovery aforesaid, surmising that guardians of heirs, tenants in tail, by the curtesy, tenants in dower, for term of life, or for years, or husbands, faintly have defended pleas moved by them, or against them; because the judgments given in the king's courts shall not be annulled by this statute, the judgment shall stand in his force, until it be reversed in the court of

STAT. 13 EDW. 1, ST. I. c. 5.

Presentations to churches of women during their coverture.

Churches of religious persons.

Judgments given shall not be reversed but by writ of error or attainr. 39 Edw. 3, c. 15.

(1) *After the death of the tenants*:—If a stranger usurp upon a tenant for life, a tenant by the curtesy, in dower, in tail, or upon tenant for years, by demise of the ancestor, the heir, if he be disturbed, on the next avoidance may present or bring his *quare impedit*, in which he must lay the last presentation in his ancestor, and pass over the usurpation, which by this statute is to be counted as none, and a tenant for half a year or a year, a grantee of the next avoidance, a tenant by statute merchant, statute staple, or elegit, are within the purview of this statute. 2 Inst. 359. Mirehouse on Advowsons, 273.

(2) *The same shall be observed in presentations made unto churches, being of the inheritance of wives*:—If a *feme covert* hath an advowson by purchase, and not by inherit-

ance, she is not within the remedy of this act. 2 Inst. 359.

(3) *Also religious men, as bishops, archdeacons, parsons of churches, and other spiritual men, shall be aided by this statute*:—By this presentation and usurpation in time of vacation, albeit the freehold and inheritance is in abeyance; yet the usurper gaineth a fee simple in the advowson, like, as if one entereth into lands during the vacation, and claim the same as his inheritance, he gaineth an inheritance by wrong. But yet, as the dying seised of lands in that case during the vacation shall not take away the entry of the successor, no more shall the usurpation during the vacation take away the right of presentation, when the church becomes void; and if he be disturbed, he shall have his *quare impedit*. Ibid.

STAT. 13 EDW.
1, ST. I. c. 5.

The defendant
pleadeth ple-
nary of his
own presenta-
tion.

Cro. Eliz. 207.
Cro. Jac. 166.
6 Co. 61.

Fitz. Quare im-
pedit, 19, 48,
73, 96, 116,
169.

Fitz. Encum-
bent, 1, 2, 4.
Bro. Plenarty,
1, 2, 7, 11, 12,
14, 15, 16.

Presentations
to a church by
composition.

Bro. Presentat.
46, 58.

Co. Litt. 344.
5 Co. 102.

13 Edw. 4, c. 3.
Dyer, 29.

Fitz. Quare im-
pedit, 7, 49,
62, 196.

Fitz. Darrein
present. 11.
Co. pl. 468,
479.

See 3 Bur.
1455.

the king as erroneous, if error be found; or by assise of *darrein presentment*, or by enquest by a writ of *quare impedit*, if it be passed, or be annulled by attainr or certification, which shall be freely granted.

And from henceforth one form of pleading shall be observed among justices in writs of *darrein presentment* and *quare impedit*, in this respect, if the defendant allegeth plenarty of the church of his own presentation, *the plea shall not fail by reason of the plenarty* (1); so that *the writ be purchased within six months* (2), though he cannot recover his presentation within the six months. And sometimes when an agreement is made between *many claiming one advowson* (3), and inrolled before the justices in the roll, or by fine, in this form that one shall present the first time, and at the next avoidance another, and the third time another; and so of many, in case there be many. And when one hath presented, and had his presentation, which he ought to have according to the form of their agreement and fine, and at the next avoidance he to whom the second presentation belongeth, is disturbed by any that was party to the said fine, or by some other in his stead; it is provided, that from henceforth they that be so disturbed shall have no need to sue a *quare impedit*, but shall resort to the roll or fine; and if the said concord or agreement be found in the roll or fine, then the sheriff shall be commanded, that he give knowledge unto the disturber, that he be ready at some short day, containing the space of fifteen days, or three weeks, (as the place happeneth to be near or far,) for to shew if he can allege anything, wherefore the party that is disturbed ought not to present. And if he

ultime presentationis vel inquisitio per breve quare impedit si transierit per attinctam vel per certificationem adnulletur que gratis concedatur. Et de cetero una forma placitandi in brevibus ultime presentationis & quare impedit inter justic' observetur quoad hoc si pars rea excipiat de plenitudine ecclesie per suam propriam presentationem non propter plenitudinem illam remaneat loquela dummodo breve infra tempus semestris impetretur quamquam infra tempus semestris presentationem suam recuperare non possit. Et cum aliquando inter plures clamantes advocacionem alicujus ecclesie pax fuerit formata inter partes & irrotulata coram justic' in rotulo vel in fine sub hac forma quod unus primo presentet & in sequente vacatione alius & in tertia tertius et sic de pluribus si plures sint Et cum unus presentaverit et habuerit suam presentationem quam habere debet per formam illius conventionis et in proxima vacatione impediatur ille ad quem sequens spectat presentatio per aliquem qui fuit pars illius conventionis vel loco ejus statutum est quod decetero non habeant hujusmodi impediti necesse perquirere breve quare impedit set habeat recursum ad rotulum vel ad finem Et si in rotulo vel in fine comperta fuerit predicta pax vel conventio mandetur vicecomiti quod scire faciat parti impediti quod sit ad aliquem brevem diem continentem spatium quindecim dierum vel trium septimanarum secundum quod locus est propinquus vel remotus ostensurus si quid sciat dicere quare sic impeditus talem presentationem suam habere non debeat Et si non venerit vel forte venerit et nichil sciat dicere quare sic impeditus presentationem suam habere non debeat ratione alicujus facti post pacem

(1) *The plea shall not fail by reason of the plenarty*:—By the common law, *plenarty*, before the writ of *quare impedit* brought, was a good plea, but *plenarty* hanging the writ was no bar at the common law; but now, by this statute, *plenarty* is no plea in a *quare impedit*, or *darrein presentment*, unless it be by the space of six months before the *quare impedit* brought; for if the rightful patron bring his action within the six months, it is maintainable by this statute; which short purview doth remedy many mischiefs at the common law. 2 Inst. 360. *Sed vide* Stat. 3 & 4 Gul. 4, c. 27, s. 36.

But this does not bind the king; for *plenarty*, by the space of six months, is no bar against him, but he may have his *quare*

impedit when he will; and that, whether he claimeth *in jure coronæ*, or in the right of a subject, as in right of a ward. 2 Inst. 360.

(2) *So that the writ be purchased within six months*:—Because this computation doth concern the church, it is great reason, that it shall be made according to the computation of the church, which churchmen do best know, and therefore the computation shall be made according to the calendar for one half year, and not accounting twenty-eight days to the month. *Tullett v. Linfield*, 3 Burr. 1455. 2 Inst. 360.

(3) *Many claiming one advowson*:—This clause extendeth as well to *strangers* of blood, as to coparceners that are *privy* in blood. 2 Inst. 361.

irrotulatam vel cirographatam recuperet presentationem suam cum dampnis suis. Et cum contingat quod post mortem antecessoris sui qui ad ecclesiam presentaverit assignata fuerit illa advocatio in dotem alicujus mulieris vel teneatur per legem Anglie et tenentes in dotem [vel] per legem Anglie presentaverint et verus heres post mortem hujusmodi tenentium per legem Anglie vel in dotem impediatur presentare cum ecclesia vacaverit provisum est quod decetero sit in electione impediti utrum perquirere velit per breve quare impedit vel ultime presentationis. Hoc etiam observetur de advocationibus dimissis ad terminum vite vel annorum vel ad feodum talliatum.

Et decetero in brevibus ultime presentationis & quare impedit adjudicentur dampna videlicet si tempus semestre transierit per impedimentum alicujus ita quod si episcopus ecclesiam conferat & verus patronus ea vice presentationem suam amittat adjudicentur dampna ad valorem medietatis [*Ecclesie de duobus annis Et si tempus semestre non transierit*

come not, or peradventure doth come, and can allege nothing to bar the party of his presentation, by reason of any deed made or written*, since the fine was made or enrolled, he shall recover his presentation with his damages. And where it chanceth that after the death of the ancestor of him that presented his clerk unto a church, the same advowson is assigned in dower to any woman, or to tenant by the curtesie, which do present, and after the death of such tenants *the very heir is disturbed to present* (1) when the church is void, it is provided, that from henceforth it shall be in the election of the party disturbed, whether he will sue a writ of *quare impedit*, or of *darrein presentment*. The same shall be observed in advowsons demised for term of life, or years, or in fee-tail.

“III. And from henceforth in writs of *quare impedit* and *darrein presentment*, damages shall be awarded (2), that is to wit, if the time of six months pass by the disturbance of any, *so that the bishop do confer to the church* (3), and the very patron loseth his presentation for that time, damages shall be awarded *for two years' value of the church* (4).

STAT. 13 EDW. 1, ST. I. c. 5.

Hob. 244.

The remedy for a disturbance after a particular estate ended.

* Anything done since, &c.

Fitz. Darrein present. 13.

Damages in *quare impedit* and *darrein presentment*.
Regist. J. 50.
V.N.B. 25, 26.
In case of the king,
Cro. Eliz. 31, 162.
Hob. 242.

(1) *The very heir is disturbed to present*:—Hereby the heir in reversion is provided for, and not the lessor himself. And albeit tenant by curtesy, tenant in dower, tenant for life, or tenant in tail presented last; yet the heir to whom the reversion falleth in possession, shall have by this branch an assise of *darrein presentment*, albeit the heir or his ancestor did not immediately present before. 2 Inst. 362.

(2) *Damages shall be awarded*:—Before the making of this statute, the plaintiff in a *quare impedit* recovered no damages, lest any profit the patron should take, should savour of simony, which the common law did detest. And this is the cause, that the king in a *quare impedit* recovereth no damages; because he could recover none by the common law, and the king is not within the purview of this clause. Ibid.

And forasmuch, as no damages were in a *quare impedit* at the common law, and this act after the Statute of Gloucester (which gave costs in certain cases) giveth damages only; therefore, in this case, the plaintiff shall recover no costs. Ibid.

But in *Holt & Holland*, (Skinn. 25,) where the question was, whether the plaintiff in a *quare impedit* should have costs, it was ruled, that if a *quare impedit* by the common law, there can be no costs; if by statute, there must be costs: and if the church be full of the defendant by institution, then it is a *quare impedit* within Stat. 13 Edw. 1, c. 5;

if not, it is at the common law.

By later authorities no costs are given in a *quare impedit*, (1 Burn's E. L. by Phillimore, 39, cit. Bull. N. P. 328; Sayer on Costs, 6; Hullock on Costs, 7;) even though the defendant have judgment on demurrer, (*Thrale v. London (Bishop of)*, 1 Hen. Black. 530;) for Stat. 8 & 9 Gul. 3, c. 11, which gives costs on demurrer, is construed to give them in such cases only, where both parties are entitled to them. But on a writ of error, the plaintiff is entitled to costs and damages, by Stat. 3 Hen. 7, c. 10, if judgment be affirmed, or the writ be discontinued, or defendant nonsuited.

(3) *So that the bishop do confer to the church*:—Albeit the bishop hath not collated, yet if he hath *jus conferendi*, the plaintiff shall, if he will, recover double damages within the meaning of this act. But if, notwithstanding the bishop's title to collate, the church remaineth void, the plaintiff may recover his presentation; and if he doth, the damages shall be only for half a year; in which case he hath his election, either to lose his presentation, and have double damages, or to have his presentation with single damages. 2 Inst. 362. Vide *Holt v. Holland*, 3 Lev. 59. 1 Burn's E. L. by Phillimore, 39.

(4) *For two years' value of the church*:—And this shall be accounted according to the true value, as the same may be letten. 2 Inst. 363.

STAT. 13 EDW.
1, ST. I. c. 5.

Fitz. Damage,
4, 9, 17, 29,
38, 93, 106.

Fitz. Quare im-
pedit, 24, 45.

Dyer, 135, 236,
241.

Kel. 57.

6 Co. 48.

2 Roll. 112.

Quare impedit
of prebends,
vicarages,
hospitals, &c.
24 Edw. 3, c.
26.

Fitz. Quare im-
pedit, 4, 16,
18, 27, 30, 38,
70, 82, 129,
140, 157, 183.

Disturbance by
indicavit.

Regist. 35.

31 Hen. 6, c.
13.

Bro. Droit. 8.

7 Co. 25, 27.

35 Hen. 6, c.
60.

38 Hen. 6, c. 9.
22 Edw. 4, c. 8.

Usurpation by
one coparcener
upon another.

Fitz. Quare
impedit, 1, 3,
7, 8, 20, 39,

40, 51, 58, 59, 64, 65, 69, 104, 148, 196. Rast. 101, 144, 496. Hob. 238. See 2 & 3 Edw. 6, c. 13, for payment of tithes, &c.

And if the six months be not passed, but the presentment be deraigned within the said time, then damages shall be awarded to the half year's value of the church; and if the disturber have not whereof he may recompense damages, in case where the bishop conferreth by lapse of time, he shall be punished by two years' imprisonment: and if the advowson be deraigned within the half year, yet the disturber shall be punished by the imprisonment of half a year.

"IV. And from henceforth writs shall be granted for chapels, prebends, vicarages, hospitals, abbeys, priories, and other houses which be of the advowsons of other men, that have not been used to be granted before. And when the parson of any church is disturbed to demand tithes in the next parish by a writ of *indicavit*, the patron of the parson so disturbed, *shall have a writ to demand the advowson of the tithes* (1) being in demand; and when it is deraigned, then shall the plea pass in the court christian, as far forth as it is deraigned in the king's court.

"V. When an *advowson descendeth unto parceners* (2), though one present twice, and *usurpeth* (3) upon his coheir, yet he that was negligent shall not be clearly barred, but another time shall have his turn to present when it fall-eth."

(1) *Shall have a writ to demand the advowson of the tithes*.—By the common law, if the incumbent of one patron demanded tithes against the incumbent of another patron, the writ of *indicavit* did lye; for that the right of the patronage should come in question; and by the presentation of the patron, his incumbent is to have the tithes, which are the profits of the church; and in a writ of right of advowson, the patron shall allege the esplees (or profits) in his incumbent in taking the great and small tithes; and therefore if the right of tithes came in question, that concerned the right of advowson, the writ of *indicavit* did lye. 2 Inst. 364.

The mischief before this statute was, that seeing the right of tithes could not be tried between the two persons after the *indicavit* granted, the person prohibited was without remedy for trial of the right of tithes; and therefore this statute doth give the patron, whose clerk is prohibited, a writ of right of

sed disrationetur presentatio infra tempus predictum tunc adjudicentur dampna ad valorem medietatis ecclesie per unam annum. MS. Antiq.] ecclesie per annum. Et si impeditor nichil habeat unde restituere possit dampna in casu quando episcopus confert per lapsum temporis puniatur per prisonam duorum annorum Et si advocatio disrationetur infra tempus semestre puniatur tamen impeditor per prisonam dimidii anni.

Et de cetero concedantur brevica de capellis prebendis vicariis hospitalibus abbatis prioratibus & aliis domibus que sunt de advocacionibus aliquorum que prius concedi non consueverunt. Et cum per breve indicavit impediatur rector alicujus ecclesie ad petendum decimas in vicina parochia habeat patronus rectoris sic impediti breve ad pretendendum advocacionem decimarum petitarum Et cum disrationaverit procedat postmodum placitum in curia Christianitatis quatenus disrationatum fuerit in curia regis.

Cum advocatio descendit participibus licet unus bis presentet & usurpet super coheredem non propter hoc exclusus sit ille in toto qui fuit negligens sed alias habeat turnum suum presentandi cum acciderit.

advowson of tithes; and if the right be tried for the demandant, the cause was to be removed into the court christian. Ibid. Respecting the law of tithes, *vide* Stephens on Nisi Prius, 2612-2616, tit. TITHES. Stephens on Clerical Law, tit. TITHES.

(2) *Advowson descendeth unto parceners*.—If coparceners cannot agree to present, the eldest sister is entitled to have the first turn, the 2nd the second turn, and so every one according to seniority, (2 Inst. 365,) and this statute extends to usurpations by one coparcener over another, as well before partition as after. *Information pur Mynes*, Plowd. 333. 1 Inst. 18 (a). But the clerk of a coparcener, being once complete incumbent, the turn is served though he be afterwards deprived. *Windsor's case*, 5 Co. 102.

(3) *Usurpeth*.—This law doth extend to usurpations by one coparcener upon another, as well before partition, as after. 2 Inst. 365.

XV. STAT. 13 EDWARDI 1, ST. I. c. 10. A.D. 1285.

STAT. 13 EDW.
1, ST. I. c. 10.

"At what time Writs shall be delivered for Suits depending before Justices in Eyre. . . ."

[Writs of *quare impedit* of churches vacant, shall be received at any time before the departure of the justices.]

XVI. STAT. 13 EDWARDI 1, ST. I. c. 19. A.D. 1285.

STAT. 13 EDW.
1, ST. I. c. 19.

"The Ordinary chargeable to pay Debts as Executors."

Cum post mortem alicujus decedentis intestati & obligati aliquibus in debito bona deveniant ad ordinarios disponenda obligetur decetero ordinarius ad respondendum de debitis quatenus bona de-

"Whereas after the death of a person *dying intestate* (1), *which is bounden to some other for debt* (2)(3), *the goods come to the ordinary* (4)(5)(6)(7), *to be disposed* (8)(9); *the ordinary from hence-*

Dyer, 232.
5 Co. 83.
Fitz. Brief, 822.
Fitz. Execut. 77.

(1) *Dying intestate*.—There be divers kinds of intestates; one, that maketh no will at all; another, that maketh a will and executors, and they refuse: in this case he dieth *quasi intestatus*, and these are within the purview of this act. Therefore the ordinary is the person whom the law appointeth to have the charge or administration of the goods and chattels of the party that dieth intestate, or *quasi intestatus*. And justly did the law in this case appoint the ordinary; for the law presumed, that he who had the care of his soul in his life-time, would after his death have care of his temporal goods and chattels, and see them well disposed and administered. 2 Inst. 397.

(2) *Which is bounden to some other for debt*.—This is not only intended of an obligation or deed in writing, but howsoever he was charged in law, as for rent upon a lease, or upon an assumpsit, or the like. Ibid.

(3) *For debt*.—This act is not only intended of that which is properly a debt, but of all duties, covenants, or just causes of action, such as might be brought against executors. Ibid.

(4) *Goods come to the ordinary*.—If a man die intestate, and a stranger taketh the goods, the ordinary shall not have an action of trespass for taking of them, unless he had taken them into his possession. But the executor or administrator before seizure may have an action of trespass. Ibid.

(5) *Come to the ordinary*.—Neither can the ordinary have any action of debt, covenant, or any other action which belonged to the intestate; but those to whom the ordinary shall commit administration may have all these actions by Stat. 31 Edw. 3, St. I. c. 11; but before that statute, there was no remedy by law given to the administrators to recover those things in action. Ibid. 398.

But by the common law, an action of debt did lie against the administrators, but it was by the name of executors until Stat. 31 Edw. 3, St. I. c. 11. Ibid.

(6) *To the ordinary*.—If the ordinary take goods of the intestate, being out of his diocese, he shall not be charged as ordinary by this act; because he taketh them of his own wrong, and not as ordinary, in which right he is to be charged by this act. Ibid.

(7) *Ordinary*.—That is, not only the bishop, but every one that is *in loco episcopi*, in this matter of taking care and cognizance of the goods of intestates; as archdeacon, chancellor, commissary, official, and those who have peculiar jurisdiction. Some of whom having, from time to time, accidentally omitted their title or style of jurisdiction in the letters of administration by them granted, have occasioned various contests in the courts of common law, concerning the validity of administrations executed in virtue of such letters; as the judgments upon the validity or invalidity of them have been also various. The enumeration of which, is not material; since there is one safe, short, and plain rule, (viz. the inserting in all such letters, the style of jurisdiction, as well as the name of the ordinary,) which being observed, is a security for ever against all such contracts. Gibson's Codex, 478. Vide Stephens on Nisi Prius, tit. EXECUTORS AND ADMINISTRATORS, 1825-1915.

And not only an ordinary or guardian of the spiritualities, or others that be *in loco ordinarii*, that of right, are within this act; but also such as usurp the place, and are in possession by wrong, are to be charged by this act. 2 Inst. 398.

(8) *The goods come to the ordinary to be disposed*.—So that this statute doth not give this power of disposing; but supposeth it in the ordinary; the statute being, as to this, in affirmance only of the common law. *Snell's case*, 5 Co. 83.

But unless some of the goods or chattels came to the hands and possession of the ordinary, he was not to be charged by the common law; but if they came to his hands, and he would neither administer and pay the debts and duties himself, nor commit them over to the kin and friends of the intestate that would, the common law did charge him, and so doth this statute, which is made in affirmance of it. 2 Inst. 397.

(9) *To be disposed*.—If it be demanded, what interest the ordinary hath in the goods of the person intestate, which come to his hands, it is answered, that he hath such an interest as the administrator, to whom administration is committed during the minority of an executor to the behoof and profit of

STAT. 13 EDW. 1, St. I. c. 19. *forth shall be bound* (1) *to answer* (2) the debts as far forth as the goods of the dead will extend, in such sort as the executors of the same party should have been bounden, if he had made a testament."

2 Inst. 397.
By 31 Edw. 3, St. I. c. 11, the ordinary shall commit administration.

STAT. 13 EDW. 1, St. I. c. 23.

XVII. STAT. 13 EDWARDI 1, St. I. c. 23. A.D. 1285.

"Executors may have a Writ of Accompt (3)."

2 Inst. 404.
Fitz. Executors, 97.
4 Edw. 3, c. 7, which gives executors an action of trespass for wrong

"Executors from henceforth shall have a writ of accompt, and the same action and process in the same writ as the testator might have had if he had lived."

functi sufficiunt eodem modo quo executores hujusmodi respondere tenerentur si testamentum fecisset.

Habeant decetero executores breve de compoto reddendo & eandem actionem & processum per illud breve qualem habuit mortuus & haberet si vixisset.

done to testator. And 25 Edw. 3, St. V. c. 5, extends it to executors of executors.

STAT. 13 EDW. 1, St. I. c. 24.

XVIII. STAT. 13 EDWARDI 1, St. I. c. 24 (4). A.D. 1285.

" A Quod Permittat and Juris Utrum for a Parson of a Church."

Quod permittat.
Rast. 538.
Regist. 32.

"II. In like manner as a parson (5) of a church may recover common of pasture by writ of *novel disseisin*, likewise from henceforth his successor shall have a *quod permittat* (6) against the disseisor or his heir, though a like writ were never granted out of the chancery before. And in like manner as a writ is granted to try whether land be the free alms of such a church, or the lay fee of such a man, even so from henceforth a writ shall be made to try whether it be the free alms of *this church*, or of *another* (7) church, in case where the free alms of one church is transferred to the possession of another church."

Eodem modo sicut persona alicujus ecclesie recuperare potest communiam pasture per breve nove disseisine eodem modo decetero recuperet successor super disseisitorum vel ejus heredem per breve quod permittat licet hujusmodi breve prius a cancellaria non fuit concessum. Eodem modo sicut conceditur breve utrum aliquod tenementum sit libera elemosina alicujus ecclesie vel laicum feudum talis decetero fiat breve utrum sit libera elemosina talis ecclesie vel alterius ecclesie in casu quo libera elemosina unius ecclesie transfertur in possessionem alterius ecclesie.

the executor, and not otherwise, nor in other manner. So as the ordinary may administer for the good of the intestate, but cannot give the goods of the intestate, or do anything to his prejudice. 2 Inst. 398.

(1) *The ordinary from henceforth shall be bound*:—If goods of the intestate come to the hands of the ordinary, and he dieth, although the words be, that *the ordinary shall be bound*, yet his executors or administrators shall be charged in an action of debt, for when this act bindeth the ordinary, by consequent his executors or administrators are bound. But, if the ordinary commit administration to one, and he taketh the goods into his possession and dieth, no action lieth against his executors. Ibid.

If the ordinary take goods into his hands of the intestate, and after commit administration, and the ordinary retaineth the goods, he shall be charged, notwithstanding the committing of administration. Ibid.

(2) *Shall be bound to answer*:—At the common law, the ordinary might have had trespass for goods taken out of his possession,

but no action did lie against the ordinary; but now, by this statute, an action lies against him, but he cannot have an action by this statute. 1 Roll. Abr. *Executor* (A), 906.

(3) By the common law, executors could not have an action, for an account to be made to the testator, because the account rested in privacy; for remedy whereof this action was made. But by the law of merchants, an action of account did lie for executors. 2 Inst. 403.

(4) *Vide* Stat. 3 & 4 Gul. 4, c. 27, s. 36.

(5) *Parson*:—This includes vicars, prebendaries, &c., and all other ecclesiastical persons.

(6) *Quod permittat*:—This writ lay, where a man had common of pasture for his cattle, and was disturbed by a stranger; so that he could not use his common.

(7) *Of this church, or of another*:—At common law, the writ of *quod permittat* lay for a parson against a layman, and for a layman against a parson; but not for one parson against another, before this statute.

XIX. STAT. 13 EDWARDI I, ST. I. c. 30 (1). A.D. 1235.

STAT. 13 EDW.
1, ST. I. c. 30.

"The Authority of Justices of Nisi Prius. Adjournment of Suits. Certain Writs that be determinable in their proper Counties. . . ."

Assisa ultime presentationis & inquisitiones super quare impedit atterminentur in proprio comitatu coram uno justitiario de banco & uno milite ad certos tamen diem & locum in banco statutos sive defendens consentiat sive non & ibi statim reddatur judicium.

"Assise of *darrein presentment* (2), and inquisitions of *quare impedit*, shall be determined in their own shire before one justice of the bench and one knight, at a day and place certain in the bench assigned, whether the defendant consent, or not, and there the judgment shall be given immediately."

9 Hen. 3, St.
I. c. 13.
Dyer, 135,
163.

XX. STAT. 13 EDWARDI I, ST. I. c. 32. A.D. 1235.

STAT. 13 EDW.
1, ST. I. c. 32.

"Mortmain by Recovery of Land by Default."

Cum viri religiosi & alie persone ecclesiastice implacitent aliquem & implacitatus fecerit defaultam ob quam teneamentum amittere debeat quia justitiarii hucusque timerunt quod si implacitatus fecerit defaultam per collusionem ut cum petens occasione statuti per titulum doni aut alterius alienationis seisinam de tenemento consequi non posset per illam defaultam consequeretur & fieret fraus statuto ordinatum est per dominum regem & concessum quod in hoc casu postquam defalta facta fuerit inquiratur per patriam utrum petens habeat jus in sua petitione aut non. Et si compertum

"When religious men and other ecclesiastical persons do implead any, and the party impleaded maketh default, whereby he ought to leese the land, forasmuch as the justices have thought hitherto, that if the party impleaded make default by collusion, that where the demandant, by occasion of the statute, could not obtain seisin of the land by title of gift, or other alienation, he shall now by reason of the default, and so the statute is defrauded; it is ordained by our lord the king, and granted, that in this case, after the default made, it shall be *inquired by the country* (3),

7 Edw. 1, ST. II.
2 Inst. 428.Fitz. Coll. 1, 2,
4, 5, 6, 7, 9,
10, 11, 22, 24,
25, 26, 27, 31,
40, 42, 46.

(1) The reason of making this statute was in respect of the danger of lapse; and therefore in favour of the patrons it is provided, that the justices of Nisi Prius shall have power to give judgment in these two actions. 2 Inst. 423, 424.

Although the words be, that "there the judgment shall be given immediately," yet if the justices of Nisi Prius do not give judgment upon the return of the *postea*, judgment may be given by the court to which the return is made; for by these words the higher court is not restrained. Ibid. 424.

(2) Writ of *darrein presentment* abolished by Stat. 3 & 4 Gul. 4, c. 27, s. 36.

(3) *Inquired by the country*:—To which purpose a writ was provided, called *Quale Jus*, (repealed by Stat. 3 & 4 Gul. 4, c. 27, s. 36,) but the statement of which will be a good comment upon this statute. "Scias quod Abbas de M. in curia nostra, &c. recuperavit seisinam suam versus I. E. de uno mesuagio cum pertinentiis in M. ut jus ecclesiæ suæ sancti Laur. de M. per defaultam ipsius I. per breve nostrum quare cessavit per biennium. Et quia dubitatur de fraude inde inter eos prælocuta contra statutum nostrum, quo cavetur ne terræ seu tenementa ad manum mortuam devenirent quod quomodo; tibi præcipimus quod venire facias coram justitiariis nostris apud Westmonast. in oct. S. Hillarii 12, tam milites quam alios liberos et

legales homines de visinetu prædicto, quorum quilibet per quos, &c. et qui prædictum abbatem nulla affinitate atting', ad recogn' super sacramentum suum *quale jus* idem abbas habet in præd. mesuagio, et quis prædecessorum suorum fuit inde seisisus, ut de jure ecclesiæ suæ prædictæ, et quantum illud mesuag' valet per annum secund' verum valorem ejusd'. Et interim mesuag' illud in manum nostram capias, ita quod neuter eorum ad illud manum apponat, donec aliud à nobis inde habueris præceptum, et quod de exitibus ejusd' ad scaccarium nostrum nobis respondeas. Et scire facias capitalibus dominis feodi illius mediatis et immediatis, quod tunc sint ibi auditur' juratam illam si voluerint. Et habeas ibi jur' et hoc breve. T." &c. Reg. Jud. f. 16 (b).

But, in order to avoid Stat. 7 Edw. 1, St. II. the religious houses used to set up a fictitious title to the lands intended to be given or sold, and brought an action against the tenant to recover them; the tenant by collusion made no defence, whereby judgment was given for the religious house, which then recovered the lands by sentence of law, upon a supposed prior title. And although proceedings of this kind were carried on by a species of conventional fraud, between the religious house and the tenant of the land, yet the judges held that, in these cases, the religious communities did not appropriate such lands

STAT. 13 EDW.
1, St. I. c. 32.

10 Hen. 7, f. 3.
11 Edw. 3, St.
III. c. 3.

Every chief
lord may
challenge the
jurors.

9 Hen. 3, St.
I. c. 36.

whether the demandant had right in the thing demanded, or no. And if it be found that the demandant had right in his demand, the judgment shall pass with him, and he shall recover seisin; and if he hath no right, the land shall accrue to the next lord of the fee, if he demand it within a year from the time of the inquest taken; and if he do not demand it within the year, it shall accrue to the next lord above, if he do demand it within half a year after the same year; and so every lord after the next lord shall have the space of half a year to demand it successively, until it come to the king, to whom at length, through default of other lords, the land shall accrue. And to challenge the jurors of the inquest, every of the chief lords of the fees shall be admitted, and likewise for the king, they that will shall challenge; and after the judgment given, the land shall remain clear in the king's hands, until it be deraigned by the demandant, or some other chief lord, and the sheriff shall be charged to answer therefore at the exchequer."

fuerit quod petens jus habet in sua petitione procedatur ad iudicium pro petente & recuperet seisinam suam Et si jus non habuerit incurratur tenementum proximo domino feodi si illud petat infra annum a tempore inquisitionis capte Et si infra annum non petat superiori domino incurratur si petat infra dimidium annum post illum annum Et sic habeat quilibet dominus post proximum dominum spacium dimidii anni ad petendum successive quousque perveniatur ad regem cui ad ultimum pro defectu aliorum dominorum tenementum incurratur. Et ad calumpniandum juratores inquisitionis admittantur quicumque capitales feodorum & similiter pro rege qui calumpniare voluerit & remaneat terra postquam iudicium clarum fuerit in manu domini regis quousque tenementum per petentem vel aliquem capitalem dominum disrationetur & oneretur vicecomes ad respondendum inde ad scaccarium.

STAT. 13 EDW.
1, St. I. c. 33.

2 Inst. 431.

XXI. STAT. 13 EDWARDI 1, St. I. c. 33. A.D. 1285.

"*Lands where Crosses be set, shall be forfeited as Lands aliened in Mortmain.*"

"Forasmuch as many tenants *set up crosses* (1), or cause to be set up in their lands, in prejudice of their lords, that tenants should defend themselves against the chief lords of the fee, *by the privileges* (2) of Templars and Hospitallers; it is ordained, that such lands shall be forfeit to the chief lords, or to the king, in the same manner as is provided for lands aliened in mortmain."

Quia multi tenentes erigunt cruces in tenementis suis aut erigi permittunt in prejudicium dominorum suorum ut tenentes per privilegium Templariorum & Hospitaliariorum tueri se possint contra capitales dominos feodorum statutum est quod hujusmodi tenementa capitalibus dominis aut regi incurrantur eodem modo quo statuitur alibi de tenementis alienatis ad mortuam manum.

per titulum doni vel alterius alienationis, as the statute *De religiosis*, 7 Edw. 1, St. II. expresses it, and that they were not within the words, *aut alio quovismodo arte vel ingenio*. For as recoveries were prosecuted by a course of law, they were presumed to be just, and it was accordingly held, that they were not within the statute. 2 Inst. 429. *Wymbish v. Tailboys*, Plowd. 43. Thus originated common recoveries, which for a long series of years were one of the principal assurances, by tenants in tail, of lands in this kingdom, and have only recently been superseded by a more simple mode of conveyance, under the provisions of Stat. 3 & 4 Gul. 4, c. 74.

(1) *Set up crosses*:—The reason why "crosses" particularly were erected, was, because Templars and Hospitallers were *cruce signati*; and the cross was the ensign of their profession. And for that their tenants enjoyed

great privileges; to the end, that they might be known to be the tenants of the said orders, and thereby freed from many duties and services, which other tenants were subject unto; they erected crosses upon their houses; and many tenants of other lords, seeing the great privileges they enjoyed, did also set up crosses, to the prejudice of their lords. Gibson's Codex, 643.

(2) *By the privileges*:—The tenants of the knights of both orders enjoyed great privileges, as well against the king as against the other lords; as, to be free from tenths and fifteenths, to be paid to the king; to be discharged of purveyance; also, not to be sued for any ecclesiastical cause before the ordinary, but before the conservators of their privileges; and to give sanctuary to felons, &c. 2 Inst. 431, 432.

XXII. STAT. 13 EDWARDI 1, ST. I. c. 34 (1). A.D. 1285.

STAT. 13 EDW.
1, ST. I. c. 34.“ . . . *Penalty for carrying a Nun from her House.*”

XXIII. STAT. 13 EDWARDI 1, ST. I. c. 41. A.D. 1285.

STAT. 13 EDW.
1, ST. I. c. 41.“*A Contra formam Collationis; and a Cessavit to recover Lands given in Alms.*”

Statuit dominus rex quod si abbates priores custodes hospitalium & aliarum domorum religiosarum fundatarum ab ipso vel a progenitoribus suis alienaverint decetero tenementa domibus ipsis ab ipso vel a progenitoribus suis collata tenementa illa in manum domini regis capiantur & ad voluntatem suam teneantur & emptor amittat suum recuperare tam de tenementis quam de pecunia quam pacavit. Si autem domus illa a comitibus baronibus vel aliis fundata fuerit de tenementis sic alienatis habeat ille a quo vel a cujus antecessore tenementum sic alienatum collatum fuerit breve ad recuperandum tenementum illud in dominico quod tale est :

Precipe tali abbati quod juste, &c. reddat B. tale tenementum quod eidem domui collatum fuit in liberam elemosynam per predictum B. vel antecessores suos & quod ad predictum B. reverti debet per alienationem quam predictus abbas fecit de predicto tenemento contra formam collationis predictæ ut dicit.

Eodem modo de tenemento dato pro cantaria sustentanda vel luminari in aliqua ecclesia vel capella vel aliis elemosinis sustentandis si tenementum sic datum alienatur. Ei si forte tenementum sic datum pro cantaria luminari potura pauperum vel aliis elemosinis sustentandis vel faciendis non fuerit alienatum sed subtracta fuerit hujusmodi elemosina per biennium competat actio donatori vel ejus heredi ad petendum tenementum sic datum in dominico sicut statutum est in Statuto Glouc' de tenementis dimissis ad faciendum vel ad reddendum quartam partem valoris tenementi vel majoris.

“Our lord the king hath ordained, that *if abbots, priors, keepers of hospitals, and other religious houses* (2), founded by him or by his progenitors, do from henceforth aliene the lands given to their houses by him or by his progenitors; the land shall be taken into the king's hands, and holden at his will, and the purchaser shall lose his recovery, as well of the lands, as of the money that he paid. And if the house were founded by an earl, baron, or other persons, for the lands so aliened, he from whom, or from whose ancestor the land so aliened was given, shall have a writ to recover the same land in demesne, which is thus :

“II. *Præcipe tali abbati, quod juste, &c. reddat G. F. tale tenementum quod eidem domui collatum fuit in liberam elemosynam per predictum G. vel antecessores suos, & quod ad predictum G. reverti debet per alienationem quam predictus abbas fecit de prædicto tenemento, contra formam collationis prædictæ, ut dicit.*

“III. In like manner for lands given for the maintenance of a chantery, or of light in a church or chapel, or other alms to be maintained (3), if the land given be aliened. But if the land so given for a chantery, light, sustenance of poor people, or other alms to be maintained or done, be not aliened, but such alms is withdrawn by the space of two years, an action shall lie for the donor or his heir to demand the land so given in demesne, as it is ordained in the Statute of Gloucester, for lands leased to do or to render the fourth part of the value of the land, or more.”

Obs. by 31
Hen. 8, c. 13,
for the dissolution of monasteries and abbeys.
12 Co. 72.
1 Roll. 166.

Cont. form.
collat.
Regist. 238.

Fitz. Brief,
291.
Fitz. Cessavit,
15, 18, 24, 44.

6 Edw. 1, c. 4.
11 Co. 63.

(1) *Vide* Stat. 1 Hen. 7, c. 4. Stat. 3 & 4 Vict. c. 86.

(2) *If abbots, priors, keepers of hospitals, and other religious houses*:—Seeing this act beginneth with abbots, and concludeth with other religious houses, bishops are not comprehended within this act, for they are superior to abbots; and these words [*other religious houses*] shall extend to houses inferior to them that were mentioned before. 2 Inst. 457. *Vide ante*, 5, n. 4.

(3) *Or other alms to be maintained*:—This latter clause extendeth to lands or tene-

ments given to any ecclesiastical person; that is, either religious, as abbots or priors; or secular, as parsons of churches, deans, &c., for the finding of a chantry priest, or of a light, or any other charity or alms deeds, or when a chantry is incorporated, and lands given for maintenance of the same. 2 Inst. 458.

And this branch being general, the same extendeth as well to bishops, and all other secular persons, or ecclesiastical, as religious, consisting of one sole person, or aggregate of many. *Ibid.*

STAT. 13 EDW.
1, ST. I. c. 49.

XXIV. STAT. 13 EDWARDI 1, ST. I. c. 49. A.D. 1285.

"The Penalty for buying the Title of Land depending in Suit. A Remedy for Suits where the Law faileth."

Fitz. Cham-
perty, 1, 5, 6,
8, 12, 14, 15.
Hob. 117.
3 Edw. 1, c.
25, 28, & 33.
Enforced by
28 Edw. 1, St.
III. c. 11.
Regist. 182,
183.
Rast. 119.

"The chancellor, treasurer, justices, nor any of the king's counsel, no clerk of the chancery, nor of the exchequer, nor of any justice or other officer, nor any of the king's house, clerk ne lay, shall not receive any church, nor advowson of a church, land, nor tenement in fee, by gift, nor by purchase, nor to farm, nor by champerty, nor otherwise, so long as the thing is in plea before us, or before any of our officers; nor shall take no reward thereof. And he that doth contrary to this act, either himself, or by another, or make any bargain, shall be punished at the king's pleasure, as well he that purchaseth, as he that doth sell."

Le chaunceller tresorer ne justice ne nul conseil le roy ne clerck del eschequier ne de justice ne de autre ministre ne nul del hostiel le roy clerck ne lay ne puisse resceivere esglise ne avowson de esglise ne terre ne tenement nen fee ne par donn ne par achat ne a ferme ne a champert ne en autre manere tant come la chose est en plee devant le roy ou devant nul de cez ministrez ne nul lower nen soit pris et qe contra cestez chosez face ou per luy ou per autre ou nul bargain face soit puny a la voluntee le roy auxibien celluy qe le purchacera come celluy qi le fra.

See farther 33
Edw. 1, St. II.

& III. 1 Edw. 3, St. II. c. 14. 4 Edw. 3, c. 11. 20 Edw. 3, c. 4. 1 Rich. 2, c. 4, against maintenance and champerty; and 32 Hen. 8, c. 9, against brachery and buying of titles, which farther enforces the statutes against maintenance and champerty.

STAT. 13 EDW.
1, ST. II. c. 6.

XXV. STAT. 13 EDWARDI 1, ST. II. c. 6. (*Statutum Wynton.*) A.D. 1235.

" Fairs or Markets shall not be kept in Churchyards."

Fairs and mar-
kets shall not
be kept in
churchyards.

"And the king commandeth and forbiddeth, that from henceforth neither *fairs nor markets* (1) be kept in churchyards, for the honour of the church."

E comaunde le rey e defend qe feire ne marche desoremes ne seient tenuz en cimeter pur honur de seint eglise

STAT. 13 EDW.
1, ST. IV. c. 1.

XXVI. STAT. 13 EDWARDI 1, ST. IV. c. 1. (*Statute of Circumspecte agatis.*) A.D. 1285.

"Certain Cases wherein the King's Prohibition doth not lie."

Cases wherein
the king's pro-
hibition doth
not lie.
2 Inst. 487.
13 Co. 41.
7 Co. 44.
5 Co. 67.

"The king to his justices sendeth greeting. Use yourselves circumspectly in all matters concerning the Bishop of Norwich and his clergy (2), not punishing them if they hold pleas in court christian *of such things as be meer spiritual* (3),

Circumspecte agatis de negotio tangente dominum episcopum Norwicen' & clerum non puniendo eos si placita tulerint de hiis que mere sunt spiritualia videlicet de correctionibus quos prelati faciunt pro mortali peccato videlicet for-

(1) *Fairs nor markets*:—How they came to be kept in churchyards, is well accounted for by Sir Henry Spelman: "Cum autem Christiani ad insignes aliquas celebritates, præsertim encenia et dedicationis ecclesiarum festa annua peragenda, convenirent; adesse utique mercatores solebant, sua mercimonia sub ipsis ecclesiis atque in cœmeteriis distracturi. . . . Ita festum cum nundinis, nundinas cum festo miscebat. Invaluit subsequentibus ævis usus hic nequam, virisque maximè obtinuisse videtur in enceniis (ut diximus) et annuis dedicationis ecclesiarum festis. . . . Plurimas igitur antiquas ferias in his ipsis festis institutas animadverto. . . . Nec difficile est sæpè conicere ex nundinarum die, cui olim sancto-

rum illa parochia commendabatur." Spelm. Gloss. v. Feria.

(2) *In all matters concerning the Bishop of Norwich and his clergy*:—The Bishop of Norwich is here put only for example; but it extendeth to all the bishops within this realm. 2 Inst. 487. This statute was, however, granted in consequence of a petition from the Bishop of Norwich;—in fact, acts of parliament in ancient times were generally founded on antecedent petitions.

(3) *Of such things as be meer spiritual*:—Not having any mixture of temporalities; as heresy, schisms, holy orders, and the like. 2 Inst. 488.

nicatione adulterio & hujusmodi pro quibus aliquando infligitur pena corporalis aliquando pecuniaria maxime si convictus sit de hiis liber homo.

Item si prelati pro cimiterio non clauso ecclesia discooperta vel non decenter ornata in quibus casibus alia pena non potest infligi quam pecuniaria penam imponat.

Item si rector petat decimam majorem vel minorem dummodo non petatur quarta pars alicujus ecclesie.

Item si rector petat mortuarium in partibus ubi mortuar' dari consueverit.

Item si prelati alicujus ecclesie petat pensionem a rectore sibi debitam omnes

that is to wit, of penance enjoined by prelates for deadly sin, as *fornication*, *adultery*(1), and *such like*(2), for the which sometimes corporal penance, and sometimes *pecuniary*(3) is enjoined(4), specially if a freeman be convict of such things. Also *if prelates do punish for leaving the churchyard unclosed*(5), or for that *the church*(6) is uncovered, or *not conveniently decked*(7), in which cases none other penance can be enjoined but pecuniary.

"Item, If a parson demand(8) tithes greater or smaller, so that the fourth part of the value of the benefice be not demanded(9).

"Item, If a parson demand mortuaries in places where a mortuary hath been used to be given.

"Item, If a prelate of a church demand of a parson a pension due to him,

Tithes and offerings.
8 Edw. 4, c. 13.
Fitz. Prohibition, 18, 20.

Pension.

(1) *Fornication, adultery*:—Here are two examples, in particular, of matters merely spiritual, which have no mixture of the temporalities, for the correction of these offences *pro salute animæ*. 2 Inst. 488.

(2) *And such like*:—i. e. Offences of the like nature.

(3) *Pecuniary*:—i. e. In commutation of penance. 2 Inst. 488.

(4) Dr. Barker's case, and Mr. Auditor Jones' Register, 2 Roll. 384.

(5) *If prelates do punish for leaving the churchyard unclosed*:—The spiritual judge, under this statute, has power to take knowledge, notwithstanding the king's prohibition. Nevertheless, if the churchwardens sue a person in the court christian, supposing by their libel, that he and all they whose estate he hath, in certain land next adjoining to the churchyard, have used time out of mind to repair all the fences of the churchyard, which are next adjoining to the said land, a prohibition will lie; for this ought to be tried at the common law, inasmuch as this is to charge a temporal inheritance. 2 Roll. Abr. *Prohibition* (F), 287. *Rex v. Reynell (Clerk)*, 6 East, 315. But the churchwardens are bound, *ex virtute officii*, to see, that the footpaths are kept in proper order, and the fences in repair. *Walter v. Mountague*, 1 Curt. 259. 2 Inst. 489.

(6) *The church*:—This is intended not only of the body of the church, which is parochial, but also of any public chapel annexed to it; but it extendeth not to the private chapel of any, though it be fixed to the church, for that must be repaired by him, that hath the proper use of it, for *qui sentit commodum, sentire debet et onus*. And this the parishioners ought to do, by custom known and approved; and the consance thereof is allowed to the ecclesiastical court by this act, but the chancel is to be repaired by the parson. 2 Inst. 489. 3 Black. Com. 92.

The rule seems to be, that the proprietor of the land in a parish is liable to be rated for the repairs of the church in that parish, not for land which he rents, but which he owns. *Cases de By-Laws and Ordinances*, 5 Co. 67. *Paget v. Crumpton*, Cro. Eliz. 659. 2 Roll. Abr. *Prohibition* (H), 289. Anon. 4 Mod. 148. 1 Burn's E. L. by Phillimore, 356.

(7) *Not conveniently decked*:—For the law alloweth the ecclesiastical court to have consance in this case, and for the providing of decent ornaments for the celebration of divine service. 2 Inst. 489.

(8) *Vide Ibid.* 490.

(9) *So that the fourth part of the value of the benefice be not demanded*:—Upon these words, Lord Coke observes, "So as at this day, in case when one person of the presentation of one patron demand tithes against another person of the presentation of another patron in court christian, amounting to a fourth of the value of the benefice; the right of tithes at this day, is to be tried at the common law." *Ibid.*

A prohibition will not be granted, where it is not material; (*Butterworth v. Walker*, 3 Burr. 1689;) but courts of law and equity supervise the acts of the spiritual court, when they are incidental to their own determinations; and therefore if the spiritual court prove an act *inter vivos*, they will consider it as void, and *coram non judice*, as much as if it proved a will relative to lands only. *Pigott v. J'Anson*, 1 Eden, 469. The judgments of the ecclesiastical court are as much subject to the equity of the court of Chancery, as the judgments at law; and the lord chancellor, it has been said, will in some cases relieve a party, who has no remedy by appeal. *Vanbrough v. Cock*, 1 Ch. Ca. 200. *Vide Stephens on Clerical Law*, tit. PROHIBITION.

STAT. 13 EDW. all such demands are to be made in a spiritual court (1).

Defamation.
4 Co. 20.
Kel. 29.
22 Edw. 4, f.
20.
Bro. Prohibition, 18, 21.

“And for laying violent hands on a clerk, and in cause of defamation, *it hath been granted already* (2), that it shall be tried in a spiritual court, *when money is not demanded* (3), but a thing done for punishment of sin.

(1) In cases, in which the court of Chancery and the spiritual courts have a concurrent jurisdiction, the court of Chancery will not hinder the spiritual courts, being first possessed of a case, from proceeding in it. *Nicholas v. Nicholas*, Prec. Chanc. 546. The temporal courts have held a similar doctrine, or (if the expression “concurrent jurisdiction” be not strictly applicable to courts existing for different purposes) they have refused a prohibition, where the whole matter of the issue has been under the cognizance of the spiritual, as well as of the temporal courts.

In pursuance of which, the general doctrine is, that pensions, as such, are of a spiritual nature, and to be sued for in the spiritual court; and accordingly, when they have come in question, prohibitions have been frequently denied or consultations granted, even though they have been claimed upon the basis of prescription. Gibson’s Codex, 706. *Goodwin v. Wells* (Dean and Chapter of), Noy. 16. *Smith v. Wallis*, 1 Salk. 58. *Collier’s case*, Cro. Eliz. 675.

But Lord Coke says, if a pension be claimed by prescription, there, seeing a writ of annuity doth lie, and that prescriptions must be tried by the common law, because the common and the canon law do therein differ, they cannot sue for such a pension in the ecclesiastical court. 2 Inst. 491.

But this has sometimes been denied to be law. Watson’s Clergyman’s Law, c. 56, p. 633. *Jones v. Stone*, 2 Salk. 550. *Johnson v. Ryson*, 12 Mod. 416. And a prohibition will not be issued to stay a suit in the spiritual court against a parson, for a pension by prescription.

In *Gooche (Dr.) v. London (Bishop of)*, Str. 879, the bishop libelled in the spiritual court, suggesting that Dr. Gooche, as archdeacon of Essex, should pay 10*l.* due to the bishop as *prestation* for the exercise of his exterior jurisdiction. The doctor moved for a prohibition, alleging that he had pleaded there was no prescription; and then that, being denied, a prohibition ought to go for defect of trial. On the contrary, it was urged by the bishop, that the libel being general, it must not be taken that he went upon a prescription; but it is to be considered in the same light as the common case of a pension, which is sueable for in the spiritual court; and the nature of the demand shows it must have its original from a composition, it being a recompense for the archdeacon’s being allowed to exercise a jurisdiction which originally did belong to the ordinary. And by the court: “The bishop may certainly entitle himself, *ab antiquo*, without laying a prescription; and as it is

hujus pensiones faciende sunt in foro ecclesiastico.

De violenta manuum injectione in clericum & in causa diffamationis concessum fuit alias quod placita inde teneantur in cur’ christianitatis dummodo non petatur pecunia sed agatur ad correctionem peccati.

only laid in general, there is no ground for us to interpose, till it appears, by the proceedings, that a prescriptive right will come in question; if they join issue on the plea, it will then be proper to apply, but at present there ought to be no prohibition.”

A vicar sued in the ecclesiastical court the Dean and Chapter of Wells, parson of a church, for a pension, and a prohibition was prayed, but it was denied; because that a pension was a spiritual thing, for which the vicar might sue in the spiritual court. *The Vicar of Halifax’s case*, Godolph. 198.

In *Bailey v. Cornes*, Bunb. 183, in the exchequer, a bill was preferred for a pension only, payable to the preacher of Bridgenorth; and upon the hearing of the cause, (which was afterwards ended by a compromise,) it seemed to be admitted, that a bill might be brought for a pension only.

(2) *It hath been granted already*:—By this it appeareth, saith Lord Coke, that the cognizance of defamation was granted by act of parliament, for otherwise it could not be granted; (2 Inst. 492;) but, without discussing that question, it is clear that cognizance by the ecclesiastical courts of causes of defamation, was expressly sanctioned by this statute.

These causes may be defined to be suits, instituted by persons, whose good fame is alleged to have been injured by some individual uttering words respecting them, importing, that they have been guilty of incontinency. The person found guilty of this offence used to be directed to do *penance* in the church, there recanting his accusation; and condemnation in costs also followed. In practice, however, of late years, the courts of Arches and Consistory have very rarely required the performance of penance.

Causes of defamation are now of unfrequent occurrence in the courts of Arches and Consistory of London; but they still prevail to a considerable extent in many of the jurisdictions in the country. *Vide* Appendix D, No. 11, to Ecclesiastical Commissioners’ Report, February 27, 1832.

The proceedings in these suits have occasioned much odium to the ecclesiastical jurisdiction; imprisonment having in several instances taken place, either from the obstinacy of the party proceeded against, or his inability to obey the sentence of the court by payment of costs; (*vide* Appendix D, No. 12, to Ecclesiastical Commissioners’ Report;) and it is anticipated, that the cognizance of such causes will be wholly withdrawn from the ecclesiastical courts.

(3) *When money is not demanded*:—For in this case, he that is defamed cannot sue

In omnibus istis casibus habet iudex ecclesiasticus cognoscere regia prohibitionem non obstante licet porrigatur ob quod impetrant laici prohibitionem in genere super decima oblationibus mortuar' redemptionibus penitentiarum violenta manuum iniectione in clericum & conversum & in causa diffamationis in quibus casibus agitur ad penam canonice capiend'.

Respondit dominus rex ad istos articulos quod in decimis obventionibus oblationibus mortuar' quando agitur ut predictum est prohibitioni non est locus. Et si clericus vel religiosus decimas suas in horreo congregatas vel alibi existentes venderit pro pecunia alicui & implacitetur in cur' christianitatis locum habet regia prohibitio quia per venditiones res spirituales sunt temporales & sic transeunt decime in catallis.

Item si contentio sit de jure decimarum originem habens de jure patronatus & earum decimarum quantitas excedat quartam partem ecclesie locum habet regia prohibitio.

Item si prelatus imponat penam pecuniariam alicui pro peccato & petat illam pecuniam locum habet regia prohibitio si coram prelati pecunia exigatur.

Item si quis manus violentas injecerit in clericum pro pace domini regis debent emende fieri coram rege pro excommunicatione vero coram episcopo & si imponatur pena corporalis quam si reus velit redimere dando prelato vel leso pecuniam potest nec in talibus locus est prohibitioni.

In diffamationibus liberorum corrigant prelati regia prohibitionem non obstante licet porrigatur.

"In all cases afore rehearsed, the spiritual judge shall have power to take knowledge, notwithstanding the king's prohibition(1)."

STAT. 13 EDW. 1, ST. IV. c. 1.
Bro. Act sur le case, 115.
38 Hen. 6, f. 29.
11 Hen. 4, f. 88.
Regist. 36, 45, 50, 51, 57, &c.
Rast. Pla. 483.
See 24 Edw. 1, where a consultation is grantable. By 9 Edw. 2, St. I. c. 1, no prohibition shall be granted where tithes are demanded.
See farther 9 Edw. 2, c. 2, 4, & 5.
1 Edw. 3, St. II. c. 11.
18 Edw. 3, St. III. c. 5.
50 Edw. 3, c. 4, and 2 Hen. 5, St. I. c. 3.

XXVII. STAT. 18 EDWARDI 1, ST. I. c. 1. (*Statute of Westminster the Third, viz. Quia emptores terrarum.*) A.D. 1290.

STAT. 18 EDW. 1, ST. I. c. 1.

"*The Feoffee shall hold his Land of the chief Lord, and not of the Feoffor.*"

Quia emptores terrarum & tenementorum de feodis magnatum & aliorum in prejudicium eorumdem temporibus retroactis multoties in feodis suis sint ingressi quibus libere tenentes eorumdem magnatum & aliorum terras & tenementa sua vendiderunt tenenda in feodo sibi & heredibus suis de feoffatoribus suis & non de capitalibus dominis feodorum per quod iidem capitales domini escaetas maritagia & custodias terrarum & tenementorum de feodis suis existentium sepius amiserunt quod eisdem magnatibus & aliis dominis quam plurimis durum & difficile videbatur & similiter in hoc casu exhereditatio manifesta dominus rex in parlamento suo

"Forasmuch as purchasers of lands and tenements of the fees of great men and other lords, have many times heretofore entered into their fees, to the prejudice of the lords, to whom the freeholders of such great men have sold their lands and tenements to be holden in fee of their feoffors, and not of the chief lords of the fees, whereby the same chief lords have many times lost their escheats, marriages, and wardships of lands and tenements belonging to their fees; which thing seemed very hard and extream unto those lords and other great men, and moreover in this case manifest disheritance: our lord the king, in his parliament at Westminster,

1 Roll. 106.
See 1 Bur. 108.

there for amends or damages, but only for correction of the sin, *pro salute animæ.* 2 Inst. 492.

But to bring offences within these statutes they must have the following incidents:

As, first, the defamation must not be for matters temporal.

Thus, if a man be called a *thief* or a *traitor*, if one be sued for such slander in the ecclesiastical court, a prohibition lieth. 2

Burn's E. L. by Phillimore, 127.

So if one call a man a *perjured* person, he must take his remedy for it, at the common law. 2 Inst. 492.

(1) For although the case be spiritual, and the perjury be committed in the spiritual court, yet the judge there can only punish *pro salute animæ*; but the party grieved by such perjury, must recover his damages at the common law. Gibson's Codex, 1013.

STAT. 18 EDW. 1, St. I. c. 1.

Fitz. Avowry, 108, 185, 255.

12 Car. 2, c. 24, takes away feudal services.

after Easter, the eighteenth year of his reign, that is to wit, in the quinzime of Saint John Baptist, at the instance of the great men of the realm, granted, provided, and ordained, that from henceforth it shall be lawful to every freeman to sell at his own pleasure his lands and tenements, or part of them, so that the feoffee shall hold the same lands or tenements of the chief lord of the same fee, by such service and customs as his feoffor held before."

apud Westm' post Pascha anno regni sui decimo octavo videlicet in quindena Sancti Johannis Baptiste ad instantiam magnatum regni sui concessit providit & statuit quod de cetero liceat unicuique libero homini terram suam seu tenementum seu partem inde pro voluntate sua vendere. Ita tamen quod feoffatus teneat terram illam seu tenementum de capitali domino per eadem servicia & consuetudines per que feoffator suus illa prius tenuit.

STAT. 18 EDW. 1, St. I. c. 3.

XXVIII. STAT. 18 EDWARDI 1, St. I. c. 3. A.D. 1290.

"No Feoffment shall be made to assure Land in Mortmain."

2 Inst. 504.

"And it is to be understood, that by the said sales (1) or purchases of lands or tenements, or any parcels of them, such lands or tenements shall in no wise come into mortmain, either in part or in whole, neither by policy nor craft, contrary to the form of the statute made thereupon of late. And it is to wit, that this statute extendeth but only to lands holden in fee simple; and that it extendeth to the time coming, and it shall begin to take effect at the feast of Saint Andrew the Apostle next coming."

Et sciendum est quod per predictas venditiones seu emptiones terrarum seu tenementorum seu partis alicujus eorumdem nullo modo possunt terre seu tenementa illa in parte vel in toto ad manum mortuam devenire arte vel ingenio contra formam statuti dudum super hoc editi. Et sciendum est quod istud statutum tenet locum de terris venditis tenendis in feodo simpliciter tantum & quod se extendit ad tempus futurum Et incipiet locum tenere ad festum Sancti Andree Apostoli proxime futurum.

9 Hen. 3, St. I. c. 36.
Add 7 Edw. 1, St. II.
13 Edw. 1, St. I. c. 32;
and 34 Edw. 1, St. III.

STAT. 24 EDW. 1.

XXIX. STAT. 24 EDWARDI 1. (*Statute of Writ of Consultation.*) A.D. 1296.

"In what case a Consultation is grantable."

12 Hen. 7, f. 22.
2 Hen. 4, f. 9.
By 50 Edw. 3, c. 4, no prohibition allowed after consultation duly granted.

"Whereas ecclesiastical judges have often surceased to proceed in causes moved before them, by force of the king's writ of prohibition, in cases wherein remedy could not be given to complainants in the king's court, by any writ out of the chancery, whereby such plaintiffs were deferred of their right and remedy in both courts, as well temporal as spiritual, to their great damage, like as the king hath been advertised by the grievous complaint of his subjects: our lord the king willeth and commandeth, that where ecclesiastical judges do surcease in the aforesaid cases, by the king's prohibition directed unto them, that the chancellor, or the chief justice (2) of our lord the king for the time being, upon sight of the libel (3) of the same matter,

Cum judices ecclesiastici ad prosequend' in causis coram ipsis agitatis per prohibic' domini regis sepius superseadeant in casibus ubi remedium consequentibus ad cur' domini per breve de cancellar' sua fieri non possit propter quod querentes illi in utraque cur' tam regia quam ecclesiastica jure suo & remedio sunt elongati ad grave dampnum ipsorum prout dominus rex ex gravi querela quorundam intellexit.

Dominus rex vult & precepit quod cum judices ecclesiastici per prohibicionem regiam sibi porrectam superseadeant in casibus predictis quod cancellar' vel capitalis justic' ipsius domini regis qui pro tempore fuerit viso libello illius cause ad instantiam querentis si viderint quod per breve de cancellar' querenti

(1) *The said sales*:—viz. The sales mentioned in the statute, *Quia emptores terrarum*.

(2) *Chancellor, or the chief justice*:—One of the petitions of the Commons in the parliament of 13 Edw. 1, was: "Cancellariis aut capitalis justiciariis habeat potestatem cog-

noscendi, quæ placita supersederi possunt in causis ecclesiasticis."

(3) *Upon sight of the libel*:—For (as it was heretofore held) agreeable to the libel ought the consultation to be. And therefore in *Hoskins's case*, when the parson sued in

remedium in suo casu fieri non possit set quod ad eor' ecclesiasticam pertineat causam illam determinare scribant iudicibus coram quibus causa illa prius fuit agitata quod in causa illa procedant non obstante prohibitione regia sibi prius inde directa, &c.

at the instance of the plaintiff (*if they can see that the case cannot be redressed*) (1) by any writ out of the chancery, but that the spiritual court ought to determine the matters) shall write to the ecclesiastical judges, before whom the cause was first moved, that they proceed therein, notwithstanding the king's prohibition directed to them before."

STAT. 24 EDW. 1.

Regist. 44.
Rast. 483.

XXX. STAT. 27 EDWARDI 1, ST. I. (2). (*Stat. De Finibus levatis.*) A.D. 1299.

STAT. 27 EDW. 1, ST. I.

XXXI. STAT. 27 EDWARDI 1, ST. II. (*Ordinatio de Libertatibus perquirendis.*) A.D. 1299.

STAT. 27 EDW. 1, ST. II.

"*In what cases the Writ of Ad quod damnum is to be sued. A Commission may be granted to receive Attorneys for such as be impleaded.*"

Fait assaver qe le roy ordeina a Westm' le primer jour Daverell' lan de son regne xx° qe ceux qe voudreient purchacer novel emparkement & gentz de religion qe vodreient terrez ou tenementz amortir eient briefe en la chaunc' pur enquire solom lez pointz acustumez en tiels chosez Et qe lez enquestez dez terres &

"It is to be known, that the king ordained at Westminster, the first day of April, the seven and twentieth year of his reign, that such as would purchase a new park, and men of religion that would amortise lands or tenements, should have writs out of the chancery to enquire upon the points accustomed

In what cases the writ *ad quod damnum* is to be used.

the spiritual court, for all the tithes of such a ground, and the defendant obtained a prohibition, upon surmise that the queen was seised of two parts of the tithes, and had granted them away, and that he had paid the two parts to the grantee, although the prohibition was for the two parts only, yet when the parson prayed consultation for the third part, it was denied, because his consultation could not be granted but according to his libel, and so he must libel for his third part *de novo*. But Hobart leaves a *quære* on this case, whether he might not have had a consultation as to the third part only. And the very next year, in *Berrie's case*, where the parson sued for tithes of hay in specie for a hundred acres, and in a prohibition issue was taken, whether the inhabitants had used to pay, for all tithes of hay of all ancient meadows within the town, a certain rate tithe, and the jury found, there was such a custom for all the ancient meadows, saving for certain called Barton Meadows, for which tithes had been paid in kind; and that the party who was sued for tithes in the spiritual court, had hay upon five acres of the Barton Meadow; it was resolved, that if the jury had found against the custom generally, as they might well have done, the parson should have had his consultation for all; but, however, as they found the truth *distributively*; that he had cause to sue in the spiritual court for one part, and not for the other, he had consultation *quoad* the Barton land, inasmuch as the libel for tithes in kind for the hundred acres was several for all or any part; and therefore for so much as was Barton, and out of the custom, it was as well libelled as if it had been for that alone.

Gibson's Codex, 1030. *Hoskin's case*, Hob. 115. *Winchcombe v. Pulleston*, Ibid. 194.

The resolution upon this head in *Fuller's case*, 12 Co. 44, was as follows: "When any libel in the ecclesiastical court contains many articles, if any of them do not belong to the cognizance of the court christian, a prohibition may be generally granted; and upon motion made, consultation may be awarded as to things which do belong to the spiritual jurisdiction, for the writ of consultation with a *quoad*, is frequent and usual."

(1) *If they can see that the case cannot be redressed*:—This supposes strict examination of the matter, which is always made before consultation awarded. For consultations are the judgments of courts had upon deliberation, whereas prohibitions are granted upon surmises. To this purpose it was said by Vaughan, chief justice, in *Hill v. Good*, Vaugh. 323, "We find no record of prohibitions denied, for there is no entry made of motions not granted; but of prohibitions granted there is; which makes the granting of a prohibition of no great authority, unless upon action brought, a consultation be denied upon demurrer."

It is on account of the great deliberation to be bestowed on these occasions, and its being an award of the court, and final, that no consultation can be granted, though by all the judges, out of term; nor by any of them within the term, out of court, as was resolved in *Fuller's case*, 12 Co. 41; and the name of the writ (*viz.* Writ of Consultation) imports this, that the court, upon consultation amongst them, ought to award it. 2 Burn's E. L. by Phillimore, 13 & 14.

(2) Superseded by Stat. 3 & 4 Gul. 4, c. 74.

STAT. 27 EDW. 1, ST. II. in such things; and that enquests of lands or tenements that be worth yearly more than twenty shillings, be returned into the exchequer, and there make fine for the amortisements, or for the park having, if the enquests do pass for him that purchased them; and after it shall be certified unto the chancellor or his deputy, that he take a reasonable fine therefore, and after make delivery.

Lands in chief. "II. In like manner they shall do, that will purchase lands or tenements holden of the king in chief.

Purchasing of protections. Making general attorneys. See 33 Edw. 1, St. I. "III. Also, people dwelling beyond the sea, that have lands, tenements, or rents in England, if they will purchase letters of protection, or will make general attorneys, they shall be sent unto the exchequer, and there shall make their fines, and from thence shall be sent unto the chancellor or his deputy, for that which he ought to do therein.

Purchasing of liberties. "IV. In like manner they shall do, that will purchase any fair, market, warren, or any other liberty. Also such as will purchase attermyning of their debts shall be sent into the exchequer.

Attorney. 20 Hen. 3, c. 10. Rast. 96. "V. Also, such as be not able to travel, and people that dwell in far countries from the chancery, which plead or be impleaded, shall have a writ out of the chancery to some sufficient man, that shall receive their attorneys when need is.

Regist. 247, &c. Rast. 25. "VI. And for a remembrance of these things, there is an indenture made, divided into three parts, whereof one part remaineth in the chancery, another in the exchequer, and the third in the wardrobe."

tenementz qe vaillent per an au pluïs de xx. s. soient mandez al eschequier & la facent la fin pur le amortisement ou pur lemparkement auxi come lez enquestez averrent pur eux qe lez purcha-cent Et dillenz soit mande au chaunc' ou a son lieu tenant ceo qil deuera faire Et dez enquestez faitz pur terre amortir dez tenementz qe namont per an outre xx. s. per estente & de xx. s. en aval voet le roy qe celles soient envoiees au chaunceller ou a son lieu tenant & quil preignent resonable fin solom la quantite de la chose & puis lez delivere.

En mesme la manere soit fait de ceux qe voudrent purchacer terre ou tenementz qe sont tenuz du roy en chief.

Item les gentz demurantz la outre qe voillent purchac' briefe de protection ou general attourne faire soient envoiees al eschequier & la facent lour fin.

Item gentz de non poer de travailler & gentz de lointains countrez qe ple-dent ou qe sont empledez eient brief de la chaunc' a aucun suffisant homme qe reseive lour attournez qant mestre serra.

Et pur remembrance de ceste chose est ceste endenture fait en treys parties dont lune demurge en la chaunc' lautre en leschequier & la tierce partie en la garde-robe.

STAT. 34 EDW. 1, ST. I. XXXII. STAT. 34 EDWARDI 1, ST. I. (*Statute De conjunctim Feoffatis.*) A.D. 1306.

"Joint-tenancy pleaded in Abatement of a Writ, &c."

2 Inst. 364, 365. " . . . Forasmuch also as pleas in court spiritual heretofore had many times unmeet delays, for that our writ that is called *indicavit* was many times brought before the judges of such matters when they were begun, and thereupon our chief justices could not proceed lawfully, nor in due manner to award a writ of consultation upon such manner of process; it is agreed, that such a writ of *indicavit* shall not be granted from

Quia etiam lites in curia christianita-tis hactenus indebitas dilationes multo-tiens fortiebantur per hoc quod breve nostrum quod vocatur *indicavit* judi-cibus talium litium in initio earum delatum fuit & super hoc capitalis justiciarius noster ad consultationem super tali processu faciendam rite seu debito modo nequivit procedere concordatum est quod tale breve *indicavit* alicui decetero non concedatur antequam lis in curia

When the writ of *indicavit* is to be granted. Regist. 35.

christianitatis inter partes fuerit contestata & quod per inspectionem libelli cancellarius noster super hoc certioretur.

henceforth to any *before the matter* (1) hanging in the spiritual court between the parties be recorded, and that our chancellor shall be certified thereof by the sight and inspection of the libel."

STAT. 34 EDW. 1, ST. I.

XXXIII. STAT. 34 EDWARDI 1, ST. III. (2). (*Statute of Amortising Lands.*) A.D. 1306.

STAT. 34 EDW. 1, ST. III.

"That Lands shall not be aliened in Mortmain, where there be Mesnes, without their Consent."

concessione domini regis facienda super inquisitionibus returnatis in cancellaria de terris ad manum mortuam ponendis rex precepit quod nihil fiat ubi medii sunt nisi religiosi ostendant eorum assensum domino regi per literas patentes eorumdem mediorum sigillis signatas Et etiam quod nihil fiat ubi donator penes se nihil retinet Et similiter ubi inquisitiones facte sunt & returnate sine warranto videlicet brevi originali returnato cum inquisitione Et similiter nisi breve originale mentionem faciat de singulis secundum novam formam per ipsum regem adjectis, &c.

"Touching the king's grant to be made upon inquests returned into the chancery for lands to be aliened into mortmain, the king commandeth that nothing shall be done (where there be any lord's mean) except the religious persons can show to our lord the king their assent under their patents, sealed with their seals; and that nothing shall pass in case where the donor reserveth nothing to himself. And likewise where inquisitions be made and returned without warrant, that is to wit, the writ original returned with the inquest, and likewise unless the writ original make mention of every thing, according to the new ordinance (3) devised by the king."

9 Hen. 3, St. I. c. 36.
7 Edw. I. St. II.
13 Edw. 1, St. I. c. 32.
Ordin. deliberat. perquir.
27 Edw. 1.

XXXIV. STAT. 35 EDWARDI 1, ST. I. c. 1 (4). (*De Apportis Religiosorum.*) A.D. 1307.

STAT. 35 EDW. 1, ST. I. c. 1.

"The Causes of Erection of Abbeyes. Impositions set by Priors' Aliens."

XXXV. STAT. 35 EDWARDI 1, ST. I. c. 2 (5). A.D. 1307.

STAT. 35 EDW. 1, ST. I. c. 2.

"Religious Persons shall send nothing to their Superiors beyond the Sea."

XXXVI. STAT. 35 EDWARDI 1, ST. I. c. 3 (6). A.D. 1307.

STAT. 35 EDW. 1, ST. I. c. 3.

"No Impositions shall be taxed by Priors' Aliens."

XXXVII. STAT. 35 EDWARDI 1, ST. I. c. 4 (7). A.D. 1307.

STAT. 35 EDW. 1, ST. I. c. 4.

"By whom the Common Seal of an Abbey shall be kept, and how used."

XXXVIII. 35 EDWARDI 1, ST. II. (*Ne Rector prosternat Arbores in Cemiterio.*) A.D. 1307.

STAT. 35 EDW. 1, ST. II.

"In what cases, and by whom, Trees may be felled in Churchyards."

Quoniam inter rectores ecclesiarum et suos parochianos super arboribus crescentibus in cemeterio altercationes oriri

"Because we do understand, that controversies do oftentimes grow between parsons of churches and their parishioners,

1 Roll. 255.

(1) *Before the matter*.—By Stat. 13 Edw. 1, c. 5, (i.e. Westm. 2, antè, 13,) a writ of *indicavit* was maintainable *ante litem contestatam*; but it was remedied by the statute *De conjunctim Feoffatis*. 2 Inst. 364.

(2) *Vide post* Stat. 7 & 8 Gul. 3, c. 37. Stat. 9 Geo. 2, c. 36.

(3) The new ordinance here referred to,

was Stat. 27 Edw. 1, St. II. (antè, 29.) 1 Kyd on Corporations, 89. The power of the crown to grant such licences is recognised by several statutes. *Vide* Stat. 18 Edw. 3, St. III. c. 3. Stat. 21 Rich. 2, c. 15. Highmore on Mortmain, 15. Stat. 2 Hen. 4, c. 13.

(4) Expired.
(5) Expired.

(6) Expired.
(7) Expired.

STAT. 35 EDW.
1, St. II.

touching trees growing in the churchyard, both of them pretending that they do belong unto themselves, we think it belongs rather to the sacred law than to the statute law, to determine this doubt. Forasmuch as a churchyard that is dedicated is the soil of a church, and whatsoever is planted belongeth to the soil, it must needs follow, that those trees which be growing in the churchyard are to be reckoned amongst the goods of the church, the which laymen have no authority to dispose, but, as the Holy Scripture doth testify, the charge of them is committed only to priests to be disposed of.

11 Co. 49.

“II. And yet seeing those trees be often planted to defend the force of the wind from hurting the church; we do prohibit the parsons of the church, that they do not presume to fell them down unadvisedly, *but when the chancel of the church doth want necessary reparations* (1); neither shall they be converted to any other use, except the body of the church doth need like repair: in which case the rectors of poor parishes of their charity shall do well to relieve the parishioners with bestowing upon them the same trees; which we will not command to be done, but we will commend it when it is done (2).”

(1) *But when the chancel of the church doth want necessary reparations*:—If it appear that the person, whose right they are, intends to cut them down for other purposes; a prohibition will be granted, to hinder waste; and so, likewise, to hinder the cutting down of such trees in the churchyard, as are for the defence of the church. And, if the trees be actually cut down by any person, for other use than is here specified; it is thought that he may be indicted and fined upon this statute. *Liford's case*, 11 Co. 49. *Costerd's case*, 2 Roll. 111. Gibson's Codex, 208.

In *Strachy v. Francis*, 2 Atk. 217, a motion was made on behalf of the plaintiff, who was patron of the living, against the rector, for an injunction to stay waste, in cutting down timber in the churchyard, to which Lord Chancellor Hardwicke observed: “A rector may cut down timber for the repairs of the parsonage-house or the chancel, but not for any common purpose; and this he may be justified in doing under the statute of 35 Edw. 1, St. II. If it be the custom of the country, he may cut down underwood for any purpose; but if he grub it up, it is waste. He may cut down timber likewise for repairing any old pews that belong to the rectory; and he is also entitled to botes for repairing barns, and out-houses, belonging to the parsonage.”

sepius intelleximus, utrisque ad se pertinere contententibus: hujusmodi alterationis dubium declarare, juris sacri potius quam statuti juris estimamus. Nam cum cimiterium maxime dedicatum solum sit ecclesie, et quicquid plantatur solo cedat; sequitur necessario, arbores ipsas debere inter facultates ecclesiasticas numerari, de quibus laicis nulla est attributa facultas disponendi, sed sicut sacra scriptura testatur solis sacerdotibus dispositio et cura indiscussa a Deo commissa decet.

Verum cum arbores ipse propter ventorum impetus, ne ecclesiis noceant, sepe plantantur; prohibemus ne ecclesiarum rectores ipsas presumant prostrernere indistincte, nisi cum cancellus ecclesie necessaria indigeat refectione. Nec in alios usus aliquammodo convertantur; preterquam si navis ecclesie indiguerit similiter refectione, et rectores parochiarum indigentium eis caritative de arboribus ipsis duxerint largiendum; quod fieri non precipimus, sed cum factum fuerit commendabimus.

An injunction was granted till the hearing of the cause, to stay the rector from cutting down timber, except in the particular instances mentioned by the lord chancellor.

So an injunction was granted to stay waste, against the widow of a rector, at the suit of the patroness during vacancy. *Hoskins v. Featherstone*, 2 Bro. C. C. 552. And may be had by the attorney-general against a bishop for opening mines, or selling large quantities of timber; but the patron cannot pray an account of the profits for his own benefit. *Knight v. Mosely*, Amb. 176.

In a visitation of Archbishop Warham a rector was enjoined, “Quod non scindat arbores crescentes in cœmeterio, quæ sunt necessariae pro defensione ecclesiae.” And not only so, but a vicar was enjoined, “Quod non succidat arbores crescentes extra præcinctum cœmeterii, neque alteras arbores stantes et crescentes prope viam processionalem existen' necessar' pro defensione ecclesiae, sub poena juris. Reg. Warh. 69 (a), 68 (b).”

(2) It is remarkable, that this statute was made the same year in which the famous resolution passed in parliament, that the Bishop of Durham should be prohibited by writ out of chancery, from wasting the woods of his bishoprick. *Rot. Parl.* 35 Edw. 1.

STATUTA EDWARDI II.

A.D. 1307—1327.

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I. STAT. 1 EDWARDI 2, ST. I. (*Statutum de Militibus.*) A.D. 1307.STAT. 1 EDW.
2, ST. I.*"Causes to excuse a Man from undertaking of Knighthood."*

Eodem modo fiat de clericis infra sacros existentibus laicum feodum tenentibus qui milites esse deberent si laici fuissent.

"... *In like manner* (1) shall be done of clerks being within holy orders, holding lay fee, which should be knights if they were lay."

II. STAT. 9 EDWARDI 2, ST. I. c. 1. A.D. 1315.

STAT. 9 EDW.
2, ST. I. c. 1.

"No Prohibition shall be granted where Tithes be demanded, where Money is paid for them."

In primis laici impetrant prohibitionem in genere super decimis obventionibus oblationibus mortuariis redemptionibus penitentiarum violenta manuum injectione in clericum vel conversum & in causis diffamationis in quibus agitur ad penam canonicam imponendam rex ad istum articulum respondet quod in decimis oblationibus obventionibus mortuariis quando super istis nominibus proponuntur prohibitioni regie non est locus etiam si propter detentionem istorum diuturnam ad estimationem earundem pecuniariam veniatur. Set si clericus vel religiosus decimas suas in orreo suo congregatas vel alibi existentes vendiderit alicui pro pecunia si petatur pecunia coram iudice ecclesiastico locum habet prohibitio quia per venditionem res spirituales fiunt temporales & transeunt decime in catalla.

"First, whereas laymen do purchase prohibitions generally upon tithes, obventions, oblations, mortuaries, redemption of penance, violent laying hands on clerks or converts, and in cases of defamation, in which cases spiritual penance ought to be enjoined; the king doth answer to this article, that in tithes, oblations, obventions, mortuaries, (when they are propounded under these names,) the king's prohibition shall hold no place, although for the long withholding of the same, the money may be esteemed at a sum certain. But if a clerk or a religious man do sell his tithes being gathered in his barn, or otherwise, to any man for money, if the money be demanded before a spiritual judge, the king's prohibition shall lie; for by the sale the spiritual goods are made temporal, and the tithes turned into chattels."

3 Edw. 4, c.
13.
Cro. Eliz. 753.
12 Co. 29.
13 Co. 41.

Rast. 484, &c.
2 Inst. 619.
By 18 Edw. 3,
c. 5, no prohibition but
where the king
hath cognizance.
See farther 50
Edw. 3, c. 4.
2 Hen. 5, St. I.
c. 3.

(1) *In like manner*:—As is directed in the case of laymen; but now by Stat. 16 Car. 1, c. 20, no person can be compelled to take

upon him the order of knighthood, nor suffer any fine, &c. for not taking it upon him.

STAT. 9 EDW.
2, ST. I. c. 2.

III. STAT. 9 EDWARDI 2, ST. I. c. 2. A.D. 1315.

"Debate upon the Right of Tithes exceeding the Fourth Part. Enjoining Penance, Corporal or Pecuniary."

2 Inst. 619.

"Also if debate do arise upon the right of tithes, having his original from the right of the patronage, and the quantity of the same tithes do come unto the fourth part of the goods of the church, the king's prohibition shall hold place, if the cause come before a judge spiritual. Also if a prelate enjoin a penance pecuniary to a man for his offence, and it be demanded, the king's prohibition shall hold place. But if prelates enjoin a penance corporal, and they which be so punished will redeem upon their own accord such penances by money, if money be demanded before a judge spiritual, the king's prohibition shall hold no place."

Co. 465.
Regist. 35.

Item si sit contentio de jure decimarum originem habens ex jure patronatus & earundem decimarum quantitas ascendat ad quartam partem bonorum ecclesie locum habet regia prohibitio si hec causa coram ecclesiastico iudice ventiletur. Item si prelati imponant penam pecuniariam alicui pro peccato & repetat illam regia prohibitio locum habet verumptamen si prelati imponant penitentias corporales & sic puniti velint hujusmodi penitentias per pecuniam sponte redimere non habet locum regia prohibitio si coram prelati pecunia ab eis exigatur.

STAT. 9 EDW.
2, ST. I. c. 3.

IV. STAT. 9 EDWARDI 2, ST. I. c. 3(1). A.D. 1315.

"Laying violent hands upon a Clerk. Excommunication for Penance Corporal."

STAT. 9 EDW.
2, ST. I. c. 4.

V. STAT. 9 EDWARDI 2, ST. I. c. 4(2). A.D. 1315.

"Prelates may correct for Defamation."

4 Co. 20.
2 Inst. 620.
Regist. 49.
Rast. 487, &c.

"In defamations (3) also prelates shall correct in manner abovesaid, the king's prohibition notwithstanding."

In diffamationibus etiam corrigant prelati supradieto modo regia prohibitionem non obstante.

STAT. 9 EDW.
2, ST. I. c. 5.

VI. STAT. 9 EDWARDI 2, ST. I. c. 5(4). A.D. 1315.

"No Prohibition where Tithe is demanded of a New Mill."

2 Inst. 621.
1 Roll. 405.
2 Roll. 84.

"Also if any do erect in his ground a mill of new(5), and after the parson of

Item si aliquis in fundo suo molendinum erexerit de novo & postea a rectore

(1) Repealed by Stat. 9 Geo. 4, c. 31. Stat. 53 Geo. 3, c. 127.

(2) To bring offences within this statute, or Stat. 13 Edw. 1, St. IV. (antè, 26), they must have the following incidents: as, first, the defamation must not be for matters temporal. Thus, if a man be called "thief" or "traitor," and be sued for such slander in the ecclesiastical court, a prohibition lieth. So if one call a man a "perjured person," he must take his remedy for it at the common law. *Braithwait v. Matthews*, Lord Raym. 212. *Actiones de Scandalis*, 4 Co. 15 (b). 1 Vin. Abr. *Actions* [for Words], (S. a. 3). Anon. Lord Raym. 397. *Crompton v. Butler*, 1 Consist. 464. 2 Burn's E. L. by Phillimore, 127.

Nor must the defamation, for matters spiritual, be mixed with matters temporal. *Grimes v. Lovel*, Lord Raym. 446.

But to entitle the spiritual court to jurisdiction, the defamation must be for matters merely spiritual. *Smith v. Wood*, 2 Salk. 692. *Coxeter v. Parsons*, Ibid. *Gobbel's case*, Cro. Car. 339. *Ferguson v. Cuthbert*, Str. 823. *Pollard v. Armshaw*, Gouldsb.

172. *Graves v. Blanchet*, 2 Salk. 696. *Aubery v. Barton*, Lord Raym. 1136. *Hollingshead's case*, Cro. Car. 229. *Lockey v. Dangerfield*, Str. 1100. In what case an action can be maintained for matters merely spiritual: vide *Davies v. Gardiner*, Poph. 36. *Matthew v. Crass*, Cro. Jac. 323. *Southold v. Daunston*, Cro. Car. 269. *Penson v. Gooday*, Ibid. 329. For words spoken of a clergyman: *Coxeter v. Parsons*, 2 Salk. 692. *Musgrave v. Bovey*, Str. 946. *Newman v. Kingerby*, 2 Lev. 49. *Cranden v. Walden*, 3 Ibid. 17. *Drake v. Drake*, Sty. 363. 1 Roll. Abr. *Action sur Case* (T), 58. *Dod v. Robinson*, Alleen. 63. *Phillips v. Badby*, 4 Co. 19. Words spoken in judgment: *Johnson v. Bewick*, Lord Raym. 711. *Argyle v. Hunt*, Str. 187. *Vicars v. Worth*, Ibid. 471. *Cook v. Wingfield*, Ibid. 555.

(3) Vide Stat. 6 & 7 Vict. c. 96. Stephens on Nisi Prius, tit. LIBEL, 2219-2264. Ibid. tit. SLANDER, 2550-2582.

(4) Vide Stat. 6 & 7 Gul. 4, c. 71.

(5) A mill of new:—This is only meant of a corn mill; (Anon. 2 Roll. 84; *Jakes' case*, 1 Ibid. 405; sed vide 1 Roll. Abr.

loci exigatur decima de eodem exhibetur prohibitio regia sub hac forma *Quia de molendino tali hactenus decime non fuerunt solute prohibemus &c. et sententiam excommunicationis si quam hac occasione promulgaveritis revocetis omnino. Responsio.* In tali casu nunquam exivit prohibitio de principis voluntate qui & decernit talem perpetuo non exire.

the same place demandeth tithe for the same, the king's prohibition doth issue in this form: *Quia de tali molendino hactenus decimæ non fuerunt solutæ, prohibemus, &c. & sententiam excommunicationis, si quam hac occasione promulgaveritis, revocetis omnino.*" *The answer.* "In such case the king's prohibition was never granted by the king's assent, nor never shall, which hath decreed that it shall not hereafter lie in such cases."

STAT. 9 EDW.
2, ST. I. c. 5.

VII. STAT. 9 EDWARDI 2, ST. I. c. 6(1). A.D. 1315.

STAT. 9 EDW.
2, ST. I. c. 6.

"Where a Suit for one Offence may be prosecuted both in Court Spiritual and Temporal."

Item si aliqua causa vel negotium cujus cognitio spectat ad forum ecclesiasticum & coram ecclesiastico iudice fuerit sententialiter terminata & transierit in rem judicatam nec per appellationem fuerit suspensa et postmodum coram iudice seculari super eadem re inter easdem personas questio moveatur & probetur per testes vel instrumenta talis exceptio in foro seculari non admittetur. *Responsio.* Quando eadem causa diversis rationibus coram iudicibus ecclesiasticis & secularibus ventilatur ut supra patet de injectione violenta manuum in clericum dicunt quod non obstante ecclesiastico iudicio cur' regis ipsum tractat negotium ut sibi expedire videtur ecclesiastico iudicio non obstante.

"Also if any cause or matter, the knowledge whereof belongeth to a court spiritual, and shall be *definitively determined before a spiritual judge* (2), and doth pass into a judgment, and shall not be suspended by an appeal; and after, if upon the same thing a question is moved before a temporal judge between the same parties, and it be proved by witness or instruments, such an exception is not to be admitted in a temporal court." *The answer.* "When any one case is debated before judges spiritual and temporal (as above appeareth upon the case of laying violent hands on a clerk) it is thought, that notwithstanding the spiritual judgment, the king's court shall discuss the same matter as it shall deem expedient."

2 Inst. 622.

4 Co. 16, 20.

Dismes (R), 641;) therefore all corn mills not erected before this statute, have been held to be tithable. To establish the antiquity of a mill, it must appear, that such building was before the memory of man, and that the mill never did pay tithe; upon which two proofs, the law will presume it to be such an *ancient* mill, as is not within this statute.

(1) *Vide* Stephens on Clerical Law, tit. PROHIBITION.

(2) *Definitively determined before a spiritual judge*:—For the spiritual judge's proceedings are for the correction of the spiritual inner man, and for the health of the soul, to enjoin him penance; and the judges of the common law proceed to give damages and recompense for the wrong and injury done. As where one layeth violent hands upon a clerk, the spiritual judge, *pro salute animæ*, shall enjoin him penance, and the clerk may have his action of battery, and

recover damages for the injury done to him; and therefore this article of the clergy was rejected. 2 Inst. 622. *Vide Boles' case*, Godb. 447. *Higgon v. Coppinger*, Jones (Sir William), 320. *Searle's case*, Hob. 121. Cro. Jac. 430.

It may not be inexpedient to subjoin the rule of the *Reformatio Legum*, concerning the right of the church to proceed in a spiritual way against criminals after sentence in the temporal courts and pardon: "Cum civilis magistratus aliquis flagitiosos homines adhuc non excommunicatos præ-occupavit, et in carcerem abduxerit; hi, si post, sententiam mortis acceperint, et nos illis postea pepercerimus, nolumus tamen indulgentia nostra ecclesiæ disciplinam impediri. Iudex igitur ecclesiasticus illos satisfactionis, et reliquorum officiorum commonefaciat; quæ si non omnia ritè perficiant, excommunicationis virga tantisper flagellentur, donec salubriores cogitationes susceperint." Ref. Leg. 84.

STAT. 9 EDW.
2, ST. I. C. 8.

VIII. STAT. 9 EDWARDI 2, ST. I. C. 8. A.D. 1315.

"Clerks in the King's Service shall be discharged of their Residence, but shall be corrected by the Ordinary."

2 Inst. 623.
Privilege of the
exchequer.

"Also barons of the king's exchequer claiming by their privilege, that they ought to make answer to no complainant out of the same place, extend the same privilege unto clerks abiding there, called to orders or unto residence, and inhibit ordinaries that by no means, or for any cause, so long as they be in the exchequer, or in the king's service, they shall not call them to judgment." *The answer.* "It pleaseth our lord the king, that such clerks as attend in his service, if they offend (1), shall be corrected by their ordinaries, like as other; but so long as they are occupied about the exchequer (2), they shall not be bound to keep residence in their churches. This is added of new by the king's council (3): The king and his ancestors since time out of mind have used (4), that clerks, which are employed in his service (5), during such time as they are in service, shall not be compelled to keep residence at

Item barones de scaccario domini regis vendicantes sibi ex privilegio quod non debent extra illum locum conquerenti cuiquam respondere extendunt illud privilegium ad clericos commorantes ibidem vocatos ad ordines seu ad residentiam et diocesanis inhihent ne aliquo modo aliquave ex causa dum sunt in scaccario & in servitio domini regis trahant ad iudicium quovis modo. *Responsio.* Placet domino regi ut clerici suis obsequiis intendentes si delinquant per ordinarios ut ceteri corrigantur set tempore quo occupantur circa scaccarium ad residentiam in suis faciend' ecclesiis non tenentur. *Hic additur sic de novo per consilium domini regis.* Rex et antecessores sui a tempore cujus contrarii memoria non existit usi sunt quod clerici suis immorantes obsequiis dum obsequiis illis intendunt ad residentiam in suis beneficiis faciend' minime compellantur nec debet dici tendere in prejudicium ecclesiastice

(1) *If they offend*:—This extendeth only *ad delicta*, i. e. *crimina*, whereof the ecclesiastical court hath the cognizance, as heresy, adultery, and the like, which the ordinary may correct, and not unto civil actions. 2 Inst. 624.

(2) *So long as they are occupied about the exchequer*:—And the court of exchequer may grant a prohibition to the ordinary, for any that ought to have the privilege of the exchequer, where the court may give the party remedy, or where a suit dependeth in the court of exchequer for the same cause, or where the king's service, which is the cause of the privilege, is hindered by the suit before the ordinary, as for non-residence during the time that he gave his necessary attendance in the exchequer for the king's service. *Ibid.*

(3) *Added of new by the king's council*:—That is, by the "common council" of the realm, as it is termed in original writs, and in other legal records, and so it is taken in other acts of parliament, and in the preamble to the *Articuli Cleri*. *Ibid.* Vide De Lolme on the English Constitution, by Stephens, 42.

(4) *The king and his ancestors since time out of mind have used*:—The clergy in this parliament inveighed vehemently against this answer, because that it tended to the breach of the ecclesiastical liberty, which was granted to them by Magna Charta, and often confirmed by other acts of parliament, "Quod ecclesia Anglicana libera sit, &c.;" to which it was answered, that the words subsequent in Magna Charta explained those words, "et habeat omnia jura sua et libertates suas

illæsas;" so as the clergy cannot claim any right but *jus suum*, nor any liberty but *libertates suas* (as the words are); and the point here in question, viz. to proceed against a clerk for non-residence, whilst he was in the king's service for the commonwealth, was neither *jus suum* nor *libertas sua*, but *libertas regis*. And therefore the parliament thought it fit to declare, that the king and his ancestors had used this liberty or prerogative time out of mind; and where it was said, that this tended in *præjudicium ecclesiasticæ libertatis*, the parliament thereunto answered, (which is worthy, Lord Coke says, to be written in letters of gold,) "Nec debet dici in prejudicium ecclesiasticæ libertatis, quod pro rege et republica necessarium invenitur." 2 Inst. 624.

(5) *That clerks, which are employed in his service*:—This branch is general, and not limited (as the former is) to the privilege of the exchequer; but extendeth to any other service of the king for the commonwealth, as if he be employed as an ambassador into any foreign nation, or the like service of the king, which is (as it is here said) for the commonwealth, and which ever must be preferred before the private. *Ibid.*

But, notwithstanding the *Articuli Cleri*, c. 9, the goods of ecclesiastical persons may be taken for issues or other dues to the king. *Ibid.* 627.

Ecclesiastical persons have this privilege, that they ought not in person to serve in war: "Nemo militans deo implicat se negotiis secularibus, ut ei placeat cui se probavit." *Ibid.* 625.

libertatis quod pro rege & republica necessarium invenitur.

their benefices. And such things as be thought necessary for the king and the commonwealth, ought not to be said to be prejudicial to the liberty of the church." STAT. 9 EDW. 2, ST. I. c. 8. Regist. 58.

IX. STAT. 9 EDWARDI 2, ST. I. c. 9. A.D. 1315.

"*Distresses shall not be taken in the Highways, nor in the ancient Fees of the Church.*"

STAT. 9 EDW. 2, ST. I. c. 9.

Item ministri domini regis ut vicecomites & alii ingrediuntur feodum ecclesie ad districtiones faciend' & aliquando capiunt animalia rectorum in via regia quando non habent nisi terram pertinentem ad ecclesiam. *Responsio.* Placet domino regi ne decetero districtiones fiant hujusmodi nec in via regia nec in feodis quibus olim ecclesie sunt dotate vult tamen districtiones fieri in possessionibus de novo a personis ecclesiasticis adquisitis.

"Also the king's officers, as sheriffs and other, do enter into the *fees of the church*(1) to take distresses, and sometime they take the *parson's*(2) beasts in the king's highway, where they have nothing but the land belonging to the church." *The answer.* "The king's pleasure is, that *from henceforth such distresses shall neither be taken* (3)(4) in the king's highway, nor in the fees where-with churches in times past *have been endowed*(5)(6); nevertheless his willet distresses to be taken in *possessions of the church newly purchased*(7)(8) by *ecclesiastical persons* (9)."

2 Inst. 627.

(1) *Fees of the church*:—That is, lands belonging to the church. Lynd. 268.

(2) *Parson's*:—Here parsons (*rectores*) are named but for example; for this law extendeth to other ecclesiastical persons. 2 Inst. 626.

(3) *From henceforth such distresses shall neither be taken*:—Notwithstanding that the king's officers, as sheriffs and others, are mentioned in the complaining part, yet Lord Coke says this law bindeth not the king, when he is party, for any debt, or duty due unto him, because the distress or other process for the king is not expressly named (in the enacting part), but *districtiones* generally. And this appeareth, he says, by a "book case" (27 Ass. 66): where a prior brought a bill of trespass against the sheriff for entering into his sanctuary, that is, within the circuit of the site of his priory, and took away his beasts. The defendant said, that he was sheriff, and that the prior lost issues in the court of Common Pleas, and a writ issued to him to levy the issues, and that he entered into the sanctuary, because he could not find a distress without. Whereupon the plaintiff demurred, and judgment was given against the plaintiff; which proveth, that the sheriff in that case could not have returned, upon the process to him directed, *Clericus beneficiatus nullum habens laicum feodum*. 2 Inst. 627. Nevertheless, the words are, that *such distresses (quod districtiones hujusmodi)* shall not be taken, which manifestly refer to the complaint preceding.

(4) *Shall neither be taken*:—And if they be taken, the party aggrieved may have a writ for his relief. Gibson's Codex, 15.

(5) *Have been endowed*:—This is to be taken in a comprehensive sense, for here the fees, that they have *ratione fundationis*, or *ratione dotationis*, are included. 2 Inst. 627.

(6) *Endowed*:—The possessions of the church are the endowment of the church, and its possessors accounted as tenants in dower. Ibid.

(7) *Newly purchased*:—In which the temporal lords had a right of distraining, which right they ought not to lose, by the possessions coming into the hands of ecclesiastical persons. For where any burden real, lieth upon any land or place, the thing itself passeth with its burden. Lynd. 268.

(8) *Purchased*:—Either to their own use, or to the use of the church. Ibid. 261.

If any ecclesiastical person acknowledge a statute merchant, or statute staple, or a recognizance in the nature of a statute staple; his body shall not be taken by force of any process thereupon. 2 Inst. 3.

(9) *Possessions of the church newly purchased by ecclesiastical persons*:—Concerning tithes, tenths, and fifteenths, granted by parliament to the king, the possessions of ecclesiastical persons, which they acquired since the 20 Edw. 1, either by purchase or act in law, were chargeable thereunto; but those which they had, at that time, were not charged therewith. And the reason thereof was this: The Pope (after the example of the high priest amongst the Jews, who had of the Levites the tenth part of the tithe) claimed, by pretext thereof, a yearly tenth part of the value of all ecclesiastical livings. This portion or tribute was by ordinance yielded to the Pope in 20 Edw. 1, and a valuation then made of the ecclesiastical livings within this realm, to the end the Pope might know, and be answered of that yearly revenue, so as the ecclesiastical livings, chargeable with that tenth (which was called spiritual) to the Pope, were not chargeable with the temporal tenths or fifteenths granted to the King in parliament, lest they should

52 Hen. 3, c. 15. Regist. 98, 183.

STAT. 9 EDW.
2, ST. I. c. 10.

X. STAT. 9 EDWARDI 2, ST. I. c. 10 (1). A.D. 1315.

"*They that abjure the Realm (2) shall be in Peace, so long as they be in the Church or Highway (3).*"

STAT. 9 EDW.
2, ST. I. c. 11.

XI. STAT. 9 EDWARDI 2, ST. I. c. 11 (4). A.D. 1315.

"*Religious Houses shall not be charged by Compulsion with Corodies, Pensions, Resort, or taking of their Horses or Carts.*"

STAT. 9 EDW.
2, ST. I. c. 12.

XII. STAT. 9 EDWARDI 2, ST. I. c. 12. A.D. 1315.

"*A Clerk excommunicate may be taken out of the Parish where he dwelleth.*"

2 Inst. 630.

"Also if any of the king's tenure be called before their ordinaries out of the parish where they continue, if they be excommunicate for their manifest contumacy, and after forty days a writ goeth out to take them, they pretend their privilege that they ought not to be cited out of the town and parish where their dwelling is; and so the king's writ that went out for to take them is denied." *The answer.* "It was never yet denied, nor shall be hereafter."

Item si aliqui de tenura domini regis vocati coram ordinariis extra parochiam in qua degunt si propter suam manifestam contumaciam excommunicentur ac post quadraginta dies pro eorum captione scribatur pretendunt se privilegiatos quod extra villam seu parochiam suam non debent vocari et sic denegatur breve regium pro captione eorundem. *Responsio.* Nunquam fuit negatum nec negabitur in futurum.

STAT. 9 EDW.
2, ST. I. c. 13.

XIII. STAT. 9 EDWARDI 2, ST. I. c. 13. A.D. 1315.

"*The Examination of a Parson presented to a Benefice belongeth to a Spiritual Judge.*"

2 Inst. 631.

"Also it is desired that spiritual persons, whom our lord the king doth present unto benefices of the church (if the bishop will not admit (5) them either for lack of learning (6) or for other cause

Item petitur quod persone ecclesiastice quas dominus rex ad beneficia presentat ecclesiastica si episcopus eas non admittat ut puta propter defectum scientie vel aliam causam rationabilem non subeant

be doubly charged; but their possessions acquired, after that taxation, were liable to the temporal tenths or fifteenths, because they were not charged to the other. 2 Inst. 627.

(1) Repealed by Stat. 1 Jac. 1, c. 25, s. 34. Stat. 21 Jac. 1, c. 28, ss. 6 & 7.

(2) *Abjure the Realm*:—The abjuring of the realm is thus expressed by Bracton, lib. 3, 135 (b): "Si recognito maleficio, elegerit regnum *abjurare*, eligere debet portum aliquem, per quem transire possit ad terram aliam *extra regnum Angliæ*; quia non teneatur abjurare terram et potestatem regis præcisè, sed tantum regnum Angliæ." And the oath they took to abjure is as follows: "Hoc audite, iusticiarii (*vel*, O vos coronatores) quod exibo à regno Angliæ, et illuc iterum non revertar, nisi de *licentia* domini regis vel hæredum suorum; sic me Deus adjuvet, &c." Ibid. 136 (a). But if he did abjure, and return, he had, notwithstanding that, the benefit of clergy. Keil. 186 (b).

(3) *Highway*:—What remained to be done, after abjuration, is thus described by Bracton, lib. 3, 135 (b), 136 (a): "Computari ei debent rationabiles *diætæ* usque ad portum illum [quem elegerit] et debent ei interdicti, ne exeat *regiam viam*, nec moram faciat alicubi

per duas noctes, nec alicubi se divertat, nec multum declinet à viâ nisi hoc fuerit ex magna necessitate, vel hospitandi causa, sed semper tendat rectâ viâ ad portum."

(4) Expired.

(5) *Admit*:—Sometimes in a larger sense admission doth include institution; but here it is to be understood as distinct from it: so that admission, strictly speaking, is, when the bishop, upon examination, admitteth the clerk to be *able*, and saith, "Admitto te habilem;" but institution is the *actual conveyance* of the spiritual cure, when the bishop saith: "Instituo te rectorem talis ecclesiæ cum cura animarum," et, "Accipe curam tuam et meam." 1 Inst. 344 (a).

(6) *For lack of learning*:—This is the most common and ordinary cause of refusal; concerning which, it hath been particularly allowed, not only by the courts of Common Pleas and Queen's Bench, but also by the high court of Parliament, that the ordinary is not accountable to any temporal court, for the measures he takes, or the rules by which he proceeds, in examining and judging; and that the clerk's having been ordained, and licensed to preach by another bishop, (and so presumed to be of good abilities,) doth not take away or diminish the right, which

examinationem laicorum personarum in casibus ante dictis prout hiis temporibus attemptatur de facto contra canonicas sanctiones set adeant iudicem ecclesiasticum ad quem de jure pertinet pro remedio prout justum fuerit consequendo. *Responsio.* De idoneitate persone presentate ad beneficium ecclesiasticum pertinet examinatio ad iudicem ecclesiasticum & ita est hactenus usitatum & fiet in futurum.

reasonable) (1), may not be under the examination of lay persons in the cases aforesaid, as it is now attempted, contrary to the decrees canonical, but that they may sue unto a spiritual judge for remedy, as right shall require." *The answer.* "Of the ability of a parson presented unto a benefice of the church, *the examination belongeth to a spiritual judge* (2) *and so it hath been used heretofore* (3), and shall be hereafter."

STAT. 9 EDW. 2, ST. I. c. 13.

4 Mod. 135.

Registr. 53.

XIV. STAT. 9 EDWARDI 2, ST. I. c. 14. A.D. 1315.

"*There shall be free Election of Dignities of the Church.*"

STAT. 9 EDW. 2, ST. I. c. 14.

Item si vacet aliqua dignitas ubi electio est faciendi petitur quod electores libere possint eligere absque incussione timoris a quacumque potestate seculari & quod cessent preces & oppressiones in hac parte. *Responsio.* Fiant libere juxta formam statutorum & ordinationum.

"*Also, if any* (4) *dignity be vacant, where election is to be made, it is moved that the electors may freely make their election without fear of any power temporal, and that all prayers and oppressions shall in this behalf cease.*" *The answer.* "They shall be made free according to the form of statutes and ordinances."

2 Inst. 632.

3 Edw. 1, c. 5.

the statute gives a present bishop to examine and judge. *Hele v. Exeter (Bishop of)*, 4 Mod. 134. *Rex v. Lee*, 3 Lev. 309.

But the lack of language, namely of the Welsh, was declared, in *Albany v. St. Asaph (Bishop of)*, Cro. Eliz. 119, to be a good cause of refusal, as rendering the clerk incapable of the cure; nor did it avail to allege, that the language might be *learnt*, or that the fact of the cure he was incapable of, might be discharged by a curate.

The law is the same, if the person presented do not understand the English tongue; for, in such case, the bishop can refuse him for incapacity. *Colt & Glover v. Coventry & Lichfield (Bishop of)*, Hob. 148.

Where there is a mixture of divers languages in any place, the rule of the canon law is as follows: "Quoniam in plerisque partibus infra eandem civitatem atque diocesim, permixti sunt populi diversarum linguarum, habentes sub una fide varios ritus et mores; districtè præcipimus ut pontifices hujusmodi civitatum seu diæcesium provideant viros idoneos, qui secundum diversitates rituum et linguarum, divina illis officia celebrent, et ecclesiastica sacramenta ministrent; instruendo eos verbo, pariter et exemplo."

(1) *Other cause reasonable*.—The two general rules of the common law upon this head are, first, that all such causes as are sufficient causes to *deprive an incumbent*, are sufficient causes to *refuse a presentee*. Secondly, that if a man be guilty of crimes, which are *mala in se*, as incontinence, drunkenness, murder, manslaughter, heresy, schism, simony, or perjury, he may be legally refused; but if crimes be alleged, that are only *malaprohibita*, as haunting of taverns, gaming, &c. the refusal cannot be warranted. *Specot's case*, 5 Co. 58 (a). Gibson's Codex, 807.

(2) *The examination belongeth to a spiritual judge*.—And the examination of the ability and sufficiency of the person presented, belongs to the bishop, who is the ecclesiastical judge; and in this examination he is a judge, and not a minister, and may and ought to refuse the person presented, if he be not *idonea persone*. 2 Inst. 631. And yet in some cases, notwithstanding this statute, *idoneitas personæ* shall be tried by the country, or else there should be a failure of justice, which the law will never suffer; as if the inability or insufficiency be alleged in a man that is dead, this case is out of this statute; for in such case the bishop cannot examine him; and consequently, though the matter be spiritual, yet shall it be tried by a jury; and the court, being assisted by learned men in that profession, may instruct the jury, as well of the ecclesiastical law in that case, as they usually do of the common law. Ibid. 632.

(3) *And so it hath been used heretofore*.—So that this act is a declaration of the common law and custom of the realm. Ibid.

(4) *Also, if any*.—Provision had been made by Stat. Westm. I. c. 5, (*antè*, 7,) for the freedom of elections in general, (because elections ought to be free, the king commandeth, upon great forfeiture, that no man, by force of arms, nor by menacing, shall disturb any to make free election,) which statute, being general, did evidently include ecclesiastical elections as well as others; but some doubts having probably been raised, whether they were included, or at least the clergy fearing that a doubt *might* be made, they judged it advisable to move the king for a *special* declaration to that purpose. Vide 1 Stephens on the Law of Parliamentary Elections, c. 12.

STAT. 9 EDW.
2, ST. I. c. 15.

XV. STAT. 9 EDWARDI 2, ST. I. c. 15 (1). A.D. 1315.

"A Clerk fleeing into the Church for Felony, shall not be compelled to abjure."

STAT. 9 EDW.
2, ST. I. c. 16.

XVI. STAT. 9 EDWARDI 2, ST. I. c. 16 (2). A.D. 1315.

"The Privilege of the Church being demanded by the Ordinary, shall not be denied to a Clerk that hath confessed Felony."

STAT. 12 EDW.
2, ST. I. c. 4.

XVII. STAT. 12 EDWARDI 2, ST. I. c. 4. (*Statute of York*.) A.D. 1318.

"Justices of Nisi Prius shall record Nonsuits, Defaults, &c."

Dyer, 163.

"And the justices or justice shall have power to record nonsuits and defaults in the country, at the days and places assigned, as afore is said. And that which they shall have done in the things above mentioned, shall be reported in the bench at a day certain, there to be inrolled, and thereupon judgment shall be given. And the king intendeth not, that the said inquests and juries should not be taken in the bench if they come, nor that this statute should extend unto great assizes. And also one justice of the one place and of the other, being associate with a discreet man of the country, knight, or other, at the request of the plaintiff, shall take inquests upon pleas pleaded and to be pleaded, that be moved by attachment and distress, and shall have power to record nonsuits as above is said, and to take inquests upon defaults there made. And as to the inquests to be taken upon writs of *quare impedit*, it shall be done as is contained in the Statute of Westminster the Second; and the justices shall have power to record nonsuits and defaults in the country, and to give judgment thereupon, as they do in the bench, and there to report that which they have done, and there to be inrolled. And if it happen, that the justice or justices that shall be assigned to take such inquests in the country, do not come, or if they come into the country at the day assigned, yet the parties and persons of such inquests shall keep their day in the bench."

13 Edw. 1, St.
I. c. 30.
By 14 Edw. 3,
St. I. c. 16,
justices of
assize may
give judgment
in *quare impe-*
dit, &c.

Et eit la justice ou les justices poer a recorder nonsutes & defautes en pays as jour & lieux qe serront assignez com desuz est dit. Et ceo qil averont fait en les choses susdites seit reporte en bank a jour done & illoeqs enroule & de ceo jugement rendu. Et nentent mie le roi qe les dites enquestes & jurez ne puissent estre prises en bank si ele veignent ne qe cest estatut sistent a grant assises. Et ausi une justice del un bank & de lautre associe a lui un prodhomme du pays chevaler ou autre al requeste du pleintiff preigne les enquestes dez pledz pledez & a pleder qe sont movez par attachementz & destresces Et eyt poer de recorder les nonsutes com desus est dist & prendre les enquestes par defautes illoeqs faites. Et qant a les assises de drein present & les enquestes sur bref de quare impedit prendre seit fait com il est contenutz en le Secund Estatut de Westm' Et eyt la justice poer de recorder nonsutes & defautes en pays & sur ceo jugement doner com en bank & soit reporte en bank ceo qe il avera fait & illoeqs seit enroule. Et si issint aveigne qe les justices ou la justice qe serront ou serra assigne de prendre tieles enquestes en pays ne veignent pas ou ne veigne en pays au jour assigne jadumeyns les parties & les gentz del enquete gardent lour jour en bank.

STAT. 17 EDW.
2, ST. I. c. 8.

XVIII. STAT. 17 EDWARDI 2, ST. I. c. 8 (3). (*Prerogativa Regis*.)
A.D. 1324.

"His Prerogative, that Lapse of Six Months shall not prejudice his Presentation."

Bro. Parl. 6.
Hob. 214.

"Of churches being vacant, the advowsons whereof belong to the king, and

De ecclesiis vacantibus quarum advocaciones spectant ad regem et alii presen-

(1) Repealed by Stat. 1 Jac. 1, c. 25, s. 34. Stat. 21 Jac. 1, c. 28, ss. 6 & 7.

(2) Ibid.

(3) The meaning of this statute is, that where a church belonging to the patronage of the king is litigious, and not recovered in

taverint ad easdem ita quod contentio inter dominum regem et alios oriatur Si rex per considerationem presentationem suam recuperaverit licet post lapsum temporis sex mensium a tempore vacationis nullum currit ei tempus dum tamen rex presentaverit infra predictum tempus sex mensium.

other present to the same, whereupon debate ariseth between the king and other; if the king by award of the court do recover his presentation, though it be after the lapse of six months from the time of the avoidance, no time shall prejudice him, so that he present within the space of six months."

STAT. 17 EDW. 2, St. I. c. 8.

XIX. STAT. 17 EDWARDI 2, St. I. c. 14. A.D. 1324.

"His Prerogative, in having the Escheat of Bishops' Freehold Tenants attainted of Felony during the Vacation."

STAT. 17 EDW. 2, St. I. c. 14.

Item habet escaetas de terris libere tenentium archiepiscoporum et episcoporum quando ipsa tenentes dampnati sunt pro feloniam facta tempore vacationis dum temporalia eorundem fuerunt in manu domini regis conferendas cui voluerit imperpetuum salvo servitio quod ad prelatos inde pertinet.

"Also the king shall have escheats of lands of the freeholders of archbishops and bishops when such tenants be attainted for felony in time of vacation, whiles their temporalities were in the king's hands, to give at his pleasure, saving to such prelates the service that thereto is due and accustomed (1)."

XX. STAT. 17 EDWARDI 2, St. I. c. 15. A.D. 1324.

"His Prerogative, that Knights' Fees, Advowsons, and Dowers, do not pass from him without special Words."

STAT. 17 EDW. 2, St. I. c. 15.

Quando dominus rex dat vel concedit aliquod manerium vel terram cum pertinentiis nisi faciat in carta sua vel scripto expressam mentionem de feodis militum advocationibus ecclesiarum & dotibus cum acciderint ad predicta mane-

"When our lord the king giveth or granteth (2) land or a manor with the appurtenances, without he make express mention (3) in his deed or writing of knights' fees, advowsons of churches, and dowers when they fall, belonging to

10 Co. 63.
Dyer, 350.
2 Rich. 3, f. 4.
41 Ed. 3, f. 5.
43 Ed. 3, f. 22.
Fitz. Quare impedit, 31.40.

six months, lapse shall not incur, as in the case of a common person; but the last clause seemeth to be a limitation of that privilege, viz., on condition that the king present within the space of six months after it is recovered; and if he present not, then lapse to incur. But it being a maxim in law, that *nullum tempus occurrit regi*, and the restraining words being not express, that the prerogative shall be restrained in that particular, but only words of implication, the law is taken to be, that a church can in no case go in lapse from the king. Gibson's Codex, 766, 770.

And therefore there is no remedy against a neglect in the crown to fill vacant churches, but only the ordinary's sequestering the profits of the church, and appointing a clerk to serve the cure. Gibson's Codex, 770. 18 Edw. 3, 21. 14 Hen. 7, 21. Doctor & Student, Dial. 2, c. 36. Vide Stephens' Clerical Law, tit. LAPSE.

Where a doubt was, whether a living had not lapsed to the king, and the clerk took out a presentation from the crown, *ad corroborandum*; he was obliged by the archbishop, as patron, to declare, that he took not that presentation on any other account but that of the doubtfulness of the lapse. Baner. 284 (a.b). 2 Whitg. 348 (b).

If the Reformatio Legum had been confirmed by authority of parliament, as was

designed, the law in this particular would have been otherwise: "Et si nobis etiam [saith the king] ex quo id novimus, sex menses effluxerint, sacerdotium vacuum non collocantibus; ad patronum rursus jam sum devolvetur; et sic in eodem semper orbe circumferatur, illis quas nominavimus personis [viz., patron, bishop, metropolitan, and king] mutuo sibi succedentibus, donec tandem aliquis eorum præscripto tempore jus collocationis exequatur." Ref. Leg. f. 29 (b).

(1) Accordingly, the temporalities being in Queen Elizabeth's hands, a copyhold escheated, which was granted by the queen, and it was held to be good. Watson's Clergyman's Law, c. 40.

(2) *Giveth or granteth*:—But when he restoreth, as in the case of the restitution of a bishop's temporalities, then advowsons pass without express mention, or any words equivalent thereto. *Whistler's case*, 10 Co. 64 (b).

(3) *Without he make express mention*:—*Cum pertinentiis, or adeò plenè et integrè, et in tam amplis modo et forma prout, &c.*, have been adjudged equivalent to an express mention, because the grantee may inquire what the appurtenances were, and in what manner and form it was held; and forasmuch as the uncertainty may be reduced to a certainty, by inquiry or circumstance, the grant is good. Ibid. 64.

STAT. 17 EDW. 2, ST. I. c. 15. such manor or land, then at this day the king reserveth to himself such fees, advowsons, and dowers, albeit that among *other persons* (1) it hath been observed otherwise."

rium vel terram pertinentibus tunc hiis diebus rex reservat sibi eadem feoda et advocaciones cum dotibus licet inter alias personas aliter fuerit observatum.

STAT. 17 EDW. 2, ST. III. XXI. STAT. 17 EDWARDI 2, ST. III. (2). *Statutum de Terris Templariorum* (3). A.D. 1324.

(1) *Other persons*:—The law, in the case of a common person, is thus stated by Rolle, out of the ancient books: If a man, seised of a manor to which an advowson is appendant, aliens that manor, without saying *with the appurtenances*, (and much more, without naming the advowson,) yet the advowson shall pass, for it is parcel of the manor. 2 Roll. Abr. *Graunts* (A), 60.

(2) Expired.

(3) *Templarii*:—They are thus described by Sir Henry Spelman (Gloss. in verb.): "Templarii dicti sunt ordo militum, qui in Templo Hierosolymis sedem habuere: id voventes, ut peregrinis tutum redderent iter Hierosolomitatum, venientesque exciperent hospitio. Institutus autem fuit hic ordo ann. 1099." For, according to the superstitions of those days, pilgrimage to the

Holy Land in person, was thought to be great merit, and one of the highest acts of devotion and reverence to our Saviour; and the next to that, was, to vow pilgrimages thither on their sick beds, in case they recovered; or, if they did not recover, to leave lands for the maintenance of a knight, to go thither and fight against the infidels. For this also, viz., the guarding of the Holy Land against infidels, was undertaken by that order, as well as the conducting and entertaining of pilgrims.

The whole order was suppressed by Pope Clement V. in a general council at Vienna, A.D. 1312, many and great abuses having been charged upon them; and particularly, that, instead of conducting, they betrayed and robbed the pilgrims. Gibson's Codex, 1175.

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I. STAT. 1 EDWARDI 3, ST. II. C. 2. A.D. 1327.

“How every Person may use his Woods within the Forest. Seising of Bishops’ Temporalities.”

STAT. 1 EDW.
3, ST. II. C. 2.

Item qe chescun homme qe eit boys deinz foreste poet prendre en son boys demeigne housbote & heybote sanz estre attache par ministres de la foreste issint qils le face par veue de foresters. Et pur ce qe avant ces heures en temps le roi pier au roi qore est le roy par malveys conseillers sanz cause & areynement fist prendre en sa meyn les temporalites des divers evesques od toutz les beins & chateux en les dites temporalites trovez & mesmes les temporalites tynt en sa meyn par long temps & prist toutz les issues en mesmes le temps a grant damages des ditz evesques vastz & destructions de lour chauteux manoirs parks & boys le roi graunt & voet qe desoremes ne soit fait.

“Item, every man that hath any wood within the forest may take houseboot and heyboot in his said wood, without being attached for the same by any ministers of the forest, so that he do the same by the view of the foresters. And because before this time, in the time of King Edward, father to the king that now is, the king by evil counsellors caused to be seised into his hands the temporalities of divers bishops, with all their goods and chattles therein found, without any cause, and the same held in his hands by a long season, and continually thereof took the profits, to the great damage of the same bishops, wastes and destructions of all their castles, manors, parks, and woods,—the king willeth and granteth, that from henceforth it shall not be done.”

Enforced by
14 Edw. 3,
St. IV. c. 3.
25 Edw. 3,
St. V. c. 6,
prohibits pur-
veyors from
taking timber
in or about any
person's house

STAT. 1 EDW.
3, ST. II. c. 10.

II. STAT. 1 EDWARDI 3, ST. II. c. 10. A.D. 1327.

"There shall be no more Grants of Corodies at the King's Request by Bishops, Abbots, &c."

"Item, whereas archbishops, bishops, abbots, priors, abbesses, and prioresses, have been before this time sore grieved by the king's requests, and his progenitors', which have desired them, by great threats, for their clerks and other servants, for great pensions, prebends, churches and corodies, so that they might nothing give nor do to such as had done them service, nor to their friends, to their great charge and damage; the king granteth, that from henceforth he will no more such things desire, *but where he ought* (1)."

Regist. 264.

Et pur ce qe ercevesques evesques abbees priours dames de religion et autres ount este avant ces heures grandement greves par priers des royes qe lor ont prie par grandes menaces pur lour clerks et autres lor servantz pur grosses empensions provendes eglises et corodies issint qils ne poeient rien doner ne faire a ceux qe lours avoient servi ne a lor amys a grant charge et damage de eux le roi ne voet desore prier mes la ou il devera.

STAT. 1 EDW.
3, ST. II. c. 11.

III. STAT. 1 EDWARDI 3, ST. II. c. 11. A.D. 1327.

"No Suit shall be made in the Spiritual Court against Indictors."

"Item, the commons do grievously complain, that when divers persons, as well clerks as lay people, have been indicted *before sheriffs in their turns* (2), and after by inquests procured, be delivered before the justices; after their deliverance they do sue in the spiritual court against such indictors, surmising against them that they have defamed them, to the great damage of the indictors, wherefore many people of the shire be in fear to indict such offenders; the king will, that in such case every man that feeleth himself grieved thereby, shall have a prohibition formed in the Chancery upon his case."

Regist. 39, 42.
Rast. 487.

Auxint plusours gentz sont grevement pleyntz qe quant diverses gentz auxibien clerks come lays ount este enditez devant viscontes en lour tourns et puis par enqueste procure sont deliverez devant justices et apres lor deliverance suient en court crestiene devers les enditours en surmettaunt eux qe eux lor ount diffame a graunt damage des ditz enditours par quoi plusours gentz des countees se doutent plus denderit les malveys le roi voet qe en tieux cas chescun qe se sent greve eyt sur ce prohibition en chauncellerie fourme en son cas.

STAT. 4 EDW.
3, c. 6.

IV. STAT. 4 EDWARDI 3, c. 6 (3). A.D. 1330.

"The Statute made at Carlisle, anno 35 Edw. 1, St. I. touching Religious Persons, confirmed."

(1) *But where he ought*:—For, of common right, the king, as founder of archbishopricks, bishopricks, and many religious houses, had a corrody or a pension, in the several foundations; a corrody for his *valedets* who attended him; and a pension for a chaplain, such as he should specially recommend, till the respective possessor should promote him to a competent benefice, for each of which, a writ is provided, as for a matter of strict right. Gibson's Codex, 16.

(2) *Before sheriffs in their turns*:—Although the statute provides expressly for indictors in the turns only, yet it extends, as well to indictors in all other courts, and to all witnesses, and to all others, who have affairs in the temporal courts, and who could not be therefore sued or molested in the court christian.

Although the testimony of two witnesses is required, it is not necessary, that they should speak to the same fact. It satisfies the demand of the law, if there be two witnesses speaking separately to facts of defamation of the same species, committed at various times. *Crompton v. Butler*, 1 Cons. 460. Otherwise, reputation might be destroyed with impunity, by the defamer using the prevention of spreading a malignant report but to one person only at a time. Nor need they speak to the identical words in the same terms. *Cole v. Corder*, 2 Phill. 106. The testimony of two affirmative, outweighs that of several negative, witnesses. *Tocker v. Ayre*, 3 Ibid. 539. Vide etiam, *anté*, 34, in not. (2)(3).

(3) Expired.

V. STAT. 4 EDWARDI 3, c. 7. A.D. 1330.

STAT. 4 EDW.
3, c. 7.*"Executors shall have an Action of Trespass for a Wrong done to their Testator."*

Item come avant ces heures executors nont pas eu action des trespas faites as testatours come des biens et chateux des ditz testatours emportez en lour vie et issint tieux trespas ont este depunitz tanqe encea si est acorde qe les executors en tieu cas eient action devers les trespasours pur damage en tieu cas recoverer en manere come ceux qi executors ils sount averoint fils fuissent en vie.

"Item, whereas in times past, executors have not had actions for a trespass done to their testators, as of the goods and chattels of the same testators carried away in their life, and so such trespasses have hitherto remained unpunished; it is enacted, that the executors in such cases shall have an action against the trespassers, and recover their damages in like manner as they, whose executors they be, should have had if they were in life."

Rast. 640.
13 Edw. 1,
St. I. c. 23.
1 Ventr. 187.
7 Hen. 4, f. 18.
11 Hen. 4, f. 3.
Fitz. Bar. 217.
Fitz. Execut.
52, 106.
Cro. Eliz. 377,
384.
Latch. 167.
Savill, 118, 133
1 Leon, 193,
194.

Regist. 98. 25 Edw. 3, St. V. c. 5, extends the remedy to executors of executors; and see farther, 21 Hen. 8, c. 4, s. 1. 43 Eliz. c. 8, s. 2. 30 Car. 2, St. I. c. 7, s. 2; and 4 & 5 Gul. & Mar. c. 24, s. 12.

VI. STAT. 5 EDWARDI 3, c. 3. A.D. 1331 (1).

STAT. 5 EDW.
3, c. 3.*"A Confirmation of the Statute of Carlisle, made 35 Edw. 1, St. I. touching Religious Houses."*

VII. STAT. 9 EDWARDI 3, St. I. c. 3. A.D. 1335 (2).

STAT. 9 EDW.
3, St. I. c. 3.*"In a Writ of Debt against divers Executors, they shall not fourch by Essoin."*

Ensement a la requeste des dites communaltez faite a nostre seigneur le roi a son dit parlement ordine est & establi par nostre seigneur le roi del assent des prelatz countes barons & autre grantz & communes avantdites qe ou brief de dette est porte vers plusurs executors qe les ditz executors ne nul de eux ne eit forsque un essoigne avant apparance cest assavoir a la somonse ou a lattachement ne apres apparance ne eint qe un essoigne come le testatour averoit issint qe mes ne puent foercher par essoigne ne avant apparance ne apres apparance & pur ceo qe touz les executors representent la persone le testatour come une persone si est auxint acorde & establi qe tout soit ceo qe visconte respoigne a le somonse qe ascun de eux neit riens ou il poet estre somons jadumeins soit agarde lattachement sur lui. Et si le visconte respoigne qil nad riens par quei il poet estre attache soit agarde le grande destresse issint qe a la grande destresse retourne sur eux respoigne al pleintif celui ou ceux qi primerment apparra ou apparrunt en court. Et tout soit ceo qe ascun de eux eit apparu en court & face defaute au jour qe la grande destresse soit retourne sur les autres jadumeins respoigne celui ou ceux qi primes appara

"Item, at the request of the said commons made to our lord the king in his said parliament, it is ordained and established, by our lord the king, by the assent of the prelates, earls, barons, and other great men, and the commons aforesaid, that in a writ of debt brought against divers executors, the same executors, nor any of them, shall have but one essoin before appearance, that is to say, at the summons or attachment, nor after appearance they shall have but one essoin, as the testator should have had, so that all the executors do represent the person of the testator as one person. It is also enacted, that though the sheriff do answer at the summons, that some of them have nothing whereby he may be summoned, yet there shall an attachment be awarded upon them. And if the sheriff answer, that he hath nothing whereby he may be attached, the great distress shall be awarded, so that at the great distress returned upon them, he or they that do first appear in the court shall answer to the plaintiff. And although some of them have appeared in the court, and make default at the day that the great distress is returned upon the other, yet nevertheless he or they shall be put to answer, that first appeared at the great

Bro. Parl. 24.

3 Hen. 6, f. 14.
7 Hen. 4, f. 10.
In an action of debt brought against divers executors, he which first appeareth shall answer.

(1) Expired.

(2) Vide Stat. 3 & 4 Gul. 4, c. 42, s. 4.

STAT. 9 EDW.
3, ST. I. c. 3.

distress returned. And in case the judgment pass for the plaintiff, he shall have his judgment and execution against them that have pleaded, according to the law heretofore used, and against all other named in the writ, of the goods of the testator, as well as if they had all pleaded. And it is to be understood, that if any in such case will sue according to the law that hath been used heretofore, he may freely do it notwithstanding this statute."

ou apparrunt a la grande destresce retourne. Et en cas qe jugement passe pur le pleintif se face le jugement & execution devers ceux qi unt pledez solonc la lei avant use & devers touz les autres nomez en le breif des biens le testatour auxicome ils eussent trestouz pledez. Et est a entendre qe si nul en tieu cas voudra suivre selonc la lei qe cea enarere ad este use qe franchement le peusse faire nient contrestant cest estatut.

STAT. 11 EDW.
3, c. 4.

VIII. STAT. 11 EDWARDI 3, c. 4(1). A.D. 1337.

"Who only may wear Furs."

[Apparel for prelates and people of holy church.]

STAT. 14 EDW.
3, ST. I. c. 1.

IX. STAT. 14 EDWARDI 3, ST. I. c. 1. A.D. 1340.

"A Confirmation of Liberties."

"First, that (2) holy church have her liberties in quietness, without interruption or disturbance."

Primerement qe seinte eglise eit ses franchises en quiete saunz emphechement ou distourbanee.

STAT. 14 EDW.
3, ST. I. c. 16.

X. STAT. 14 EDWARDI 3, ST. I. c. 16. A.D. 1340.

"Before what Persons Nisi Prius may be granted."

Justices of assise may give judgment upon assise, *quare impedit*, and *darrein presentment*.

". . . The justices before whom the *nisi prius* hath been granted in pleas of assises, of *darrein presentment* (3), and *quare impedit*, [shall] have power to give the judgments in the country upon the verdicts of assise, and of inquests, and upon nonsuits and defaults."

Les justices devant queux le nisi prius ad este grantee es plees dassises de darrein presentment et quare impedit eient poair de rendre les juggementz en pais sur verditz dassise & denqueste & sur nonseutes & defautes.

STAT. 14 EDW.
3, ST. I. c. 17.

XI. STAT. 14 EDWARDI 3, ST. I. c. 17(4). A.D. 1340.

"A *Juris Utrum* (5) maintainable for a Parson or Vicar."

(1) Repealed by Stat. 1 Jac. 1, c. 25, s. 45.

(2) *First, that*:—Besides the many confirmations of the Great Charter in Parliament, (which included a confirmation of the rights and liberties of the church and clergy,) and besides other general confirmations of the rights of the clergy, in conjunction with those of the laity, here are divers acts and clauses specially in favour of the church and clergy. And this is pursuant to a maxim in our laws, "*Ecclesia est infra ætatem, et in custodia domini regis, qui tenetur jura et hæreditates suas manu tenere et defendere.*" And elsewhere, "*Ecclesia, quæ semper est infra ætatem, fungitur semper vice minoris; nec est juri consonum, quod infra ætatem existentes, per negligentiam custodum suorum exhæredationem patiantur.*" 2 Inst 3.

Accordingly, divers of our kings before the Conquest, particularly Edward the Elder,

Edgar, Canutus, and Edward the Confessor, begin their laws in like manner, with special provisions for the liberties of the church and clergy, of which therefore this usage since, is only a continuance. Spelm. Con. 391, 444, 539. And it is further observable, that numerous confirmations were made at the special request of the commons in parliament, whose petitions frequently began with such a general clause in favour of the church and clergy. *Vide* Rot. Parl. 17 & 51 Edw. 3;—2, 3, 5, 6, 7, 8, & 17 Rich. 2;—1 & 4 Hen. 4;—2, 5, 7, & 8 Hen. 5;—et 2 Hen. 6.

(3) Repealed by Stat. 3 & 4 Gul. 4, c. 27, s. 36.

(4) *Ibid.*

(5) *Juris utrum*:—This was a writ for the successor in a benefice to recover lands belonging to his church, which were aliened by his predecessor.

XII. STAT. 14 EDWARDI 3, ST. IV. c. 1 (1). A.D. 1340.

"Spiritual Persons' Goods shall not be taken by Purveyances (2) without the Owners' consent."

STAT. 14 EDW.
3, ST. IV. c. 1.

XIII. STAT. 14 EDWARDI 3, ST. IV. c. 2 (3). A.D. 1340.

"Presentment to Churches made by the King in another's Right."

STAT. 14 EDW.
3, ST. IV. c. 2.

XIV. STAT. 14 EDWARDI 3, ST. IV. c. 3. A.D. 1340.

"No Bishop's Temporalities shall be seised without good Cause."

STAT. 14 EDW.
3, ST. IV. c. 3.

Et volons & grantoms pur nous & pur noz heirs qe desorenavant nous ne noz heirs ne prendrons ne ne ferroms prendre en nostre main les temporaltez des ercevesques evesques abbees priours ou dautres de quel estat ou condition qils soient sanz verroie & joust cause selonc ley de terre & jugement sur ceo la done.

"Item, we will and grant, for us and for our heirs, that from henceforth we nor our heirs shall not take, nor cause to be taken into our hands, the temporalities of archbishops, bishops, abbots, priors, or other people of holy church, of what estate or condition they be, without a true and just cause, according to the law of the land, and judgment thereupon given."

1 Edw. 3,
St. II. c. 2.
Regist. 32.
Enforced by
25 Edw. 3,
St. III. c. 6.

XV. STAT. 14 EDWARDI 3, ST. IV. c. 4. A.D. 1340.

"How the Temporalities of Bishops shall be used in time of Vacation."

STAT. 14 EDW.
3, ST. IV. c. 4.

Et pur ceo qe en la petition des ditz prelatz & clerge si est contenu qe escheatours & autres gardeins en temps des voidances des erceveschees eveschees & autres prelacies si ont fait grant wast & destruction cea en arere si volons & grantoms pur nous & pur noz heirs qe a totes les foith qe tieux voidances desorenavant avendront qe noz eschetours & les eschetours de noz heirs qe pur temps serront entrent & facent bien garder les dites voidances sanz faire wast ou destruction en manoirs parks vivers ou boys & qils ne vendont suthbois nenchacent en parks nen warrennes nen peschent vivers ne franchises pescheries ne ne gersonent ne parnount fins des tenauntz fraunks ne bondes einz facent garder & salver quantqe appent a les dites voidances saunz y faire damage ou auscun manere des oppressions. Et si dean & chapitre des eglises cathedrales priours suppriours prioresses supprioresses & coventz des prelacies abbeies ou priouries des queux la voidance atient a nous & a noz heirs voillent rendre a nous & a noz heirs la value des dites voidances aussi come autres nous

"Item, because that in the petition of the said prelates and clergy it is contained, that escheators and other keepers, in the time of vacation of archbishopricks, bishopricks, and other prelacies, have done great waste and destruction in the same in time past; we will and grant for us and for our heirs, that at all times from henceforth, when such voidances shall happen, that our escheators and the escheators of our heirs, which for the time shall be, shall enter, and cause to be well kept, the said voidances, without doing waste or destruction in the manors, warrens, parks, ponds, or woods; and that they fell no underwood, nor hunt in the parks or warrens, nor fish in ponds, nor free fishings, nor shall rack nor take fines of the tenants, free nor bond; but shall keep and save as much as pertaineth to the said voidances without doing harm, or any manner of oppression. And if the dean and chapter of churches cathedral, priors, subpriors, prioresses, subprioresses, and covents of prelacies, abbeys, or priories, whose voidance pertaineth to us and our heirs, will render to us and our heirs the

(1) Superseded by Stat. 12 Car. 2, c. 24.

(2) A freedom from *purveyance* remained a special and peculiar right of the clergy for some ages, till the laity were also released from that burden by Stat. 12 Car. 2, c. 24;

the same statute which also took away the court of wards and liveries, and tenures in capite and by knight service.

(3) Repealed by Stat. 25 Edw. 3, St. III. c. 2.

STAT. 14 EDW.
3, ST. IV. c. 4.

The dean and
chapter may
take them in
farm, if they
will.

value of the said avoidance, as other will reasonably yield, then the chancellor and treasurer shall have power to let the said dean and chapter, prior or subprior, prioress or subprioress, and covent, the said voidances by good and sufficient surety, so that they shall have the same before all other, yielding to us the value of them, according as shall be found by remembrances of the exchequer, or by inquest to be taken upon the same, if need be, without making fine. And in case they will not accord to yield to the value, nor find such surety, then the chancellor and treasurer shall cause to be ordained the good preservation of such voidances by escheators, or other sufficient keepers, to answer the king of that to him pertaineth reasonably, without doing waste or destruction, or other thing which may turn in disherison of the churches whereof such voidances shall happen."

voillent rendre resonablement adonques eient chancellor & tresorer poair de lesser as ditz dean & chapitre priour ou sup-priour prioresses supprioresses & covent les dites voidances par bone & suffis-saunt seurtie ensi qils les eient devant toutz autres rendant a nous la value selonc ceo qe serra trove par remem-brance de leschequer ou par enquest sur ceo a prendre si mestier soit saunz fin faire. Et en cas qils ne voillent acorder a rendre la value ne a trover tiele seurtie adonques chancellor & tresorer facent ordiner la bone garde de tieux voidances par eschetours ou autres gardeins suffi-santz pur respondre au roi de ceo qe a lui attient resonablement saunz faire wast ou destruction ou autre chose qe purra tourner a desheritance des eglises dont tieux voidances avendront.

STAT. 14 EDW.
3, ST. IV. c. 5.

XVI. STAT. 14 EDWARDI 3, ST. IV. c. 5. A.D. 1340.

"Who shall demise Bishops' Temporalities during the time of Vacation."

"Item, wholly to show the affection and good will which we have, that that pertaineth to God and holy church be safely kept without waste or destruction, or impeachment to be made thereof by us or our ministers, we will, and by these present letters do, grant full power to our said chancellor and treasurer, which taking to them other of our council, such as to them shall seem best to be taken, by good information of remembrances of the exchequer, and other informations, as to them shall seem best, shall let the vacations of archbishopricks, bishopricks, abbacies, priories, and other houses, whose voidances pertaineth unto us, to the dean and chapter, prior or subprior, prioress or subprioress, and covent, to yield a certain of every avoidance by the year, quarter, or month, during the vacations, according as to them shall seem best, without making any fine; so that no escheator nor other minister, in the time of vacations, shall have cause to enter, or meddle to do anything which shall be in prejudice of the churches whereof such voidances shall happen; saving to us and to our heirs the knights' fees, advowsons of churches, escheats, wards, marriages, reliefs, and services of the said fees. In witness whereof we have made

Et pur entierement monstrier laffection & volente qe nous avons qe ceo qe appartient a Dieu & a seinte eglise soit sauvement garde sanz wast destruction ou empechement de nous ou de noz ministres si voloms & par cestes noz presentes lettres grantoms plein poair a nostre chancellor & tresorer qe pris a eux autres de nostre conseil tieux come ils verront qe fount aprendre par bone information des remembrances del eschequer & autres informations tieux come mieultz lour semblera si lessent les vacations des erceveschees eveschees abbeies priories & autres maisons dont la voidance a nous appartient as dean & chapitres priours ou suppriours priouresses ou supprioresses & coventz a certain a rendre de chescun avoidance par lan quartre ou moys durantes les vacations selonc ceo qe mieultz lour semblera sanz fin faire si qe nul eschetour ou autre ministre en temps de vacation neit cause ne matire denter ou de se meddler a faire rien qe soit en prejudice des eglises dont tieux voidances avendront Sauvez a nous & a noz heirs fees des chivalers avoisons des eglises eschetes wardes mariages & releves & services des ditz fedz. En tesmoignance de quele chose a cestes presentes lettres avons mys

nostre seal. Don' a Westm' le xvi. jour d'Averil lan de nostre regne d'Engleterre quatorzisme & de nostre regne de France primer.

these our letters patents, dated at Westminster the sixteenth of April, the fourteenth year of our reign of England, and the first of France."

STAT. 14 EDW. 3, ST. IV. c. 5.

XVII. STAT. 15 EDWARDI 3, c. 5. A.D. 1341.

"Punishments of Usury by the King or the Ordinaries (1)."

STAT. 15 EDW. 3, c. 5.

Item acorde & assentuz est qe le roi & ses heirs eient la conisaunce des usereres mortz & qe les ordinaires de seinte esglise eient la conisaunce des usereres vifs desicome a eux attient faire compulsioun par censures de seinte esglise pur le pecche de faire restitution des usures prises contre la lei de seinte esglise.

"Item, it is accorded and assented, that the king and his heirs shall have the conusance of the usures dead. And that the ordinaries of holy church have the conusance of usures on life, as to them appertaineth to make compulsion, by the censures of holy church for the sin, to make restitution of the usures taken against the laws of holy church."

XVIII. STAT. 15 EDWARDI 3, c. 6 (2). A.D. 1341.

"Ministers of the Church shall not answer before the King's Justices for Things done touching the Jurisdiction of the Church."

STAT. 15 EDW. 3, c. 6.

Item acorde est qe les ministres de seinte esglise pur deniers prises pur redemption de corporele penaunce ne pur proeve et acompte des testamentz ou pur travail entour ceo mys ne pur solempnete des esposailles ne pur autre cause touchaunte la jurisdiction de seinte esglise ne soient apeschez ne aresonez ne chacez a respoudre devant les justices le roi ne ses autres ministres & sur ceo eient les ministres de seinte esglise briefs en la chauncellerie a les justices & autres ministres totes les foiths qils les demanderont.

"Item, it is accorded, that the ministers of holy church for money taken for redemption of corporal penance, nor for proof and account of testaments, or for travail taken about the same, nor for solemnity of marriage, nor for other things touching the jurisdiction of holy church, shall not be impeached, nor arrested, nor driven to answer before the king's justices, nor other ministers; and thereupon the ministers of holy church shall have writs in the chancery to the justices and other ministers at all times, when they the same will demand."

(1) It was anciently holden, that the taking of any kind of consideration for the loan or forbearance of money, was an offence of ecclesiastical cognizance, punishable by severe censures and forfeitures. 1 Hawk. P. C. c. 82, s. 4. But this notion, which appears to have proceeded from a mistaken construction of some passages in the Mosaic law, (Exod. c. 22, v. 25; Levit. c. 25, vv. 36, 37; Deut. c. 23, vv. 19, 20; 1 Hawk. P. C. c. 82, s. 7; 2 Black. Comm. 455,) has long given way to the more reasonable doctrine, that there is nothing improper in taking a moderate interest for the use of money; any large and immoderate consideration for such use has, however, been justly deemed prejudicial to the welfare of society, and the contract to receive any such exorbitant increase, is that, which is now generally understood by the appellation of usury.

It seems that at common law, no indictment for usury could be supported, unless it were of such an exorbitant kind, as that taken by the Jews. Accordingly, it is laid down in the books, that usury, such as the Jews took, namely, 40 per cent. per annum, or more,

was an offence at common law, and that, upon conviction, the usurer forfeited his goods to the king, and his lands to the lord of the fee, but that no other usury was so prohibited. 3 Inst. 151, 152. Com. Dig. *Usury* (A). Anon. Hardr. 410. 1 Russell on Crimes, by Greaves, 458.

In countries where the civil law prevailed, and where the question that arose was, whether a contract was usurious or not, although the ecclesiastical courts determined such question, the pronouncing of the contract void, and the execution of the sentence, belonged to the temporal courts.

(2) This statute was repealed the same year, but with the following declaration: "Willing, nevertheless, that the articles contained in the said pretended statute, which by others of our statutes, or our progenitors', kings of England, have been approved, shall, according to the form of the said statute, in every point, as convenient is, be observed." And accordingly, three years after, Stat. 18 Edw. 3, ST. III. c. 6, (*post*. 51,) was assented to. Gibson's Codex, 467.

STAT. 18 EDW.
3, ST. III. c. 1.

XIX. STAT. 18 EDWARDI 3, ST. III. c. 1. A.D. 1344.

"A Triennial Dism granted to the King by the Clergy, towards the Maintenance of his War in France."

"No archbishop (1) shall be impeached before our justices because of crime (2), unless we especially do command them, till another remedy be thereof ordained."

STAT. 18 EDW.
3, ST. III. c. 2.

XX. STAT. 18 EDWARDI 3, ST. III. c. 2 (3). A.D. 1344.

"Bigamy shall be tried by the Ordinary, and not by Inquest."

STAT. 18 EDW.
3, ST. III. c. 3.

XXI. STAT. 18 EDWARDI 3, ST. III. c. 3. A.D. 1344.

"Prelates Impeached for Purchasing Lands in Mortmain."

"Item, if prelates(4), clerks beneficed, or religious people, which have purchased lands, and the same have put to mortmain, be impeached upon the same before our justices, and they show our charter of licence, and process thereupon made by an inquest of *ad quod dampnum*, or of our grace, or by fine, they shall be freely let in peace, without being further impeached for the same purchase. And in case they cannot sufficiently show, that they have entered by due process, *after licence* (5) to them granted in general or in special, that they shall be well received to make a convenient fine for the same; and that the enquiry of this article shall wholly cease according to the accord comprised in this parliament."

Item qe si prelatz clers beneficez ou gentz de religion qount purchacez terres & les ount mys a mort meyn soient empeschez ou aresonez sur ceo devant noz justices & ils monstrent noz chartres de licence & processe sur ceo fait par enqueste ad quod dampnum ou de nostre grace ou par fin qils soient lessez franchisement en pees saunz estre outre empeschez pur la dite purchase. Et en cas qil ne purront sufficialment monstren qils ne soient entrez par due processe apres la licence a eux grante en general ou especial qils soient bonement resceuz a faire covenable fyn & qe lenquerrie de cest article cesse de tout solonc laccordement pris en cest parlement.

7 Edw. 1,
St. II.
18 Edw. 1,
St. I. c. 3.
1 Edw. 3,
St. II. c. 12.

STAT. 18 EDW.
3, ST. III. c. 4.

XXII. STAT. 18 EDWARDI 3, ST. III. c. 4 (6). A.D. 1344.

"In Commissions to be made for Purveyance, the Fees of the Church shall be excepted."

(1) *No archbishop*:—*Nor bishop*, saith the Record; (Rot. Parl. 18 Edw. 3;) and the entry, which is as follows, will explain the object of this enactment: "To our sovereign lord the king, praying the Archbishop of Canterbury, the bishops and other prelates, and the clergy of his realm, that it will please him, in maintenance of the estate of holy church, to grant and ordain in this parliament, that no archbishop nor bishop be hereafter arraigned nor impeached before his justices in a criminal cause, by what way soever, inasmuch, as upon such a cause, no soul may judge them but the Pope only."

Answer: "It is advised, that in a criminal cause no *archbishop*, nor *bishop*, be impeached before the justices, if the king especially command it not, till other remedy be ordained."

The writ directed to the justices for the trial of Thomas Merks, bishop of Carlisle, had in it, a *non obstante* to this statute:

"Licet, in statuto apud Westm. nuper edito, inter cætera continetur, quod nullus archiepiscopus nec episcopus coram justitiariis nostris, occasione alicujus criminis impetatur, absque speciali præcepto nostro, quousque," &c., which was read in court; but the judges urged, that the liberties of the church did not extend to high treason, and so he put himself *super patriam*. Gibson's Codex, 129.

(2) Superseded by Stat. 28 Hen. 8, c. 1, s. 7. Stat. 6 Geo. 4, c. 25, s. 3.

(3) Repealed by Stat. 9 Geo. 4, c. 31.

(4) *If prelates*:—This statute was made upon the special petition of the clergy to the king in parliament. Rot. Parl. 18 Edw. 3.

(5) *After licence*:—If the king doth license to alien in mortmain, and dieth, the licence may be executed after. 1 Inst. 52 (b).

(6) Repealed by Stat. 12 Car. 2, c. 24, s. 12.

XXIII. STAT. 18 EDWARDI 3, ST. III. c. 5. A.D. 1344.

"No Prohibition shall be awarded but where the King hath Cognizance."

Item qe nule prohibition ne isse dehors de la chauncellerie si noun en cas qe nous averoms la conisaunce & devons avoir de droit.

"Item, that no prohibition shall be awarded *out of the chancery* (1), but in case where we have the cognizance, and of right ought to have."

STAT. 18 EDW.
3, ST. III. c. 5.
12 Hen. 7, f. 22.
4 Co. 123.
5 Co. 73.
6 Co. 23.
9 Edw. 2,
St. I. c. 1.

XXIV. STAT. 18 EDWARDI 3, ST. III. c. 6. A.D. 1344.

"Temporal Justices shall not inquire of Process awarded by Spiritual Judges."

Item qe par la ou commissions sont faites de novel as diverses justicez qils facent enquestes sur juges de seint eglise le quel qils facent joust processe ou excessive en cause du testament & autres les queux notoriement apartiegnent a la conisaunce de seint eglise les ditz justices ount enquis & fount enditer juges de seint eglise en blemissement de la franchise de seint eglise qe tieles commissions soient repellez & desoremes defenduz save l'article de *eyre* tiele come il doit estre.

"Item, whereas commissions be newly made to divers justices, that they shall make inquiries upon judges of holy church whether they made just process or excessive in causes testamentary, and other, which notoriously pertaineth to the *cognizance of holy church* (2), the said justices have enquired, and caused to be indicted, judges of holy church, in blemishing of the franchise of holy church; that such commissions be repealed, and from henceforth defended, saving the article in *eyre*, such as ought to be."

STAT. 18 EDW.
3, ST. III. c. 6.

(1) *Out of the chancery*:—The Fourteenth Article offered by Archbishop Bancroft, in the 3rd of James I, is as follows: "Amongst the causes whereby the ecclesiastical jurisdiction is oppressed with multitude of prohibitions, upon surmises only, this hath a chief place, in that, through encroachment (as we suppose) there are so many several courts, and judges in them, that take upon them to grant the same, as in the King's Bench five, and in the Common Pleas as many, the one court oftentimes crossing the proceedings of the other; whereas we are persuaded, that all such kinds of prohibitions, being original writs, ought only to issue out of the Chancery, and neither out of the King's Bench, nor Common Pleas. And that this hath been the ancient practice in that behalf, appeareth by some statutes of the realm, and sundry judgments at the common law; the renewing of which practice carrieth with it an apparent show of great benefit and conveniency, both to the church and to the subject: for, if prohibitions were to issue only out of one court, and from one man, of such integrity, judgment, sincerity, and wisdom, as we are to imagine the Lord Chancellor of England to be endued with, it is not likely, that he would ever be induced to prejudice and pester the ecclesiastical courts with so many needless prohibitions; or, after a consultation, to send out in one cause, and upon one and the same libel, not altered, prohibition upon prohibition, his own act remaining upon record before him to the contrary. The further consideration whereof, when, upon the judges' answer thereunto, it shall be more thoroughly debated, we must refer to your lordship's honourable direction and wisdom."

To this article the following answer was

returned: "A strange presumption in the ecclesiastical judges to require, that the king's courts should not do that, which by law they ought to do, and always have done, and which by oath they are bound to do; and if this shall be holden inconvenient, and they can in discharge of us obtain some act of parliament to take it from all other courts than the Chancery, they shall do unto us a great ease; but the law of the realm cannot be changed, but by parliament,—and what relief or ease such an act may work to the subject, wise men will soon find out and discern; but by these articles thus dispersed abroad, there is a general unbecoming aspersion of that upon the judges, which ought to have been forborne." 2 Inst. 608, 609.

(2) *Cognizance of holy church*:—So saith Glanville (lib. 7, c. 6): "Placitum de testamentis coram iudice ecclesiastico fieri debet, et per illorum qui testamento interfuerint testimonia, secundum juris ordinem, terminari." And to the same effect observe Bracton, (lib. 2, c. 26,) and Fleta, (lib. 2, c. 57): "Si de testamento oriatur contentio, in foro ecclesiastico debet placitum terminari; quia de causa testamentaria, sicut nec de causa matrimoniali, curia regis se non intromittit."

The books of common law, (*Hensloe's case*, 9 Co. 37 (b).) state, that the foundation of this right, which the church hath, was by special concession from the secular power, which is so far from being denied, that it is no other doctrine, than what Lyndwood himself hath laid down (De Testam. c. Statut. v. *Ecclesiasticarum*): "Sed hic posset queri, unde provenit hæc libertas quoad casum nostrum; videtur namque quoad primum, quod ecclesia non haberet se intromittere de tali approbatione testamentorum, sed potius pertineret ad

STAT. 18 EDW.
3, ST. III. c. 7.

XXV. STAT. 18 EDWARDI 3, ST. III. c. 7 (1). A.D. 1344.

"No Scire Facias shall be awarded against a Clerk for Tithes."

2 Inst. 639.

"Item, whereas writs of *scire facias* () have been granted to warn prelates, religious and other clerks (3), to answer dismes in our chancery, and to show if they have anything, or can anything say, wherefore such dismes ought not to be restored to the said demandants, and of answer as well to us, as to the party of such dismes; that such writs from henceforth be not granted, and that the process hanging upon such writs be annulled and repealed, and that the parties be dismissed from the secular judges of such manner of pleas; saving to us our right,

Item qe par ou briefs de scire facias oient este grauntez a garner prelatz religious & autres clers a respoundre des dismes en nostre chauncellerie & a monstrier sils eient riens pur eux ou sachent riens dire pur quoi tieux dismes a les demandauntz ne devient estre restitutes & a respoundre auxibien a nous come a partie des tieux dismes qe tieux briefs desore enavant ne soient grauntez & qe les processses pendantz sur tieux briefs soient anientiz & repellez & qe les parties soient dimises devant seculers juges de tieux maners de pledez savez a nous

judices laicos. Dic, quod hæc libertas, quod approbationem hujusmodi, fundatur super consensu regio et suorum procerum, in talibus ab antiquo concessio." "De consuetudine tamen hæc approbatio in Anglia pertinet ad judices ecclesiasticos, episcopos videlicet et eorum officiales." Lynd. De Testam. c. Statut. v. *Approbatio*.

Nevertheless, from the constitutions, and laws which were made of ancient time against lords of manors' detaining the goods of the deceased in prejudice of their creditors, of their families, and of their souls, it seemeth, that the lords of manors, did for some time retain a jurisdiction with respect to the goods of their deceased vassals. And from this source possibly may be deduced the power of granting probate of wills and administration of intestates' effects, that still remaineth in divers manors. Which power having been enjoyed time out of mind, and without interruption, is allowed to be good. And where the lord of a manor hath the probate of testaments within his manor, if such will be proved in the ecclesiastical court, a prohibition lieth; because the jurisdiction thereof belongeth to another: else the party might be doubly vexed. *Williams' case*, 5 Co. 73.

The granting of probates of wills regularly belongs to the ecclesiastical courts; but some courts baron have this right by prescription, as the manor of Mansfield, and those of Cowley and Caversham, in Oxfordshire. Wentworth's Off. of Executor, 44. *Vide etiam* Swinb. pt. 6, s. 11, pl. 3.

But, excepting in such like particular cases, it is now certain, however it might have been formerly, that the spiritual court is the only court, that hath jurisdiction of the probate of wills; and, as incident to such jurisdiction, hath power to determine all those matters, that are necessary to the authenticating thereof.

And the reason why the probate of testaments hath been given unto spiritual men, is, because it is to be intended, that they have more knowledge, what is for the profit and benefit of the soul of the testator than laymen have, and that they will look more than laymen, that the debts of the deceased be paid

and satisfied out of his goods, and that they will see his will performed, so far as his goods will extend.

In the Roman law, we find that Justinian (Cod. 1, 3, 28), enables bishops or their superiors to sue for legacies left to pious uses, such as to support the poor, redeem captives, &c. But he prohibits them from proving or registering wills, which it appears they had attempted, confining that power to the secular magistrate. Cod. 1, 3, 41, & 6, 23. It is remarkable, before the introduction of Christianity, the pontifical college at Rome, could compel an heir to perform the will of the deceased in certain cases, where no action was given by the civil law, as where a monument was to be erected. Dig. 5, 3, 50. *Vide etiam* Preface to Sir George Lee's Reports, by Phillimore. 4 Burn's E. L. by Phillimore, 292.

(1) This statute was made upon a petition of the clergy to the king in parliament. Rot. Parl. 18 Edw. 3.

(2) *Writs of scire facias*:—are judicial writs founded upon some Record. Thus, if a person have recovered debts or damages in the queen's courts, and if he sue not for execution within a year and a day, he must then issue a writ of *scire facias* to warn the party, who, if he come not, or do nothing to stay the execution, a writ of execution is issued, commanding the sheriff to pursue the judgment on which such writ of execution is founded.

(3) *To warn prelates, religious and other clerks*:—This *scire facias* was not brought against the possessors of the land for subtraction of tithes, but against the prelates, or other clerks, which took the tithes after they were severed. Commissions out of chancery were directed to certain persons, giving them authority to inquire, whether such a spiritual person ought to have tithes of such lands, whereupon inquisitions were taken and returned; and if it were found for the spiritual person, upon this record he might have a *scire facias* against any prelate, religious or other clerk, that took them after severance. 2 Inst. 639.

nostre droit tiel come nous & noz auncestres avons eu & soleions avoir de resoun. En tesmoignance de queux choses a la request des ditz prelatz a cestes presentes lettres avons faitz mettre noz sealx. Don' a Londres le viii. jour de Juyl lan de nostre regne dEngleterre disoitisme & de France quint.

such as we and our ancestors have had, and were wont to have of reason. In witness whereof, at the request of the said prelates, to these present letters we have set our seal. Dated at London the eighth day of July, the year of our reign of England the eighteenth, and of France the fifth."

STAT. 18 EDW. 3, ST. III. c. 7.

XXVI. STAT. 25 EDWARDI 3, ST. II. A.D. 1350.

"In what place Bastardy pleaded against him that is born out of the Realm shall be tried."

STAT. 25 EDW. 3, ST. II.

Et si alleggee soit contre nul tiel nee par dela qil est bastard en cas ou levesqe doit avoir conissance de bastardie soit maunde a levesqe du lieu ou la demande est de certifier la court le roi ou le ple ent pende si come auncienement ad este usee en cas de bastardie alegge contre ceux qi nasquirent en Engleterre.

" And if it be alleged against any such born beyond the sea, that he is a bastard, in case where the bishop ought to have cognizance of bastardy, it shall be commanded to the bishop of the place where the demand is, to certify the king's court where the plea thereof hangeth, as of old times hath been used in the case of bastardy alleged against them which were born in England."

Trial of bastardy pleaded against him which is born out of England. Rast. 105.

XXVII. STAT. 25 EDWARDI 3, ST. III. c. 1. A.D. 1350.

"All Privileges granted to the Clergy confirmed. The King nor his Heirs shall present to a Benefice of Another's Right of any time of his Progenitors."

STAT. 25 EDW. 3, ST. III. c. 1.

Primerement qe toutz les franchises & privileges grantez par devant a la dite clergie soient confermez & tenuz en toutz pointz. Et quant as presentementz affaire par nostre dit seignur le roi ou nul de ses heirs as benefices de seinte eglise en autri droit par auncien title nostre seignur le roi al honur de Dieu & de seinte eglise voet & grant de meisme lassent de son dit parlement qe desore il ne nul de ses heirs ne prendra title de presenter a nul benefice en autri droit de nul temps de ses progenitours ne qe nul prelat de son roialme soit tenuz de recevoir nul tiel presentement affaire ne ent faire execution ne nule justice del une place ne del autre pusse ne deive sur nul tiel presentement affaire plee tenir ou juggedment doner mes qe le dit roi & ses heirs soient de touz tieux presentementz forbarrez as touz jours sauvent au dit roi & a ses heirs toutz tielx presentementz en autri droit de tout son temps & de temps avenir.

"First, that all the privileges and franchises granted heretofore to the said clergy be confirmed and holden in all points. And as touching presentments to be made by our lord the king, or any of his heirs, to a benefice of holy church in another's right by old title, our said lord the king, to the honour of God and holy church, willeth and granteth, of the assent of the said parliament, that from henceforth, he nor any of his heirs, shall not take title, to present to any benefice, in any other's right, of any time of his progenitors; nor that any prelate of his realm be bound to receive any such presentment to be made, nor to do thereof any execution; nor that any justice of the one place, or the other, may not nor ought not to hold plea, or give judgment upon any such presentment to be made; but that the said king and his heirs be for ever hereafter clearly barred of all such presentments; saving always to him and his heirs all such presentments in another's right fallen, or to fall, of all his time, and of the time to come."

11 Hen. 4, f. 8. Vide Pasch. 8 Car. in Scacc. inter Dom. Regem & Prust. 1 Cr. 354. Jones, 334.

STAT. 25 EDW.
3, ST. III. c. 2.

XXVIII. STAT. 25 EDWARDI 3, ST. III. c. 2. A.D. 1350.

"A Repeal of the Statute of anno 14 Edw. 3, St. IV. cap. 2, touching the King's Presentment to a Church of another's Right."

"And because, in the parliament holden at Westminster the fourteenth year of the reign of our lord the king that now is, amongst other things then granted to the prelates of holy church, it was ordained, that the king should not take title to present to any benefice in another's right, but of the voidances which shall happen of such benefices within three years next before his presentment, which thing seemeth very prejudicial to the king and his heirs; it is accorded in this present parliament, that the said ordinance, as to this point, shall be holden for none; but nevertheless, that all the other articles contained in the said ordinance and grant, then made to holy church, shall stand in their force."

Et pur ce que en parlement tenuz a Westmonstier lan du regne nostre dit seigneur le roi quatorzisme entre autres choses adonques grantez as prelatz & a seinte eglise estoit ordene que le roi ne prendroit title de presenter a nul benefice en autri droit forse de vacations que aveindreint des tielx benefices deinz trois annz proscheins devant son presentement quele chose semblast trop prejudiciele au roi & a ses heirs acorde est en cest parlement que la dite ordinance quant a ce point soit tenu par nule & que toutz les autres articles contenuz en meisme l'ordenance & grantes adonques faitz a seinte eglise estoient en lour force.

STAT. 25 EDW.
3, ST. III. c. 3.

XXIX. STAT. 25 EDWARDI 3, ST. III. c. 3. A.D. 1350.

"When the King presenteth to a Benefice in another's Right, his Title shall be examined."

"Item, whereas before this time our lord the king hath taken title to present to benefices at the suggestion of many clerks, where the title hath not been true, and by such presentments and judgments thereupon given, the clerks have been received by the ordinaries of the places, against God and good faith, and in depression of them which had good and true title to the said benefices; now the king will and granteth, that at what time he shall take collation or presentment, from henceforth, to any benefice in another's right, that the title whereupon he groundeth himself shall be well examined that it be true; and at what time before judgment the title be found, by good information, untrue or unjust, the collation or presentment thereof made, shall be repealed; and the patron, or the possessor, which shall show and prove the false title, shall have thereupon writs out of the chancery, as many as to him shall be needful."

Auxint come nostre seigneur le roi eit avant ces heures pris title de presenter a suggestion des plusours clerks la ou le title nad este verroi & parmi tielx presentementz & juggementz sur ce renduz les clerks ount este receuz par ordinaries des lieux contre Dieu & bone foi & en depression de ceux que avoient bone & verrei title es ditz benefices si voet le roi & grant que a quele heure qil ferra collation ou presentement desore a nul benefice ensi en autri droit le title sur quel il se fendra soit bien examinee qil soit verrei & a quele heure que avant le juggement rendu le title soit trovee par bone information nient verrei ne just soit la collation ou presentement en fait repelle & eit le patron ou le possesseur que monstra & prova la faux title sur ce briefs de la chancellerie quanque a lui serront busoignables.

46 EDW. 3,
f. 10.

Confirmed by
12 Rich. 2,
St. II. c. 1,
and enforced
by 4 Hen. 4,
c. 22.

STAT. 25 EDW.
3, ST. III. c. 4.

XXX. STAT. 25 EDWARDI 3, ST. III. c. 4(1). A.D. 1350.

"Clerks convicted of Felony or Treason shall be delivered to their Ordinaries."

XXXI. STAT. 25 EDWARDI 3, ST. III. c. 5 (1). A.D. 1350.

STAT. 25 EDW.
3, ST. III. c. 5.

"A Clerk shall be arraigned of all his Offences at once."

XXXII. STAT. 25 EDWARDI 3, ST. III. c. 6. A.D. 1350.

STAT. 25 EDW.
3, ST. III. c. 6.

"A Bishop's Temporalities shall not be seised for a Contempt."

Item pur ce qe les temporaltees des ercevesques & evesques ount este sovent foitz pris en la main le roi pur contempt fait a lui sur le brief quare non admisit & ensement par plusurs autres causes dount les ditz prelatz ount priez au roi qe nule tiele prise se face desore desicome ils sont pieres de la terre si voet le roi & grant en meisme cest dit parlement qe touz les justices qe rendront desore les juggementz contre nul prelat de la terre en tieu cas ou semblable qils en tieu cas pussent franchement recevoir & desore reçoivent pur le contempt ensi ajugge fyn resonable de la partie ensy condempnee solonc la quantite du trespass & solonc la qualite du contempt maintenant au temps de juggement si la partie loffre ou autrement apres le jugement a quelle heure qe la partie le voet offrir & sil busoigne le chancellor & tresorer soient a la receite de dit fyn appelez.

"Item, because the temporalities of archbishops and bishops have been oftentimes taken into the king's hands for contempts done to him, upon writs of *quare non admisit*, and likewise for divers other causes, whereof *the said prelates* (2) have prayed the king, that no such taking shall from henceforth be made, sith they be peers of the land; the king will and granteth in the same parliament, that all the justices which from henceforth shall give judgment against any prelate of the land in such case, or the like, that they in such case may freely receive, and from henceforth shall receive for the contempt so judged, a reasonable fine of the party so condemned, according to the quantity of the trespass, and after the quality of the contempt, incontinently at the time of the judgment, if the party offer the same, or otherwise after the judgment, at what time the party will offer himself; and if it need, the chancellor and the treasurer shall be called to the receipt of the said fines."

1 Edw. 3, St.
II. c. 2.
14 Edw. 3, St.
IV. c. 3.

9 Edw. 4, f. 28.
Bro. Ord. 12.

XXXIII. STAT. 25 EDWARDI 3, ST. III. c. 7. A.D. 1350.

STAT. 25 EDW.
3, ST. III. c. 7.

"The Ordinary may counterplead the King's Title for a Benefice fallen by Lapse."

Item pur ce qe plusurs presentementz as diverses benefices de seinte eglise sibien de patronage de laiez gentz come de gentz de seinte eglise gestoient voides par sys mois dount les collations de tieux benefices par laps de temps estoient devolutz & de droit appartenantz a les ordinaries des lieux estoient recovez par le roi par jugement ent rendu de lassent des ditz patrons en deceit de les collations ensi faites resonablement par les ditz ordinaries en queux plees a eux defendre & contrepleder le droit le roi ensi clamee les ordinaries ne lours clerics as queux ils donoient tieux benefices nestoient receuz a monstren ou defendre

"Item, because that many presentments to divers benefices of holy church, as well of the patronage of lay people, as of people of holy church, which were void by six months, whereof the collation of such benefices by lapse of time was devolute, and of right pertaining to the ordinaries of the places, were recovered by the king by judgments thereof given of the assent of the said patrons, in deceit of the said collations so made reasonably by the said ordinaries; in which plees the ordinaries nor their clerks, to whom they did give such benefices, *were not received* (3) to show nor defend their right in this behalf,

13 Edw. 1,
St. I. c. 5.
Hob. 161.
7 Co. 26.
1 Roll. 453,
458, 466, 470.
2 Roll. 452.

(1) Repealed by Stat. 7 & 8 Geo. 4, c. 27.

(2) *The said prelates*.—In the Roll of Parliament of this year, there is a petition of the clergy to the same effect, which was presented to the king in parliament.

(3) *Were not received*.—The reason was, because they could not deny the king's title, and maintain the patron's in whose default the lapse took place.

STAT. 25 EDW.
3, St. III. c. 7.

1 Leonard, 45.
Fitz. Quare
impedit, 194.
196.
Fitz. Liv. 34.
Hob. 318.
Savill, 108.
1 Mod. 279.

Br. Petition, 5.
13 Rich. 2,
St. I. c. 1; the
king's presen-
tee shall not be
received to a
church full of
an incumbent,
till he hath re-
covered it by
law.

nor to counterplead the king's right so claimed, which is not reasonable; wherefore the king, by the assent of the said parliament, will and granteth for him and his heirs, that when archbishops, bishops, or other ordinaries, have given a benefice of right devolute to him by lapse of time, and after the king presenteth and taketh the suit against the patron, which percase will suffer that the king shall recover without action tried, in deceit of the ordinary, or the possessor of the said benefices, that in such case, and *all other cases like* (1), where the king's right is not tried, the archbishop or bishop, ordinary or *possessor* (2), shall be received to counterplead the title taken for the king, and to have his answer, and to show and *defend his right* (3) upon the matter, although that he claim nothing in the patronage in the case aforesaid."

lour droit en celle partie la quele chose nestoit mie resonable par quoi le roi de lassent de son dit parlement voet & grant pur lui & pur ses heirs qe quant ercevesqe evesqe ou autre ordinarie ad done un benefice de droit a lui devolut par laps de temps & apres le roi presente & preigne sa seute devers lun patron qi par cas voet soefrir qe le roi recouvre saunz action trie en deceit de lordinair ou le possessor des ditz benefices qe en tieu cas & en toutes autres cases semblables ou le droit le roi nest pas trie lercevesqe evesqe ordinar ou le possessor soient receuz a contrepleder le tittle pris pur le roi & davoit son respons & a monstrier & defendre son droit sur la matire tout soit il qe il riens cleime el patronage en cas susdit.

STAT. 25 EDW.
3, St. III. c. 8.

XXXIV. STAT. 25 EDWARDI 3, St. III. c. 8. A.D. 1350.

"Cognizance of Avoidance of Benefices appertaineth to the Ecclesiastical Judge."

"Item, whereas the said prelates have showed and prayed remedy, for that the secular justices do accroch to them cognizance of *voidance* (4) of benefices of right, which cognizance and the discussing thereof pertaineth to the judges of holy church, and not to the lay judge; the king will and granteth, that the said justices shall from henceforth receive

Item come les ditz prelatz eient monstrez & priez remedie sur ce qe les justices seculers acrochent a eux conissance de voidance des benefices de droit quelle conissance & discussion attient a jugge de seinte eglise & nient a lai jugge si voet le roi & grante qe les dites justices desore receivent tieles chalenges faites ou affaire par quecumqes prelatz de

(1) *All other cases like*:—As when a common person, who was *no true* patron, presented within six months, and the true patron himself presented not in time, whereupon the ordinary collated by lapse, against whom, he who pretended a title brought a *quare impedit*, because his clerk was refused. In this case, the pretender must needs have prevailed, supposing his title good, and it must be *taken* for good, because neither ordinary nor incumbent could deny; for *de non apparentibus, et de non existentibus, eadem est ratio*. *Elvis* (Sir William) v. *York* (Archbishop of), Hob. 319.

(2) *Possessor*:—So that an incumbent who hath only presentation, admission, and institution, cannot take the benefit of this law, unless he hath induction also. *Vide* Stephens on Clerical Law, tit. *Advowson*.

(3) *Defend his right*:—It is not enough to counterplead the title of his adversary, but he must also make a title to himself.

(4) *Voidance*:—This occurs from several causes.

First, by the act of God, viz., by death; of which voidance the patron is bound to take *notice* at his peril, without expecting an inti-

mation from the ordinary.

Secondly, by the act of the incumbent, as by resignation; cession; or by the acceptance of an incompatible benefice or office.

Thirdly, by the act of the ordinary, viz., by deprivation, for any crime, &c., which voidance, being created by sentence in the ecclesiastical court, must be notified to the patron; but takes not place presently, if an appeal be depending.

Fourthly, by the act of law, as in case of simony, (*vide* Stephens on Clerical Law, tit. *SIMONY*), not subscribing the Articles or Declaration, not reading of the Articles or the Common Prayer, &c., all which, being voidances by act of parliament, are to be understood, with regard to the times of the commencement of such voidances, and the notice of them, according to the directions and limitations of the respective statutes.

It may be here observed, that the general rule, as laid down by Lord Coke, is as follows: "If the disability grow by any act of parliament, or other temporal law, there no notice ought to be given, unless notice be prescribed to be given thereby." 2 Inst. 631.

seinte eglise en celle partie & outre ent
facent droit & reson.

such challenges, made or to be made by
any prelate of holy church in this be-
half, and moreover thereof shall *do*
right(1) and reason.”

STAT. 25 EDW.
3, ST. III. c. 8.

XXXV. STAT. 25 EDWARDI 3, ST. III. c. 9. A.D. 1350.

STAT. 25 EDW.
3, ST. III. c. 9.

“*Indictments of Ordinaries for Extortion shall be put in certainty.*”

Item pur ce que les justices le roi par-
nent enditementz des ordinaries & de
leurs ministres de extorsions & oppres-
sions & les empeschent sanz ce qils
mettent en certain en quoi ou de qi ou
en quelle manere ils ount fait extorsion
si voet le roi qe les justices le roi ne em-
peschent desore les ordinaries ne leur
ministres par cause de tieux enditementz
des generals extorsions ou oppressions
sils ne mettent ou dient en certain en
quelle chose & de qi & en quelle manere
les ditz ordinaries ou leur ministres
ount fait extorsions ou oppressions.

“Item, because that the king’s justices
do take indictments of ordinaries, and of
their ministers, of extorsions and op-
pressions, and impeach them, without
putting in certain, wherein or whereof,
or in what manner they have done ex-
tortion; the king will, that his justices
shall not from henceforth impeach the
ordinaries, nor their ministers, because
of such indictments of general extorsions
or oppressions, unless they say, and *put*
in certain(2), in what thing, and of
what, and in what manner, the said or-
dinaries or their ministers have done
extorsions or oppressions(3).”

(1) *Do right*:—The only right that hath
been done to the church in this particular,
is, the finding out and alleging a distinction
between *full and not full, void and not void*.
It is granted, that whether a church be full
or not full, shall be tried by the certificate
of the bishop, because plenarty is by institu-
tion, which is a spiritual act; but whether
void or not void, shall be tried by the country,
being an act notorious to the country, and
distinguishable by them. 1 Inst. 344 (a).
Hitching v. Glover, 1 Roll. 191. *Wats n*
v. Baker, Siderf. 390.

Dr. Gibson (Codex, 793) observes upon
the foregoing authorities: “This is affirmed
in all the books, as current law; but I have
not found that any of them have endeavoured
to account for the seeming inconsistency,
between that doctrine and this statute.”

(2) *Put in certain*:—In the 33rd of
Elizabeth, a commissary, register, and ap-
pointer were indicted of extortion, for that
they, *colore officiorum suorum*, had received
11s. 6d. for absolution; and exception was
taken to the indictment, that by this statute
the particular offence of every offender ought
to have been *specially* set down; but the
exception was not allowed, because they took
it *in gross*, and the party grieved, could not
have notice by what *proportions* they divided
it. Gibson’s Codex, 1915, cit. 2 Len. 268.

Another exception upon this statute, was,
because it did not state what was their *due*
fee; and this was conceived to be a good
cause of exception; for if no fee be due, the
same ought to appear in the indictment.
And afterwards, the opinion of the court
was, that they should be discharged.

(3) The following letters patent, succeed
immediately after the statute:

“Le roi a touz ceux as queux cestes
lettres vendront saluz. Come en nostre
darein parlement tenuz a Westm’ en la feste
de seint Hiller darrein passe entre autres
petitions & articles mises avant en meisme
le parlement par lonurable piere en Dieu
Simon ercevesqe le Canterbirs pur lui & ses
confrers evesques de sa province des certaines
grevances queles ils disoient estre faites a
seinte eglise encontre les privileges dycelle
feust chalenge depar le dite clergie qe que-
cumqes cleres convictz de ce qe ils avoient
fauxe ou contrefait nostro monoe ou nostre
grant ou privee seals deussent enjoier privi-
lege de seinte eglise & qe leglise avoit este en
possession de tieux. Nous pur cause qe
nous ne poons mie pur autres grosses bu-
soignes entendre a la discussion de ce point
voillantz auxibien sauver lestat de seinte
eglise come le nostre volons & grantons qe
cest article soit mis en suspens tanqe a nostre
proschein parlement en le quel ce point purra
plus pleinement estre discusse & la verite ent-
trie & qe si en le meen temps nul clerc soit
convict qil eit fauxe ou contrefait la monoe
de la terre ou ascun de noz seals avantditz qil
ne soit pur le temps mis a la mort par agarde
de jugge seculer mes remys a prisone a y
demorer en safeguard sanz nulle liverance
faire al ordenair tanqe autrement en seit
ordene. En tesmoignance de quelle chose
nous avoms fait faire cestes noz lettres pa-
tentes. Don a Westm’ le xx. jour de Feverer
lan de nostre regne dEngleterre vintisme
sisme & de France treszisme.”

STAT. 25 EDW.
3, ST. V. c. 2.

XXXVI. STAT. 25 EDWARDI 3, ST. V. c. 2. A.D. 1350.

"A Declaration, which Offences shall be adjudged Treason."

"... Moreover, there is another manner of treason (1), that is to say, when a man secular or religious slayeth his prelate (2), to whom he oweth faith and obedience (3)."

Ovesqe ceo il y ad autre manere de treson cest assavoir qe tue son baron quant homme seculer ou de religion tue son prelat a qi il doit foi & obedience.

STAT. 25 EDW.
3, ST. V. c. 5.

XXXVII. STAT. 25 EDWARDI 3, ST. V. c. 5. A.D. 1350.

"Executors of Executors shall have the Benefit and Charge of the first Testator."

13 Edw. 1,
St. I. c. 23.
Plowd. 286.
Fitz. Coven. 24.
Fitz. Exec. 92,
103, 110, 120.

Fitz. Exec. 10,
29, 70, 95, 120.
30 Car. 2,
St. I. c. 7,
makes execu-
tors in their
own wrong
answerable.
4 & 5 Gul. &
Mar. c. 24,
s. 12, makes
executors of
executors an-
swerable for
wasting assets.
Rast. 323.

"Item, it is recorded and established, that executors of executors shall have actions of debts, accompts, and of goods carried away of the first testators, and execution of statutes merchants and recognizances made in court of record to the first testator, in the same manner as the first testator should have had if he were in life, as well of actions of the time past, as of the time to come, in all cases where judgment is not yet given betwixt such executors of executors; but that the judgments given to the contrary to this article in times past shall stand in their force; and that the same executors of executors shall answer to other of as much as they have recovered of the goods of the first testators, as the first executors should do if they were in full life."

Ensement acorde est & establi qe executour des executours eient action des dettes accomptes & des biens empor-
tez du primer testatour & execution des estatutz marchantz & reconissances faites en court de record au primer testatour en meisme la manere come le primer testatour averoit sil feust en vie auxibien dactions de temps passe come de temps avenir en toutz cases ou juggementz ne sont pas renduz unqore entre tieux executours des executours mes qe les juggementz a contraire en temps passe estoient en lour force & qe meismes les executours des executours respoignent as autres de tant come ils averont recoveri des biens du primer testatour sicome les primers executours ferroient sils feussent en pleine vie.

STAT. 25 EDW.
3, ST. V. c. 22.

XXXVIII. STAT. 25 EDWARDI 3, ST. V. c. 22 (4). A.D. 1350.

"He that purchaseth a Provision in Rome for an Abbey, shall be out of the King's Protection, and any Man may do with him as with the King's Enemy."

STAT. 25 EDW.
3, ST. VI.

XXXIX. STAT. 25 EDWARDI 3, ST. VI. (Statute of Provisors (5) of Benefices.) A.D. 1350.

"The King and other Lords shall present unto Benefices of their own, or their Ancestors' Foundation, and not the Bishop of Rome."

3 Inst. 127.
2 Roll. 459.
Rast. 2.
Stat. Carlisle,
35 Edw. 1,
c. 4, s. 3.

"Whereas, late in the parliament of good memory of Edward King of England, grandfather to our lord the king that now is, the 35th year of his reign,

Come jadis en le parlement de bone memoire sire Edward Roi dEngleterre ael nostre seigneur le roi qore est lan de son regne trentisme quint a Kardoil

(1) *Another manner of treason*:—The first part of this statute is concerning high treason; so called in respect of the royal majesty against whom it is committed. And the sort of treason spoken of in this clause is called petit treason, because it is only committed against subjects. 3 Inst. 20.

(2) *Slayeth his prelate*:—This was petit treason at the common law. Ibid.

(3) *To whom he oweth faith and obedience*:—Petit treason presupposes a trust and obedience in the offender, either civil, as in a wife or servant; or ecclesiastical, as in an ecclesiastical person.

Aiders, abettors, and procurers are within

this law, for though in high treason there can be no accessories, in petit treason there may be, either before or after the act done. Ibid.

Stat. 9 Geo. 4, c. 31, ss. 1 & 2, enacts, that every offence which before Stat. 25 Edw. 3, ST. V. c. 2, would have amounted to petit treason, shall be deemed to be murder only. *Vide etiam* Stat. 7 & 8 Geo. 4, c. 27.

(4) *Vide* Stat. 5 Eliz. c. 1, s. 21.

(5) *Provisors*:—"Provisores dicuntur, qui vel episcopatum vel ecclesiasticam aliam dignitatem in Romana curia sibi ambiabant de futuro, quod ex gratia expectativa nuncuparunt: quia usque, dum vacaret, expectandum esset."

tenuz oie la petition mise devant le dit ael & son conseil en le dit parlement par la communalte de son roialme contenant qe come seinte eglise d'Engleterre soit founde en estat de prelatie deins le roialme d'Engleterre par le dit ael & ses progenitours & countes & barons & nobles de son roialme & leur ancestres pur eux & le poeple enfourmer de la lei Dieu & pur faire hospitalites aumoignes & autres oeuvres de charite es lieux ou les eglises feurent foundes pur les almes de foundours & de leur heirs & de touz Cristiens & certains possessions tant en fees terres & rentes come en avowesons qe se extendent a grande value par les ditz foundours feurent assignez as prelatz & autres gentz de seinte eglise du dit roialme pur cele charge sustenir & nomement des possessions qe feurent assignez as ercevesques evesques abbes priours religious & autres gentz de seinte eglise par les rois du dit roialme countes barons & autres nobles de son roialme meismes les rois countes barons & nobles come seignurs & avowes eussent & aver deussent la garde de tieles voidances & les presentementz & collations des benefices esteantz des tieles prelacies.

Et les ditz rois en temps passe soloient aver la greindre partie de leur conseils pur la salvation du roialme quant ils en eurent mester de tiels prelatz & clerics issint avances le Pape de Rome accrochant a lui la seigneurie de tieles possessions & benefices meismes les benefices dona & graunta as aliens qi unques ne demurerent el roialme d'Engleterre & as cardinaux qe y demurer ne purroient & as autres tant aliens come denzeins autresi come il eust este patron en avowe des dites dignites & benefices come il ne feust de droit selonc la lei d'Engleterre

holden at Carlisle, the petition heard, put before the said grandfather and his council in his said parliament by the commonality of the said realm, containing, that whereas the holy church of England was founded in the estate of prelacy, within the realm of England, by the said grandfather and his progenitors, and the earls, barons, and other nobles of his said realm, and their ancestors, to inform them and the people of the law of God, and to make hospitalities, alms, and other works of charity, in the places where the churches were founded, for the souls of the founders, their heirs, and all Christians; and certain possessions, as well in fees, lands, rents, as in advowsons, which do extend to a great value, were assigned by the said founders to the prelates and other people of the holy church of the said realm, to sustain the same charge, and especially of the possessions which were assigned to archbishops, bishops, abbots, priors, religious, and all other people of holy church, by the kings of the said realm, earls, barons, and other great men of his realm; the same kings, earls, barons, and other nobles, as lords and advowees, have had and ought to have the custody of such voidances, and the presentments and the collations of the benefices being of such prelacies.

“II. And the said kings in times past were wont to have the greatest part of their council, for the safeguard of the realm when they had need, of such prelates and clerks so advanced; the Bishop of Rome, accroching to him the seignories of such possessions and benefices, doth give and grant the same benefices to *aliens* (1), which did never dwell in England, and to cardinals, which might not dwell here, and to other as well aliens as denizens, as if he had been patron or advowee of the said dignities and benefices, as he was not of right by the law

STAT. 25 EDW.
3, ST. VI.

The Pope bestowed spiritual livings upon aliens not dwelling in England.

(1) *To aliens*.—After this, in the reign of Henry the Sixth, the popes had advanced so far in their encroachments, as to grant English bishopricks in *commendam*, to foreigners, as, in reality, a kind of administrators of the revenues only; upon which occasion, among others, the archbishop called a convocation, and at the opening of it, acquainted the bishops and clergy, that the Pope, as appeared by his Bulls, “providit et commisit ecclesias cathedralem Elien’ per modum commendæ perpetuæ [to the

Archbishop of Roan] ac ipsum administratorem perpetuum dictæ ecclesiæ et diocesis Elien’ deputavit et ordinavit. . . . Quæ, quia erat res antehac invisâ, et mali exempli, ac, ut per magnas rationes ostendit et luculenter declaravit reverendissimus pater antedictus, posset cedere in ecclesiæ Anglicanæ magnum detrimentum et jacturam; dicebat, quod super hujusmodi facto vellet ipsos consulere, et super eisdem deliberare.” Registr. Conv. A.D. 1438.

STAT. 25 EDW.
3, ST. VI.

The inconveni-
ences ensuing
thereon.

of England; whereby if they should be suffered, there should scarcely be any benefice within a short time in the said realm, but that it should be in the hands of aliens and denizens by virtue of such provisions, against the good will and disposition of the founders of the same benefices; and so the elections of archbishops, bishops, and other religious should fail, and the alms, hospitalities, and other works of charity, which should be done in the said places, should be withdrawn, the said grandfather, and other lay patrons, in the time of such voidances, should lose their presentments, *the said council should perish* (1), and goods without number should be carried out of the realm, in adnullation of the estate of the holy church of England, and disherison of the said grandfather, and the earls, barons, and other nobles of the said realm, and in offence and destruction of the laws and rights of his realm, and to the great damage of his people, and in subversion of all the estate of his said realm, and against the good disposition and will of the first founders. By the assent of the earls, barons, and other nobles, and of all the said commonality, at their instances and requests, the damage and grievances afore considered, in the said full parliament it was ordained, provided, established, agreed, adjudged, and considered, that the said oppressions, grievances, and damages in the same realm, from henceforth should not be suffered in any manner. And now it is showed to our lord the king in this present parliament holden at Westminster,

par les queux sils feussent soeffertz a peine demurroit ascun benefice en poi de temps el dit roialme qil ne serroit es meins daliens & denzeins par virtue de tieles provisions contre la bone volunte & disposition des foundours de meismes les benefices & issint les elections des ercevesques evesches & autres religious faudroient & les almoignes hospitalites & autres oevres de charite qe serroient faitz as ditz lieux serroient sustretes le dit ael & autres lais patrons en temps de tieles voidances perderoient lour presentementz le dit conseil periroit & biens sanz nombre serroient emportes hors du riaulme en adnullation del estat de seinte eglise dEngleterre & desheriteson du dit ael & des countes barons & nobles & en offens & destruction des lois & droitures de son roialme & grant damage de son poeple & subversion del estat de tut son roialme susdit & contre la bone disposition & volunte des primers foundours del assent des countees barons nobles & tute la dite communalte a lour instantte requeste consideres les damages & grevances susdites en le dit plener parlement feust purveu ordine & establi qe les dites grevances oppressions & damages en meisme le roialme des adonques mes ne serroient soeffertz en ascun manere. Et ja monstre soit a nostre seigneur le roi en cest parlement tenuz a Westm' a les octaves de la purification de nostre dame lan de son regne dEngleterre vintisme quint & de France duszisme par le greveuse plainte de toute la communalte de son roialme qe les grevances & meschiefs susditz sabondent de temps en temps a

(1) *The said council should perish*:—In fact, England was so far from admitting *cardinals*, who were *foreigners*, to any part in their public councils, that it was an established rule, that if any Englishman was created a cardinal, he thereby became utterly incapable of being a member of the king's council. Inasmuch, that Cardinal Beaufort, though of the blood royal, could not be admitted one of the king's councillors, but by a special declaration of parliament, for that purpose, and upon an oath by him taken, to *retire* out of the council, as oft as any matters concerning the two courts of England and Rome should be under consideration. Rot. Parl. 8 Hen. 6. The record sets forth, "Quod transactis temporibus, in regno Angliæ visum non fuerit, ut speratur, quod aliqui Anglicæ nationis ad statum et dignitatem *cardinalis* per sedem apostolicam sublimati, post susceptam hujusmodi dignitatem, ad interessendum *conciliis regis*, veluti regis et regni *conciliarii*, hactenus admissi

extiterunt." After which, having recited the cardinal's relation to the king, and his great merits and abilities, it follows: "De avisamento et assensu dominorum spiritualium et temporalium in præsentî parliamento existen' concordatum fuit et unanimiter avisatum, quod præfatus cardinalis ad interessendum conciliis regis, et unus consiliariorum suorum, nedum admitti, set etiam ad intendendum eisdem conciliis ex parte ejusdem domini regis requiri deberet specialiter, et hortari: sub protestatione tamen subsequente, videlicet, quod quotiens aliqua materiæ, causæ, vel negotia, ipsum dominum regem, aut regna seu dominia sua ex parte una, ac sedem apostolicam ex parte altera, concernentia, in hujus conciliis regis communicand' et tractand' fuerint, idem cardinalis se ab hujusmodi concilio absenteret, et communicationi eorundem causarum, materialium, et negotiorum non intersit quovis modo."

plus grant damage & destruction de tut le roialme plus qe unqes ne firent cest assaver qore de novel nostre seint piere le pape par procurement des clerics & autrement ad reservee & reserve de jour en autre a sa collation generalment & especialment sibien erceveschees eveschees abbeies & priories come totes dignetes & autres benefices dEngleterre qesont del avowerie de gentz de seinte eglise & les doune auxibien as aliens come as denzeins & prent de touz tiels benefices les primeres fruitz & autres profitz plusours & grande partie du tresor del roialme si est emporte & despendu hors du roialme par les purchaceours de tieles graces & auxint par tieles reservations privies plusours clerics avances en ceste roialme par lour verroies patrons qe ont tenuz lour avancementz par long temps pesiblement sont sodeinement ostes sur quoi la dite communaltee ad prie a nostre seignur le roi qe desicome le droit de la corone dEngleterre & la loi du dite roialme sont tieles qe sur meschiefs & damages qe si aviegnont a son roialme il doit & est tenuz par son serement del acord de son poeple en son parlement faire ent remede & lei en ostant les meschiefs & damages qensi aviegnont qe lui pleise de ce ordiner remede.

Nostre seignur le roi veiant les meschiefs & damages susnomes & eant regard al dit estatut fait en temps son dit ael & a les causes contenues en ycele le quel estatut tient touz jours sa force & ne feust unqes defait ne anulli en nul point & pur tant est il tenuz par son serement del faire garder come la loi de son roialme coment qe par soeffrance & negligence ad este puis attempte a contraire & auxint eant regard a les grevous plaintes a lui faites par son poeple en ses divers parlamentz cea enarere tenuz voillantz les tresgrantz damages & meschiefs qe sont avenuz & viegnont de jour en autre a la eglise dEngleterre par la dite cause remede ent ordiner par assent de

at the *utis* of the Purification of our Lady, the five and twentieth year of his reign of England, and of France the twelfth, by the grievous complaints of all the commons of his realm, that the grievances and mischiefs aforesaid do daily abound, to the greater damage and destruction of all his realm of England, more than ever were before, viz., that now or late the Bishop of Rome, by procurement of clerks and otherwise, hath reserved, and doth daily reserve to his collation, generally and especially, as well archbishopricks, bishopricks, abbeys, and priories, as all other dignities and other benefices of England, which be of the advowry of people of holy church, and give the same as well to aliens as to denizens, and taketh of all such benefices the first-fruits, and many other profits, and a great part of the treasure of the said realm is carried away and dispended out of the realm, by the purchasers of such benefices and graces aforesaid; and also by such privy reservations many clerks advanced in this realm by their true patrons, which have peaceably holden their advancements by long time, be suddenly put out; whereupon the said commons have prayed our said lord the king, that sith the right of the crown of England, and the law of the said realm is such, that upon the mischiefs and damages which happen to his realm, he ought, and is bound by his oath, with the accord of his people in his parliament, thereof to make remedy and law, and in removing the mischiefs and damages which thereof ensue, that it may please him thereupon to ordain remedy.

“III. Our lord the king, seeing the mischiefs and damages before mentioned, and having regard to the said statute made in the time of his said grandfather, and to the causes contained in the same; which statute holdeth always his force, and was never defeated, nor adnulled in any point, and by so much as he is bounden by his oath to cause the same to be kept as the law of his realm, though that by sufferance and negligence it hath been sithence attempted to the contrary; also having regard to the grievous complaints made to him by his people in divers his parliaments holden heretofore, willing to ordain remedy for the great damages and mischiefs which

STAT. 25 EDW.
3, ST. VI.

The Pope giveth the benefices of the church, and reserveth the first-fruits to himself.

The causes and reasons of making this statute

STAT. 25 EDW.
3, ST. VI.

Elections of
the dignities of
the church
shall be free,
as they were
founded.

Patrons and
founders of the
dignities of the
church, and
their heirs,
shall have the
collation or
presentation to
them being
void.

9 Hen. 3,
St. I. c. 33.
11 Hen. 4,
f. 37, 59, 76.

Where the
Pope maketh
provision to a
dignity of the
church, the
king shall
present.

have happened, and daily do happen to the church of England by the said cause; by the assent of all the great men and the commonality of the said realm, to the honour of God, and profit of the said church of England, and of all his realm, hath ordered and established, that the free elections of archbishops, bishops, and all other dignities and benefices elective in England, shall hold from henceforth in the manner as they were granted by the king's progenitors, and the ancestors of other lords, founders of the said dignities and other benefices. And that all prelates and other people of holy church, which have advowsons of any benefices of the king's gift, or of any of his progenitors, or of other lords and donors, to do divine services, and other charges thereof ordained, shall have their collations and presentments freely to the same, in the manner as they were enfeoffed by their donors. And in case that reservation, collation, or provision be made by the court of Rome, of any archbishoprick, bishoprick, dignity, or other benefice, in disturbance of the free elections, collations, or presentations aforementioned, that at the same time of the voidance, that such reservations, collations, and provisions ought to take effect, our lord the king and his heirs shall have and enjoy for the same time the collations to the archbishopricks and other dignities elective, which be of his advowry, such as his progenitors had before that free election was granted, since that the election was first granted by the king's progenitors upon a certain form and condition, as to demand licence of the king to chuse, and after the election to have his royal assent, and not in other manner; which conditions not kept, the thing ought by reason to resort to his first nature.

"IV. And if any such reservation, provision, or collation be made of any house of religion of the king's advowry, in disturbance of free election, our sovereign lord the king, and his heirs, shall have for that time the collation to give this dignity to a convenient person. And in case that collation, reservation, or provision be made by the court of Rome, of any church, prebend, or other benefices, which be of the advowry of people of holy church, whereof the king is advowee paramount immediate, that at the

touz les grantz & la communalte de son dit roialme al honur de Dieu & profit de la dite eglise d'Engleterre & de tut son roialme ad ordine & establi que les franchises elections des erceveschees eveschees & tutes autres dignites & benefices electifs en Engleterre se tieignent desore en manere come eles feurent grantes par les progenitours nostre dit seigneur le roi & par les auncestres dautres seignurs foundees. Et que touz prelatz & autres gentz de seinte eglise q'i ont avowesons de queconques benefices des douns nostre seigneur le roi & de ses progenitours ou dautres seignurs & donours pur faire divines services & autres charges ent ordines eient leur collations & presentementz franchement en manere come ils estoient feffes par leur donours. Et en cas que dascune erceveschee eveschee dignite ou autre quecunqe benefice soit reservation collation ou provision faite par la court de Rome en destourbanche des elections collations ou presentations susnomes que a meisme les temps des voidances que tieles reservations collations & provisions deusent prendre effect que a meisme la voidance nostre seigneur le roi & ses heirs eient & enjoient pur cele foitz les collations as erceveschees eveschees & autres dignites electives que sont de savowerie autieles come ses progenitours avoient avant que franche election feurent primes grantez par les progenitours le roi sur certaines forme & condition come a demander du roi conge de eslir & puis apres la election daver son assent roial & nemye en autre manere les queles conditions nyent gardez la chose doit par reson ressortir a sa primere nature.

Et que si dascune meson de religion del avowerie le roi soit tiele reservation collation ou provision faite en destourbanche de franche election eit nostre seigneur le roi & ses heirs a cele foitz la collation a doner cele dignite a persone covenable. Et en cas que reservation collation ou provision soit faite a la court de Rome de nule eglise provende ou autre benefice que sont del avowerie des gentz de seinte eglise dont le roi est avowe paramount immediat que a mesme le temps de voidance a quel temps la reservation colla-

tion ou provision deusent prendre effect come desus est dit qe le roi & ses heirs de ce eient le presentement ou collation a cele soit. Et issint de temps en temps a totes les foitz qe tieles gentz de seinte eglise serront destourbez de leur presentementz ou collations par tieles reservations collations ou provisions come desus est dit sauvee a eux le droit de leur avowesons & presentementz qant nul collation ou provision de la court de Rome ent ne soit faite ou qe les dites gentz de seinte eglise osent & vuillent a meisines les benefices presenter ou collation faire & leur presentees puissent leffait de leur collations & presentementz enjoier. Et en meisme la manere eit chescun autre seigneur de quel condition qil soit les presentementz ou collations a les mesons de religion qe sont de favowrie & as benefices de seinte eglise qe sont apurtenantz a meismes les mesons. Et si tiels avowes ne presentent point a tieles benefices deinz le demy en apres tieles voidances ne levesqe de lieu ne la doune par laps de temps deinz un mois apres le demy an qe adonques le roi eit ent les presentementz & collations come il ad dautres de savowerie demeisne. Et en cas qe les presentees le roi ou les presentes dautres patrons de seinte eglise ou de leur avowes ou ceux as quex le roi ou tielx patrons ou avowes susditz averont done benefices apurtenantz a leur presentementz ou collations soient destourbez par tiels provisours issint qils ne puissent avoir possession de tieles benefices par virtue des presentementz & collations issint a eux faitz ou qe ceux qe sont en possession des tiels benefices soient empesches sur leur dites possessions par tiels provisours adonques soient les ditz provisours & leur procuratours executours & notaires attaches par leur corps & menes en response & sils soient convictz demoergent en prisone sanz estre lesse a meinprise en baille ou autrement delivres tanqils averont fait fin & redemption au roi a sa volente & gree a la partie qe se sentera greve. Et nient meins avant qils soient delivvers facent pleine renunciation & troevent sufficeante seurete qils natteront tiele chose en temps avenir ne nul proces sueront par eux ne par autre devers nuly en la dite court de Rome ne nule part ailleurs pur nules tieles emprisonementz

same time of the voidance, at which time the collation, reservation, or provision ought to take effect as afore is said, the king and his heirs thereof shall have the presentment or collation for that time. And so from time to time, whensoever such people of holy church shall be disturbed of their presentments or collations, by such reservations, collations, or provisions, as afore is said; saving to them the right of their advowsons and their presentments, when no collation or provision of the court of Rome is thereof made, where that the said people of holy church shall or will to the same benefices present or make collation; and that their presentees may enjoy the effect of their collations or presentments. And in the same manner every other lord, of what condition that he be, shall have the collations or presentments to the houses of religion which be of his advowry, and other benefices of holy church which be pertaining to the same houses. And if such advowees do not present to such benefices within the half year after such voidances, nor the bishop of the place do not give the same by lapse of time within a month after half a year, that then the king shall have thereof the presentments and collations, as he hath of other of his own advowry. And in case that the presentees of the king, or the presentees of other patrons of holy church, or of their advowees, or they to whom the king, or such patrons or advowees aforesaid, have given benefices pertaining to their presentments or collations, be disturbed by such provisours, so that they may not have possession of such benefices by virtue of the presentments or collations to them made, or that they which be in possession of such benefices, be impeached upon their said possessions by such provisours; then the said provisours, their procurators, executors, and notaries, shall be attached by their body, and brought in to answer; and if they be convict, they shall abide in prison without being let to mainprise or bail, or otherwise delivered, till that they have made fine and ransom to the king at his will, and gree to the party that shall feel himself grieved. And nevertheless, before that they be delivered, they shall make full renunciation, and

STAT. 25 EDW. 3, ST. VI.

44 EDW. 3, f. 36.

The penalties of those, which by provisions from Rome do disturb such presentments or elections, as others ought to make. See 26 Hen. 8, c. 15.

STAT. 25 EDW.
3, St. VI.

find sufficient surety that they shall not attempt such things in time to come, nor sue any process by them, nor by other, against any man in the court of Rome, nor in any part elsewhere, for any such imprisonments or renunciations, nor any other thing depending of them.

ou renunciations ne nule autre chose dependant de eux.

Fitz. Præmunire, 9, 12.

Rast. 465.
13 Rich. 2,
St. I. c. 1.
Confirmed by
13 Rich. 2,
St. II. c. 2
& 3.

By 16 Rich. 2,
c. 5, purchas-
ing bulls or
other instru-
ments from
Rome incurs
præmunire.
And see 5 Eliz.
c. 1, & 13 Eliz.
c. 2, against
maintaining
the authority
of the see of
Rome, or
bringing bulls,
&c. from
thence.

"V. And in case that such provisors, procurators, executors, or notaries be not found, that the exigent shall run against them by due process, and that writs shall go forth to take their bodies in what parts they be found, as well at the king's suit, as at the suit of the party, and that in the mean time the king shall have the profits of such benefices so occupied by such provisors, except abbeyes, priories, and other houses, which have colleges or convents, and in such houses the colleges and convents shall have the profits; saving always to our lord the king, and to all other lords, their old right. And this statute shall have place as well of reservations, collations, and provisions made and granted in times past against all them which have not yet obtained corporal possession of the benefices granted to them by the same reservations, collations, and provisions, as against all other in time to come. And this statute oweth to hold place and to begin at the said *utis*."

Et en cas que tielx proviseurs procura-
tours executours & notaires ne soient
trovez que lexicgende courge devers eux
par due proces & que briefs issent de
prendre leur corps quel part qils soient
trovez auxibien a la suite le roi come de
partie & qen le mesne temps le roi eit
les profitz de tielx benefices issint ocupez
par tielx proviseurs forspris abbeyes pri-
ories & autres mesons qont college ou
covent & en tieles mesons eient les convent
& colleges les profitz sauvant totefoitz a
nostre seigneur le roi & as autres seignurs
leur aunciene droit. Et eit cest estatut
lieu auxibien de reservations collations
& provisions faites & grantes en temps
passe devers touz ceux que ne sont uncore
adept corporele possession des benefices
a eux grauntes par meismes les reserva-
tions collations & provisions come devers
touz autres en temps avenir. Et doit
cest estatut tenir lieu commenceant a les
oetaves susditz.

STAT. 27 EDW.
3, St. I. c. 1.

XL. STAT. 27 EDWARDI 3, St. I. c. 1. (*Statute of Provisors*.) A.D. 1353.
"Præmunire(1) for suing in a Foreign Realm, or impeaching of Judgment given."

4 Inst. 86.
3 Inst. 120,
125.
11 Co. 63.
12 Co. 37.
2 Roll. 317.

14 Hen. 4,
f. 14.
2 Rich. 3, f. 17.
5 Edw. 4, f. 6.
Fitz. Præmun.
5, 6, 10.

"First, because it is shewed to our lord the king, by the grievous and clamorous complaints of the great men and commons, aforesaid, how that divers of the people be, and have been, drawn out of the realm to answer of things, whereof the cognizance pertaineth to the king's court; and also that the judgments given in the same court be impeached in another court, in prejudice and disherison of our lord the king, and of his crown, and of all the people of his said realm, and to the undoing and destruction of the common law of the same realm at all times used. Whereupon, good deliberation had with the great men and other of his said council, it is assented and accorded by our lord the king, and the great men and commons aforesaid,

Primerement pur ce que monstree est
a nostre dit seigneur le roi par grevous
& clamours plaintes des grantz & com-
munes avantditz coment plusours gentz
sont & ount este traites hors du roialme
a respondre des choses dount la conis-
sance appartient a la court nostre seigneur
le roi & aussint que les juggementz ren-
duz en meisme la court sont empechez
en autri court en prejudice & disherit-
son nostre seigneur le roi & de sa corone
& de tout le poeple de son dit roialme
& en defesance & anientissement de la
commune lei de meisme le roialme usee
de tout temps. Sur quoi eue bone deli-
beration od les grantz & autres du dit
conseil assentu est & acorde par nostre
dit seigneur le roi & les grantz & com-
munes susditz que totes gentz de la

(1) *Præmunire*:—So called from the words of the writ, in that case: "Rex vice

comiti, &c., præmunire facias præfatum A.B. quod tunc sit coram nobis, &c."

ligeance le roi de quele condition qils soient qi trehent nulli hors du roialme en plee dount la conissance appartient a la court le roi ou des choses dount juggementz sont renduz en la court le roi ou qi suent en autri court a deffaire ou empescher les juggementz renduz en la court le roi eient jour contenant l'espace dedeux mois par garnissement affaire a eux en le lieu ou les possessions sont qi sont en debat ou aillours ou ils averont terres ou autres possessions par le viscont ou autre ministre du roi destre devant le roi & son conseil ou en sa chancellerie ou devant les justices le roi en ses places del un baunk ou del autre ou devant autres justices le roi qi serront a ce deputez a respondre en leur propre persones au roi contempt fait en celle partie. Et sils ne vieignent mie au dit jour en propre persone de esteer a la lei soient ils leur procurateurs attournez executours notairs & maintenours de cel jour enavant mis hors ne la protection le roi & leur terres biens & chateux forfaitz au roi & soient leur corps ou qils soient trovez pris & emprisonnez & reintz a la volente le roi & sur ce soit brief fait de les prendre par leur corps & de seisir leur terres biens & possessions en la main le roi & si retourne soit qils ne sont mie trovez soient mis en exigend & utlaghez.

that all the people of the king's ligeance, of what condition that they be, which shall draw any out of the realm in plea, whereof the cognizance pertaineth to the king's court, or of things whereof judgments be given in the king's court, or which do sue in *any other court* (1), to defeat or impeach the judgments given in the king's court, shall have a day, containing the space of two months, by warning to be made to them in the place where the possessions be which be in debate, or otherwise where they have lands or other possessions, by the sheriffs or other the king's ministers, to appear before the king *and his council* (2), or in his Chancery, or before the king's justices in his places of the one Bench or the other, or before other the king's justices which to the same shall be deputed, to answer in their proper person to the king, of the contempt done in this behalf. And *if they come not* (3) at the said day in their proper persons to be at the law, they, their procurators, attorneys, executors, notaries, and maintainors, shall from that day forth be put out of the king's protection (4), and their lands, goods, and chattels forfeit to the king, and their bodies, wheresoever they may be found, shall be taken and imprisoned, and ransomed at the king's will: and upon the same *a writ shall be made* (5) to take them by their

STAT. 27 EDW. 3, ST. I. c. 1.

39 EDW. 3, f. 7.
43 EDW. 3, f. 6.

Bro. Attorney,
48, 53, 104.
11 Co. 34.
44 EDW. 3,
f. 7, 36.
1 Lev. 241,
242.

Enforced by
38 EDW. 3,
St. II. cc. 2, 3,
& 4.

(1) *Any other court*:—Lord Coke (3 Inst. 120) interprets this of the courts within this realm, which are not courts of common law, viz. Ecclesiastical courts, the courts of Admiralty, the courts of the Constable and Marshal, and of Equity proceeding in course of equity. And he says, they are called other courts, either because they proceed by the rules of *other laws*, as by the canon or civil law, &c., or by *other trials* than the common law doth warrant. For the trial warranted by the law of England for matters of fact, is by verdict of twelve men, before the judges of the common law, of matters pertaining to the common law, and not upon examination of witnesses in any court of equity. So that *alia curia*, is either that which is governed *per aliam legem*, or, which draweth the party *ad aliud examen*. Vide Stephens on Clerical Law, tit. PROHIBITION.

(2) *And his council*:—That is, the king, and the lords of parliament, in parliament, which is a court of justice. 3 Inst. 125.

(3) *If they come not*:—Or if they do appear and plead, and the issue be found against them, the judgment shall be the same. Ibid. 124.

(4) *Out of the king's protection*:—By these words, persons attainted in a writ of

præmunire, are disabled to have any action or remedy by the king's law, or the king's writs; for the king's law, and the king's writs, are the things whereby a man is protected and aided, so as he who is out of the king's protection, is out of the aid and protection of the law. Ibid. 125.

(5) *A writ shall be made*:—Such a writ is inserted in the Register, (Jud. f. 82 (b).) according to the following form: "Rex, vicecomiti salutem. Præcipimus tibi quod non omittas propter, &c. quin capias L. de C. & L. de B. qui extra protectionem nostram tam ad sectam nostram quam I. clerici positi sunt, eo quod idem L. de C. prosecutus fuit placitum in aliena curia, videlicet in curia Romana extra regnum nostrum Angliæ, de patronatu ecclesiæ de I. Lincoln' dioc', quæ de laicali patronatu I. de B. & L. de P. existit, et præfatus L. de B. manutentor ejusdem L. de C. ad præmissa facienda extitit, contra formam ordinationis et provisionis in hujusmodi casu editarum, si, &c. et eum in prisiona nostra salvo custodiri facias, ita quod, &c. octavis Hilarii ad respondendum tam nobis de contemptu et præjudicio in præmissis factis, quam prædicto I. de B. de damnis sibi in ea parte illatis. Et habeas, &c. T. &c."

STAT. 27 EDW. 3, ST. I. c. 1. bodies, and to seise their lands, goods, and possessions, into the king's hands; and if it be returned, that they be not found, they shall be put in exigent, and outlawed.

Appearance of the offender after two months will save his outlawry, but not his lands or goods.

Reg. 182.

Rast. 24, 465.

See 16 Rich. 2, c. 5, which

makes it *præmunire* to purchase bulls or other instruments from Rome; and farther, 5 Eliz. c. 1, & 13 Eliz. c. 2, against maintaining the authority of the see of Rome, or bringing bulls from Rome.

"II. Provided always, that at what time they come before they be outlawed, and will yield them to the king's prison to be justified by the law, and to receive that which the court shall award in this behalf, that they shall be thereto received; the forfeiture of the lands, goods, and chattels abiding in their force, if they do not yield them within the said two months, as afore is said."

Purveu totes foitz qe a quele heure qils vieignent devant qils soient utlaghez & se veullent rendre a la prisone le roi destre justicez par la lei & recevoir ce qe la court le roi agardera en celle partie qils soient a ce receuz la forfaiture des terres biens & chateux demorante en sa force sils ne se rendent deinz les ditz deux mois come devant est dit.

STAT. 28 EDW. 3, c. 14.

XLI. STAT. 28 EDWARDI 3, c. 14. A.D. 1354.

"Upon which days Wool may be shewed in the Staple, and in which not."

"Item, it is accorded and established, that shewing of wools shall be made at the staple every day of the week, except the Sunday and solemn feasts of the year."

STAT. 31 EDW. 3, ST. I. c. 4.

XLII. STAT. 31 EDWARDI 3, ST. I. c. 4. A.D. 1357.

"Redressing of Extortion in Bishops' Officers, in proving of Wills."

Enforced by 3 Hen. 5, c. 8, 21 Hen. 8, c. 5, which ascertain the fees to be taken.

"Item, whereas the ministers of bishops and other ordinaries of holy church, take of the people grievous and outrageous fine for the probate of testaments, and for the making of acquittances thereof; the king hath charged the Archbishop of Canterbury, and the other bishops, that they cause the same to be amended; and if they do not, it is accorded, that the king shall cause to be inquired by his justices of such oppressions and extortions, to hear them and determine them, as well at the king's suit, as at the suit of the party, as in old time hath been used."

Item come les ministres des evesques & autres ordinaires de seinte eglise preignent du poeple grevous & outrageouses fynes pur le proeve des testamentz & pur les acquittances ent faire le roi ad charge lercevesque de Canterbirs & les autres evesques qils ent mettent amedement & sils ne facent acorde est qe le roi ferre enquire par ses justices des tieux oppressions & extorsions & de les oier & terminer sibien a la fuyte le roi come de prove come auncienement ad este use.

STAT. 31 EDW. 3, ST. I. c. 11.

XLIII. STAT. 31 EDWARDI 3, ST. I. c. 11(1). A.D. 1357.

"To whom the Ordinary may commit the administration of the Goods of him that dieth intestate. The benefit and charge of an Administrator."

13 Edw. 1, St. I. c. 19. Carthew, 376. 1 Shower, 407.

"Item, it is accorded and asserted, that in case where a man dieth intestate, the ordinaries shall depute(2) the next and

Item acorde est & assentu qe en cas ou homme devie intestat les ordinaires facent deputer de plus proscheins &

(1) Before this statute, by the common law, administrators possessed no property in the goods and chattels of the intestate; nor could they recover debts, as executors could do: but by this statute, they were enabled in both those respects; besides which, they were thenceforth to be charged by the name of administrators, and were not to be charged, as by the common law, by the name of ex-

ecutors. Stephens on Nisi Prius, 1825-1915, tit. EXECUTORS and ADMINISTRATORS. Gibson's Codex, 478.

(2) The ordinaries shall depute:—Before this statute, the ordinary was not compellable to grant administration; but by this statute, he is commanded, and thereby compellable, to grant administration; and a refusal to do it, would be a contempt to the

plus loialx amis du mort intestat pur administrer ses biens les queux deputez eient action a demander & recoverer come executours les dettes dues au dit mort intestat en la court le roi pur administrer & desprendre pur l'alme du mort & respoignent auxint en la court le roi as autres as queux le dit mort estoit tenuz & obligez en mesme la manere come executours respondront. Et soient acountables as ordinairs si avant come executours sont en cas de testament sibien de temps passe come de temps avenir.

most lawful friends (1) (2) of the dead person intestate to administer his goods; which deputies shall have an action to demand and recover as executors the debts due to the said person intestate in the king's court, for to administer and dispend for the soul of the dead; and shall answer also in the king's court to other to whom the said dead person was holden and bound, in the same manner as executors shall answer. And they shall be accountable to the ordinaries, as executors be in the case of testament, as well of the time past as the time to come."

STAT. 31 EDW. 3, ST. I. c. 11.
Amended by 21 Hen. 8, c. 5.
1 Roll. 105.
Vaugh. 96.
41 Edw. 3, f. 2.
37 Hen. 6, f. 15.
Dyer, 256.
5 Co. 9.
9 Co. 38.
Co. Lit. 133(b).
Cro. Eliz. 409.
Cro. Car. 63, 106.
Regist. 141.
Rast. 320.
2 Bulst. 315.

XLIV. STAT. 31 EDWARDI 3, ST. I. c. 13. A.D. 1357.

"The King's Pardon to the Commons of the Escape of Felons, and their Goods not estreated . . ."

" . . . Except the escapes of clerks convict out of the prison of the prelates, their ordinaries."

STAT. 31 EDW. 3, ST. I. c. 13.

XLV. STAT. 36 EDWARDI 3, ST. I. c. 8(3). A.D. 1362.

"A Penalty imposed by the Bishop upon Priests taking more Wages than is assigned. What Wages a Parish Priest may take."

STAT. 36 EDW. 3, ST. I. c. 8.

XLVI. STAT. 37 EDWARDI 3, c. 13(4). A.D. 1363.

"The Apparel of several sorts of Clerks."

STAT. 37 EDW. 3, c. 13.

XLVII. STAT. 38 EDWARDI 3, ST. II. A.D. 1363.

Against Provisors.

STAT. 38 EDW. 3, ST. II.

Pur nurrir amour paix & concorde entre leglise & le roialme & empescher & faire cesser les grantz malx perils & importables damages & grevances qont este faitz & avenuz en temps passe & avendront enapres si la chose serroit soefferte passer avant par cause de personeles citations & autres qont passez avant ces hures & passent communement de jour en autre hors de la courte de Rome par my feintes ou fauses suggestions & propositions deceivantz le saint Piere encountre tout plein des personnes du dit roialme sur causes dount la cognissance & finale discussion appertient a nostre seignur le roi & a sa courte roiale & autrement & aussi des impetrations & provisions faites en

"To nourish love, peace, and concord between holy church and the realm, and to appease and cause to cease the great hurt, perils, and importable losses and grievances that hath been done and happened in times past, and that shall happen hereafter, if the thing from henceforth be suffered to pass, because of personal citations, and other that be past before this time, and commonly doth pass from day to day out of the court of Rome by feigned and false suggestions and propositions, deceiving the holy father, against all manner of persons of the realm, upon causes, whose cognizance and final discussing pertaineth to our lord the king and his royal court; and also of impetrations and pro-

4 Inst. 51, s. 1.

king, and an injury to the party. *Salop's (Countess of) case*, 9 Co. 40.

(1) *The next and most lawful friends*:—Before this statute, the ordinaries might have granted administration to whom they pleased; but hereby they are restrained to the next and most lawful friends. *Ibid.*

(2) *Most lawful friends*:—That is, to the next of blood, who are not attainted of treason, or felony, or have any other lawful disability. *Ibid.*

(3) Repealed by Stat. 21 Jac. 1, c. 28.

(4) Repealed by Stat. 24 Hen. 8, c. 13. Stat. 1 Jac. 1, c. 25.

STAT. 38 EDW.
3, ST. II.

The several enormities of citations and impetrations of benefices obtained from Rome.

visions made in the said court of Rome, of benefices and offices of the church, pertaining to the gift, presentation, donation, and disposition of our said lord the king, and other lay patrons of his realm, and of churches, chapels, and other benefices appropriated to cathedral churches, colleges, abbeys, priories, chantries, hospitals, and other poor houses, and of other dignities, offices, and benefices, occupied in times past and present by divers and notable persons of the said realm: For the which causes, and the dependants thereof, the good ancient laws, customs, and franchises of the said realm have been and be greatly impeached, blemished, and confounded, the crown of our lord the king abated, and his person very hardly and falsely defamed, the treasure and riches of his realm carried away, the inhabitants and subjects of the realm impoverished and troubled, the benefices of the church wasted and destroyed, divine service, hospitalities, alms-deeds, and other works of charity withdrawn and set apart, the great men, commons, and subjects of the realm, in body and goods damnified :”

meisme la courte de Rome des benefices & offices desglise appartenantz a la donation presentation ou disposition nostre dit seigneur le roi & dautres patrons lais de son roialme & des eglises cha-peles & autres benefices appropries as eglises cathedrales collegiales abbaies priories chaunteries hospitalx & autres povres maisons & des autres dignitees offices & benefices occupez en temps passe & present par diverses & notables personnes du dit roialme pur les queles causes & dependences dicelles les bones & auncienes lois usages custumes & fraunchises du dit roialme ount estez & sount moult grandement empeschez blemiz & confounduz la corone le roi nostre seigneur abesse & sa persone moult durement & fausement diffamee les avoires & richesses du roialme emportez les heritances & subgiz dicelx empovriz & troubliz les benefices desglises gastez & destruitz divin service hospitalites almoignes & altres oeuvres de charitee entrelessez & souztraitz les grantz communes & subgitz du dit roialme travaillez & en corps & en biens damagez :

STAT. 38 EDW.
3, ST. II. c. 1.

XLVIII. STAT. 38 EDWARDI 3, ST. II. c. 1. A.D. 1363.

“Persons receiving Citations from Rome in Causes pertaining to the King, &c., to incur the Penalties of Stat. 25 Edw. 3, St. VI.”

“Our sovereign lord the king, at his parliament holden at Westminster, in the utas of St. Hillary, the thirtieth year of his reign, having a regard to the quietness of his people, which he chiefly desireth to sustain in tranquillity and peace, to govern according to the laws, usages, and franchises of his land, as he is bound by his oath made at his coronation*, following the ways of his progenitors, which for their time made certain good ordinances and provisions against the said grievances and perils; which ordinances and provisions, and all the other made in his time, and especially in the twenty-fifth and twenty-seventh year of his reign, our sovereign lord the king, by the assent and express will and concord of the dukes, earls, barons, and the commons of his realm, and of all other whom these things toucheth, by good and mete deliberation and avisement, hath approved, accepted, and confirmed, saving the

Nostre dit seigneur le roi a son parlement tenuz a Westm’ en les oytaves de Seint Hiller lan de son regne trente oytisme eiant regard a la quiete de son poeple le quel il desire tres souverainement a sustenir en tranquillite pais & repos et governir solonc les lois usages & fraunchises de sa terre & sicome tenuz y est par son serement donez en sa coronation en eide & consort du Pape qi moult sovent a estee trublez par tieles & semblables importuns clamours & impetrations & qi y meist voluntiers covenable remede si sa seyn-teteie estoit sur ces choses enfourmee & passant parmy les voies de ses nobles progenitours les queux pur le temps lors courant firent certeynes bones purveiances & ordenances encountre les avantditz grevaunces & perils les queles ordinances & purveances & aussi toutes les autres faites en son temps & par especial en lan de son regne xxv. & xxvii. Nostre dit seigneur le roi de

* Add for the ease and convenience of the Pope, who has been frequently disturbed by such importunate clamours and impetrations, and would willingly apply convenient remedy, if his holiness was informed of these things.

lassentement & expresse volunte & con-
corde des ducs contes barons nobles &
communes de son roialme & de touz
altres qe la chose touche par bone &
meure deliberation & avisement a ap-
prove accepte & conferme sauf lestat
des prelatz & daltres seignurs du roialme
touchant la libertee de lour corps si qe
par force de cest estatut lour corps ne
soit pas pris ajoustant a ycelles a pur-
veu & ordene qe touz ceux qont impe-
trez purchacez ou pursuiz tiels perso-
neles citations & autres en aucun temps
passe ou impetreront purchacerount ou
pursuerount semblables en temps avenir
encountre lui ou aucun de ses subgiz &
aussi touz ceux qont impetrez ou im-
petreront de la dite court deanees arce-
deakenees provostes & autree dignitees
offices chapelles ou autres benefices des-
glise quelconques appartenantz a la colla-
tion donation presentation ou disposition
nostre dit seignur le roi ou dautre patron
lai de son dit roialme Et aussi toutes
sembleables personnes impetrouers des-
glises chapelles offices benefices desglise
pensions ou rentes amortisees & approp-
riez as eglises cathedrales ou collegiales
abbaies priories chaunteries hospitalx au
altres povres maisons avant ceo qe tielx
appropriations & amortissementz soient
cassez & anullez par due proces en-
semble touz ceux qont impetrez en
meisme la court dignites offices hospi-
talx ou benefices quelconques desglise qe
sount occupez au present par title rai-
sonable par ascuns personnes du dit
roialme si tiel impetration ne soit ja
pleinement execute ou impetreront en-
apres semblables benefices par quoi
prejudice damage ou empeschement a
estee ou purra estre fait enapres a lui
ou a ses ditz subgiz ou personnes herit-
ages possessions droitures ou biens quel-
conques ou a les lois usages custumes
fraunchises & libertees de son dit
roialme & de sa corone ensemble touz
leur maintenours conseilours abet-
tours & autres aidantz & fauteurs
seientement taunt a la suite le roi come
de la partie ou dautre quelconqe de
roialme trovantz plegges & seurete de
pursuir contre eux en ceo caas soient
les dites personnes diffames & suspectes
violenment de tiels impetrations pur-
suites ou grevances arestuz & pris par
les viscontes de lieux & justices en lour
sessions deputez bailliffs & autres min-

estate of the prelates and other lords of the realm, touching the liberty of their bodies, so that by force of this statute their bodies be not taken. Joining to the same hath provided and ordained, that all they which have obtained, purchased, or pursued such personal citations or other, in any times past, or hereafter shall obtain, purchase, or pursue such like, against him or any of his subjects, and also all they that have obtained or shall obtain in the said court, deaneries, archdeaconries, provosties, and other dignities, offices, chappels, or benefices of holy church, pertaining to the collation, gift, presentation, or disposition of our said sovereign lord the king, or of other lay patron of his said realm, and also all like persons, obtainers of churches, chappels, offices, or benefices of holy church, pensions or rents amortised and appropriated to churches cathedral or collegial, abbeyes, priories, chantries, hospitals, or other poor houses, before that such appropriations, amortisements be void and adnulled by due process; also, all they which have obtained in the same court, dignities, offices, hospitals, and any benefices of churches which be occupied at this present season by reasonable title by any persons of the said realm, if such impetrations be not fully executed; or shall obtain hereafter like benefices, whereby prejudice, damage, or impeachment hath been or may be done hereafter to him or to his said subjects, in persons, heritages, possessions, rights, or any goods, or to the laws, usages, customs, franchises, and liberties of his said realm and of his crown; also all their main-tenors, concealers, abettors, and other aiders and fauters wittingly, as well at the suit of the king as of the party, or other whatsoever he be of the realm, finding pledges and surety to pursue against them; in this case, all the said persons defamed and violently suspect of such impetrations, pursuits, or grievances, shall be arrested and taken by the sheriffs of the places and justices in their sessions, deputies, bailiffs, and other the king's ministers, by good and sufficient mainprise, replevin, bail, or other surety (the shortest that may be), and shall be presented to the king and his council, there to remain and stand

STAT. 38 EDW.
3, ST. II. c. 1.

STAT. 38 EDW.
3, ST. II. C. 1.

25 EDW. 3,
ST. V. C. 22,
and ST. VI.
Altered by
16 RICH. 2, C. 5,
and 5 ELIZ. C. 1.

to right, to receive what the law will give them; and if they be attainted or convict of any of the said things, they shall have the pain comprised in the statute made in the twenty-fifth year of the reign of our sovereign lord the king, which beginneth, 'Whereas late in the Parliament,' &c."

istres le roi & par bone & suffisaunte maynprise replevissement bail ou altre plegerie le plus brief qe faire se purra soient ils presentez au roi ou a son conseil pur y demurer & ester a droit & recevoir ceo qe la lei leur donera. Et sils soient atteintz ou convaincuz daucunes des dites choses eient la penance compris en lestatut fait en lan nostra dit seignur le roi xxv. qe comence *Au Parlement somons a Westminster* &c.

STAT. 38 EDW.
3, ST. II. C. 2.

XLIX. STAT. 38 EDWARDI 3, ST. II. C. 2. A.D. 1363.

"Suspected Persons not appearing before the King's Justices after Warning, to incur the Penalty of Stat. 27 Edw. 3, St. I. c. 1."

"Item, if any person, defamed or suspect of the said impetrations, prosecutions, or grievances, or enterprises, be out of the realm or within, and may not be attached or arrested in their proper persons, and do not present them before the king or his council, within two months next after that they be thereupon warned in their places (if they have any), or in any of the king's courts, or in the counties, or before the king's justices in their sessions, or otherwise sufficiently, to answer the king and to the party, to stand and be at the law in this case before the king and his council, shall be punished by the form and manner comprised in the statute made in the said seven-and-twentieth year of this king's reign, which beginneth, 'Our sovereign lord the king, of the assent,' &c.; and otherwise, as to the king and his council shall seem to be done, without any grace, pardon, or remission to be made by the king, without the will and assent of the party, which shall prove him to be grieved, and without making to him due satisfaction in this case."

Et si aucunes personnes diffames ou suspectes des dites impetrations prosecutions grevances ou entreprises soient hors du dit roialme ou dedans & ne purront estre attachez ne arestuz en leur propres personnes & ne se presentent devant le roi ou son conseil dedeins deux mois prochein apres ce qils serrount sur ceo garniz en leur lieux si aucuns en eient ou aucuns des courtz le roi ou en les countees ou devant les justices le roi en leur sessions ou autrement suffisamment pur respondre au roi & a la partie & demurer & estre a la lei en ceo cas devaunt le roi & son conseil soient puniz par fourme & maniere compris en lestatut fait lan xxvii. nostre seignur le roi qe comence *Nostre seignur le roi de lassent & a la priere* &c. & autrement sicome affaire semblera au roi & a son conseil sanz faire a aucun deulx par nostre dit seignour le roi aucune grace pardonaunce ou remission sanz la volente & assentement de la partie qe se prouvera estre greve & sanz faire a lui due satisfaction en ce cas.

STAT. 38 EDW.
3, ST. II. C. 3.

L. STAT. 38 EDWARDI 3, ST. II. C. 3. A.D. 1363.

"Such Offenders to be out of the King's Protection, and punished according to the Stat. 27 Edw. 3, St. I. c. 1."

"Item, it is accorded, that none other subject of the said realm, keeping and sustaining these ordinances, shall incur any forfeiture of life and member, of lands, of heritage, nor of goods, against the king, nor none other person, nor lose estate nor favour because of the said things ordained, nor his heirs may not nor ought not to be reproved, de-

Item ordeigne est qe nul autre sujet du dit roialme gardant et sustentant ces ordinances nencourage aucune forfaiture de vie de membre de terres heritage ne de biens devers le roi nautre persone quelconque ne ne perde estat ne faveur par cause de les susditz choses ordenees ne lui ne ses heirs ne purront ne devront estre reprovez diffameez nempes-

cheez par aucuns des ditz causes en aucune temps avenir. Et si aucune persone de quelconque estat ou condition qil soit par quelconque manere qe ce soit attempte ou face aucune chose a lencountre des dites ordonances ou daucune chose comprise en ycelles soit la dite persone meisme a respounse en manere come dessus est dit & si elle serra sur ceo attainte ou convaincue soit mise hors la protection le roi et puniz par fourme du dit estatut de lan xxvii.

famed, nor impeached by any of the said causes at any time hereafter. And if any person, of whatsoever estate or condition that he be, by any manner, attempt or do any thing against the said ordonances or any thing comprised in them, the same person shall be brought to answer in the manner as aforesaid; and if he be thereupon attainted or convicted, he shall be put out of the king's protection, and punished after the form of the said statute made the said xxvii. year."

STAT. 38 EDW. 3, ST. II. c. 3.

LI. STAT. 38 EDWARDI 3, ST. II. c. 4. A.D. 1363.

"The Punishment of those who sue falsely and maliciously upon this Statute. The Consent of the King and Parliament to impeach Offenders against the same."

STAT. 38 EDW. 3, ST. II. c. 4.

Et si aucune persone face malicieusement ou fausement aucun poursuite encountre persone quelconque du dit roialme pur cause comprise en ces presentes ordonances & de ceo soit duement attaint soit tiel pleintif duement puniz a lordonance du roi ou de son consail & nientmeyns face gree & lamende a la partie qe a estee grevee par sa pleinte. Et a fin qe les dites ordonances & chescun dycelles pur aise quiete & bien commun soient le mieuz sustenuz executz & gardez & qe touz ceux qe ount mespris ou mesprendront encountre cestes ordonances par prosecutions accusations denunciations citations ou proces faites ou affaire hors du dit roialme ou dedeins ou overtement contre quelconque persone du roialme soient le plus covenablement & promptement meisnez a respons pur receyvra droit solonc leur deserte le roi les prelatz les ducs countes barons & nobles communes clercs & lais sont tenuz par ceste presente ordonnance a aider conforter & consailler lun a lautre & taunt souvent qe busoigne serra & par toutes les meillours maneres qe faire se pourra de parole & de fait pur empescher tieux meffesours & resistere de fait a lour enterprises & saunz les soeffrir habiter demorer ne passer par lour seignouries puissance terres jurisdictions ne lieux & sont tenuz de garder & defendre lune a lautre de tout damages vilainex & reproves sicome ils ferroient lour propres persones & pur leur fait & busoigne & par tiele manere & si avant come tieles prosecutions ou proces fuissent faites ou atteintez encountre eux en special ou en commune.

"Item, if any person maliciously or falsely make any pursuit against any person of the said realm, for cause comprised in these present ordonances, and thereof be duly attainted, such plaintiff shall be duly punished at the ordinance of the king and his council; and nevertheless he shall make gree and amends to the party aggrieved by his pursuit. And to the intent that the said ordonances, and every of the same, for the ease, quietness, and wealth of the commons, be the better sustained, executed, and kept; and that all those that have offended, or shall offend, against these ordonances, by prosecutions, accusations, denunciations, citations, or other process made or to be made out of the said realm or within, or otherwise against any manner of person of the said realm, be the more covenably and speedily brought in answer, to receive right according to their desert: the king, the prelates, dukes, earls, barons, nobles, commons, clerks, and lay people, be bound by this present ordinance to aid, comfort, and to counsel the one and the other; and as often as shall need, and by all the best means that may be made of word and of deed, to impeach such offenders, and resist their deeds and enterprises, and without suffering them to inhabit, abide, or pass by their seignories, possessions, lands, jurisdictions, or places, and be bound to keep and defend the one and the other from all damage, villainy, and reproof, as they should do their own persons, and for their deed and business, and by such manner, and as far forth, as such prose-

13 Eliz. c. 2. The offences in the foregoing chapter made punishable as in cases of high treason.

STAT. 38 EDW. 3, St. II. c. 4. cutions or process were made or attempted against them in especial, or in common."

STAT. 45 EDW. 3, c. 3.

LII. STAT. 45 EDWARDI 3, c. 3(1). A.D. 1372.

"*A Prohibition shall be granted where a Suit shall be commenced in a Spiritual Court for Sylva cædua*(2)."

50 Edw. 3, f. 10.
9 Hen. 6, 56.
Plow. 470.
Cro. Eliz. 1, 477, 736.
2 Inst. 642.
Cro. Jac. 100, 133.

"Item, at the complaint of the said great men and commons, shewing by their petition, that, whereas they sell their great wood of the age of twenty years, or of forty years, or of greater age, to merchants, to their own profit, or in aid of the king in his wars, parsons and vicars of holy church do implead and draw the said merchants in the spiritual court for the tithes of the said wood, in the name of this word called *Sylva cædua*, whereby they cannot sell their woods to the very value, to the great damage of them and of the realm; it is *ordained*(3) and established, that a prohibition in this case shall be granted, and upon the same an attachment, as it hath been used before this time."

Regist. 44.
Fitz. N. B. 54 (b).
Rast. 489.

Item a la plainte des ditz grantz & communes monstranz par lour petition qe come ils vendent leur gros boys dage de vint anns ou quarrante ans ou de greindre age as marchantz en profit de eux mesmes & en eide du roi en sa guerre parsones & vikers de seint esglise les ditz marchantz empledent & travaillent en court cristien pur les dismes du dit boys en noun de ceste parole Silve cedue par quoi ils ne poeient vendre leur boys a verroie pris a grant damage de eux & de roialme est ordeine & establi qe prohibition en ce cas soit grantee & sur ce attachement come ad este avant ces heures.

STAT. 50 EDW. 3, c. 1.

LIII. STAT. 50 EDWARDI 3, c. 1. A.D. 1376.

"*A Confirmation of the Liberties of the Church.*"

"First, it is ordained and established, that holy church have all her liberties and franchises in quietness, without impeachment or other disturbance."

Primerement est ordeigne & establi qe seinte esglise eit ses libertees & franchises en quiete sanz empeschement ou destourbanse ascune.

(1) *Vide* Stat. 6 & 7 Gul. 4, c. 71. Stat. 1 Vict. c. 69. Stat. 1 & 2 Vict. c. 64. Stat. 2 & 3 Vict. c. 62. Stat. 3 & 4 Vict. c. 15.
(2) Before the enactment of Stat. 45 Edw. 3, c. 3, the claim to the tithe of wood set up by the clergy, was considered to be confined to the wood called *sylva cædua*, and to depend on the question, what sort of wood was properly so called.

That question was necessarily determinable by the nature of the wood, and the state of it when cut,—in other words, by its quality and age. The wood properly so called *sylva cædua*, is what is ordinarily termed coppice wood. That sort of wood grows, for the most part, from roots, and is ordinarily cut down periodically, at regular intervals, usually of seven years; though sometimes it is not felled until after twenty years' growth, and upwards. Hence arose the distinction between *gros bois*, or timber, and *sylva cædua*, or coppice wood; the former being always exempt, by the common law, from tithe, but the latter was always liable to tithe. The various disputes on the subject of the tithe of wood between the church and lay persons, to which this distinction gave rise at a very early period, produced Stat. 45 Edw. 3, c. 3, which was passed to prohibit

the claim of tithe of the wood called *gros bois*, where the great wood felled should be of the growth of twenty years or more, being prosecuted in courts christian, under pretext of its being the wood called *sylva cædua*. *Evans v. George & Rowe*, 12 Price, 125. *Vide etiam, Edwards v. Omellhallum*, March, 65. *Anon.* 1 Roll. 100. *Wray v. Clench*, Moore (Sir F.), 908. *Ram v. Patenson*, Cro. Eliz. 477. *Hawes v. Cornwall*, 1 Lev. 189. *Cornwall v. Haws*, 2 Keb. 90. *Siderf.* 300. *Holliday v. Lee*, Moore (Sir F.), 541.

Oak wood, of more than twenty years' standing, not growing from acorns, but from old stools, which stools belonged originally to trees, that had stood more than twenty years, were held not to be so clearly entitled by Stat. 45 Edw. 3, c. 3, to exemption from tithe, as to make a verdict which subjected them to tithe a wrong verdict. *Ford v. Racster*, 4 M. & S. 130.

The wood intended in this statute, is such, as is fit for the building of houses and ships, and therefore it comprehends oak, elm, ash, and beech. *Pinder v. Spencer*, Noy, 30. *Holliday v. Lee*, Moore (Sir F.), 541.

(3) *Ordained*:—In *Brook v. Rogers*, (Cro. Jac. 100,) the court agreed, that this statute was only in affirmation of the common law.

LIV. STAT. 50 EDWARDI 3, c. 3. A.D. 1376.

STAT. 50 EDW.
3, c. 3.“*The King's Pardon to the People in the year of his Jubilee.*”

“ . . . Except those tenements which be aliened into mortmain.”

LV. STAT. 50 EDWARDI 3, c. 4. A.D. 1376.

STAT. 50 EDW.
3, c. 4.“*No Prohibition shall be allowed after Consultation(1) duly granted.*”

Item est ordine & establi de l'assent avantdit qe par la ou consultation est une foitz duement grauntez sur prohibition faite a juge de seinte esglise qe mesme le juge puisse procedre en la cause par vertue de mesme la consultation non obstante aucun autre prohibition sur ceo a luy baille Purveu toute-foitz qe la mattire en la libeli du dite cause ne soit engrosee enlargee ou par autre manere chaungee.

“Item, it is ordained and established of the said assent, that, *whereas a consultation is once duly granted(2) upon a prohibition(3) made to the judge of the holy church, that the same judge(4) may proceed in the cause by virtue of the same consultation, notwithstanding any other prohibition thereupon to him delivered: provided always, that the matter in the libel of the said cause be not engrossed, enlarged, or otherwise changed(5).*”

Cro. Car. 208.
1 Roll. 378.
2 Roll. 207,
500.
See Stat. of the writ of consultation,
24 Edw. 1.3 Bulstr. 182.
Carthew, 463.
Latch, 6.

(1) Since Stat. 1 Gul. 4, c. 21, the writ of consultation seems to be unnecessary.

(2) *Whereas a consultation is once duly granted*:—On a prohibition for tithes, the defendant showed, that the plaintiff had previously sued in chancery, to stay such proceedings by English bill, and had afterwards brought a prohibition there, upon which a consultation was granted; and that the prohibition then in question, was for the same cause, namely, for matter of discharge; wherefore he prayed a consultation upon this statute, which requireth that consultation being once duly granted, there shall not be another prohibition. But the court held, that this consultation was not duly granted according to the intent of the statute, because the prohibition was not duly grantable there, and so out of the statute; for it was not duly granted upon an English bill. And by the court, the statute is to be intended where the consultation is granted upon examination of the matter, and not for the insufficiency of the proceedings. Whereupon, it was awarded, that the prohibition should stand. *Sibley v. Crawley*, Cro. Eliz. 736.

And in a subsequent case, it was holden by the court of Queen's Bench, that if it be apparent matter, that the consultation was not duly granted, then a new prohibition might be granted. *Tey v. Cox*, 2 Brownl. 35. *Babington's case*, Moore (Sir F.), 917. Gibson's Codex, 1031.

(3) *Upon a prohibition*:—The statute of 50 Edw. 3, c. 4, is intended, where consultation is granted, upon the substance of the suggestion being proved to be insufficient in verdict, or nonsuit after evidence; and not where it is granted for the insufficiency of the form of the suggestion, or in the proceedings thereupon. *Stroud v. Hoskins*, Cro. Car. 208. Jones (Sir William), 231. Which doctrine had been also laid down before, (*Brigham*

v. Robson, 2 Keb. 719,) in the court of Queen's Bench, viz. that, when a consultation is granted upon any fault of the prohibition in form by misprision of the clerk, or by mispleading of any statute; in that, or such like, a new prohibition may be granted upon the same libel: but if consultation be granted upon the right of the thing in question, there a new prohibition shall not be granted upon the same libel. Vide etiam *Dorwood v. Brikinden*, 2 Brownl. 26. *Anon.* 2 Vent. 47.

(4) *The same judge*:—It was observed by Noy, in *Bowry v. Wallington*, (Poph. 159; Palm. 418,) that though in the printed books, and also in the extract of the statute in the time of Richard 2, and in one roll remaining in the Tower, it is the same judge, yet, in the Parliament Roll itself, it is not *eidem judici*, but only *judici ecclesiastico*; which appeared to be so, upon view of the Parliament Roll in court; and he added, that if it were, as in the printed books and extracts, *eidem judici*, it should not be intended the same *personal* judge, but the same *judge of consuance* of the same jurisdiction or cause, so as no new prohibition shall be grantable, after consultation, though the bishop or archdeacon constitute a *new judge*, or the party appeal from an inferior to a superior court. *Biggs' case*, 3 Bulstr. 182. Sed vide *Davy v. Cockcam*, 2 Roll. 500.

(5) *Changed*:—In the case of Dame Denton and the Countess of Clanricard, (Gibson's Codex, 1031,) where the first libel was, that tithes had been paid time out of mind; and the second, that they had been paid for twenty, thirty, or forty years, and time out of mind. This was adjudged a change of the libel, as laying the foundation of a new title, different from the former, and the whole court said, that if they proceeded upon that addition, they would grant the prohibition.

STAT. 50 EDW.
3, c. 5.

LVI. STAT. 50 EDWARDI 3, c. 5(1). A.D. 1376.

"None shall arrest Priests or Clerks doing Divine Service."

Enforced by
1 Rich. 2, c. 15,
which inflicts
penalty on
offenders.

See 1 Mar.
Sess. 2, c. 3,
for the penalty
of molesting
priests during
service.

"*Item, because that* (2) complaint is made to our lord the king by the clergy of his said realm of England, that as well divers priests bearing the sweet body of our Lord Jesus Christ to sick people, and their clerks with them, as otherwise divers other persons of holy church, *whiles they attend* (3) to divine services in churches, churchyards, and other places dedicated to God, be sundry times taken and arrested by authority royal, and commandment of other temporal lords, in offence of God, and of the *liberties of holy church* (4), and also in disturbance of divine services aforesaid, the same our lord the king, who would be sore displeased if any did in such manner, will and granteth, and defendeth *upon his grievous forfeiture* (5), that none do the same from henceforth, so that collusion or feigned cause be not found in any of the said persons of holy church in this behalf."

Item pur ceo qe plainte est faite a nostre seigneur le roi par le clergie de son dit roialme dEngleterre qe sibien diverses prestres portantz le corps nostre Seignur Jesu Christ as malades & leur clerks ovesqe eux come autrement plusours autres persones de seinte esglise tant come ils entendent as divines services es esglises cimitoires & autres lieux dediez a Dieu sont plusours foitz pris & arrestuz par auctorite roiale & commandement des autres seignours temporeles en offence de Dieu & de libertee de sa seinte esglise & auxint destourbanche des divines services avantditz mesme nostre seigneur le roi a qi meult despleroit si nully le fist en tiel manere voet & grante & auxint defende sur sa grevouise forfaiture qe nully le face desoremes issint qe collusion ou cause feyne ne soit trove en aucun des ditz parsones de seinte esglise en celle partie.

(1) This statute has been repealed by Stat. 9 Geo. 4, c. 31, but it has been printed, in order to illustrate the ancient privileges of the clergy.

(2) *Item, because that*:—The record of the clergy's petition, and the king's answer, differs, as it appears upon the Parliamentary Roll, in some particulars, from the printed statute: "*Item supplicat dictus clerus, quatenus dignetur regia celsitudo in præsenti parlamento statuere, ne quivis clericus, ecclesiasticæ persona, dum sacris ministeriis et divinis officiis occupatur, pro transgressione qualibet, licet gravi, in ecclesia, vel ejus cœmeterio, aut locis aliis Deo dedicatis, capiatur per ballivos, et alios ministros regios, seu aliorum dominorum temporalium, seu aliorum, arrestetur: ne ex hoc divinum turbetur officium, vel inceptum contingat forsitan intermitteri. Idem, ecclesia statuatur de presbytero, ad infirmum de eucharistia deferente, ac etiam ipsum clerico, si quem habeat secum, cor . . .*"

The king's answer, "*Le roi le voet, &c.*" The king willet it, and granteth it in such manner, that no man keep himself in sanctuary by fraud.

This record seems to account for a seeming mistake in *Pit v. Webby*, (2 Bulstr. 72,) where it is supposed, that Stat. 50 Edw. 3,

c. 5, Stat. 1 Rich. 2, c. 15, Stat. 23 Hen. 8, c. 9, forbad arrests of laymen as well as clergymen, if attending divine service, arising from the words, "*divers other persons of holy church, while they attend to divine services,*" but the record shows, that, however dubiously such language may be expressed in the printed statute, ecclesiastical persons were only included.

(3) *Whiles they attend*:—Lord Coke states, (12 Co. 100,) that he saw a "*report*" in the time of Queen Mary, where it was held, "*that eundo, redeundo, et morando, for to celebrate divine service, the priest ought not to be arrested, nor any one who aids him in it.*"

(4) *Liberties of holy church*:—From hence it is concluded by my Lord Coke, (Ibid.,) upon the authority of the foregoing report, that this statute, and Stat. 1 Rich. 2, c. 15, give no *new* privileges to the clergy, but are only an affirmation of the common law.

(5) *Upon his grievous forfeiture*:—The above-cited "*report*" declares, that the party grieved may have an action upon this statute, because "*when anything is prohibited by an act, although that the act doth not give an action, yet action lieth upon it.*"

STATUTA RICHARDI II.

A.D. 1377—1399.

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I. STAT. 1 RICHARDI 2, c. 1. A.D. 1377.

STAT. 1 RICH.
2, c. 1.*"A Confirmation (1) of the Liberties of the Church, and of all Statutes not repealed."*

II. STAT. 1 RICHARDI 2, c. 3(2). A.D. 1377.

STAT. 1 RICH.
2, c. 3.*"Prelates shall have their Action of Trespass against Purveyors offending."*

III. STAT. 1 RICHARDI 2, c. 13(3). A.D. 1377.

STAT. 1 RICH.
2, c. 13.*"Ecclesiastical Judges shall not be vexed for Suits for Tithes in a Spiritual Court."*

Item les prelatz & le clergie de dit roialme se pleignent grandement de ce que les gentz de seint eglise pursuaintz en court christiene pur lour dismes & autres choses quele de droit deyvent & de aunciene soleient appartenere a mesme la court christiene & les juges de seint eglise conissantz en tiels causes & autres persones soy en entremettantz solonc la leye sont maliciousment & nonduement par celle cause enditez enprisonnez & par seculer poair orriblement oppressez & auxint efforcez ove violence par sermentz & grevous obligations & moutz dautres maners non duement compulsez a desister & cesser outrement es choses desusdites encontre les libertees & franchises de seint eglise par quoy est assentuz que touz tielx obligations faitz ou affaires par durece & violence ne soient jammes dascun value. Et quant a ceux qi procurent par malice teux enditementz & destre mesmes des enditours apres ceo que les enditez ent

"Item, the prelates and clergy of this realm do greatly complain them, for that the people of holy church, pursuing in the spiritual court for their tithes, and their other things, which of right ought, and of old times were wont, to pertain to the same spiritual court, and that the judges of holy church, having cognizance in such cases, and other persons thereof meddling according to the law, be maliciously and unduly for this cause indicted, imprisoned, and by secular power horribly oppressed, and also enforced with violence by oaths and grievous obligations, and many other means unduly compelled to desist and cease utterly of the things aforesaid, against the liberties and franchises of holy church. Wherefore it is assented, that all such obligations made or to be made by duress or violence, shall be of no value. And as to those that by malice do procure such indictments, and to be the same indictors, after the same in-

2 Inst. 489.

The penalty of those which do procure such indictments.

(1) *Vide etiam*, Stat. 2 Rich. 2, St. II. c. 1. Stat. 3 Rich. 2, c. 1. Stat. 5 Rich. 2, St. I. c. 1. Stat. 6 Rich. 2, St. I. c. 1. Stat. 7 Rich. 2, c. 1. Stat. 8 Rich. 2, c. 1. Stat. 12 Rich. 2, c. 1.

(2) Expired.

(3) *Vide* Stephens on Nisi Prius, tit. TITHES. Stephens on Clerical Law, tit. TITHES.

STAT. 1 RICH.
2, c. 13.

dictées be so acquit, such procurours shall have and incur the same pain that is contained in the Statute of Westminster the Second, of those which procure false appeals to be made. And the justices of assises, or other justices, before whom such indictées shall be acquit, shall have power to inquire of such procurours and indictors, and duly to punish them according to their desert."

sont aquitez eient & encourgent tieux procurours & enditours mesme la peyne qest contenue en lestatut de Westm' seconde de ceux qi procurent faux apelles estrefaitz. Et eient les justices des assises ou autres justices devant queux tieux enditez serront aquitez poiair denquerre de tieux procurours & enditours & de les punir duement chescun solonc son desert.

STAT. 1 RICH.
2, c. 14.

IV. STAT. 1 RICHARDI 2, c. 14(1). A.D. 1377.

"In an Action of Goods taken away, the Defendant maketh title for Tithes due to the Church."

20 Edw. 4,
3 (b).

"Item, it is accorded, that at what time that any person of the holy church be drawn in plea in the secular court for his own tithes taken, by the name of goods taken away, and he which is so drawn in plea maketh an exception, or alledgeth, that the substance and suit of the business is only upon tithes due of right and of possession to his church, or to another his benefice, that in such case the general averment shall not be taken without shewing specially how the same was his lay-chattel."

Item est assentuz qe a quel heuré qe aucun persone de seinte eglise soit treet en plee en court seculer pur ses propres dismes prisez par noun des biens enportez & celui qe ensi ent est treet en plee face exception ou allegge qe la substance & source de la bossoigne soit soulement sur dismes duez de droit & possession de sa eglise ou a autre son benefice qe en tieu cas general averement ne soit jammes pris sanz monstrier matier especial coment ceo fuist lay chatell.

STAT. 1 RICH.
2, c. 15.

V. STAT. 1 RICHARDI 2, c. 15(2). A.D. 1377.

"The Penalty for arresting of Priests during Divine Service."

STAT. 2 RICH.
2, St. I. c. 5.

VI. STAT. 2 RICHARDI 2, St. I. c. 5(3). A.D. 1378.

"The Penalty for telling slanderous Lies of the great Men of the Realm."

12 Co. 134.
2 Inst. 227.
Vaughan, 139.
Palmer, 565.

"Item, of devisors of false news and of horrible and false lyes, of prelates, dukes, earls, barons, and other nobles and great men of the realm, and also of the chancellor, treasurer, clerk of the privy seal, steward of the king's house, justices of the one bench or of the other, and of other great officers of the realm, of things which by the said prelates, lords, nobles, and officers aforesaid, were never spoken, done, nor thought, in great slander of the said prelates, lords, nobles, and officers, whereby debates and discords might arise betwixt the said lords, or between the lords and the commons (which God forbid), and whereof great peril and mischief might come to all the realm, and quick sub-

Item de controvorsours de faux novel & countours des horribles & fauxes men-songes des prelatz dues countes barons & autres nobles & grantz de roialme & auxint del chaunceller tresorer clerk de prive seal seneschal del hostel nostre seigneur le roi justices del un bank & del autre & dautres grantz officers du roialme des choses qe par les ditz prelatz seignurs & officers ne furent unques parlez touchez ou pensez en grant esclandre des prelatz seignurs nobles & officers avantditz par ont debatz & discordes purroient sourdre parentre les ditz seignurs ou parentre les seignurs & communes qe Dieu ne veulle & dont grant peril & meschief purroit avenir a tout le roialme & legerement subversion

(1) *Vide* Stephens on Nisi Prius, 2612-2616, tit. TITHES. Stephens on Clerical Law, tit. TITHES.

(2) Repealed by Stat. 9 Geo. 4, c. 31

(3) *Vide* Stephens on Nisi Prius, 2219-2264, tit. LIBEL; *Ibid.* 2550-2582 tit. SLANDER. Stat. 6 & 7 Vict. c. 96.

& destruction del roialme avantdit si due remede ny fuisse mys est defenduz estreitement & sur grief peine pur eschuer les damages & perils avantditz qe desore nul soit si hardi de controver dire ou counter aucune fauxe nouvelle mensonge ou autre tiel fauxe chose des prelatz seignurs & les autres desusditz dont descord ou esclaundre aucune puisse soudre deinz mesme le roialme & qi le fra eit & encourage la paine autrefoitz ent ordenez par estatut de Westm' primer qe voet qil soit pris & emprisonnez jeques a tant qil eit trovez celluy dont la parole serra muevez.

version and destruction of the said realm, if due remedy be not provided: it is straightly defended upon grievous pain, for to eschew the said damages and perils, that from henceforth none be so hardy to devise, speak, or to tell any false news, lyes, or other such false things, of prelates, lords, and of other aforesaid, whereof discord or any slander might rise within the same realm; and he that doth the same shall incur and have the pain another time ordained thereof by the Statute of Westminster the First, which will, that he be taken and imprisoned till he have found him of whom the word was moved."

STAT. 2 RICH.
2, St. I. c. 5.

3 Bulst. 235.
1 Leon. 287.
Dyer, 155.
4 Co. 12.
Kel. 26.
Cro. Eliz. 1.
Cro. Car. 135.
Jones, 194.
Rast. 393.
3 Edw. 1, c. 34.
Enforced by
12 Rich. 2,
c. 11.
Confirmed and
extended by
1 & 2 Phil. &
Mar. c. 3, and
1 Eliz. c. 6.

VII. STAT. 2 RICHARDI 2, St. I. c. 7. A.D. 1378.

"Urban was duly chosen Pope, and so ought to be accepted and obeyed."

STAT. 2 RICH.
2, St. I. c. 7.

VIII. STAT. 3 RICHARDI 2, c. 3. A.D. 1379.

"None shall take any Benefice of an Alien, or convey Money to him."

STAT. 3 RICH.
2, c. 3.

Item pur ce qe le roi nostre seigneur ad entenduz sibien par les pleintes de sez foialx liges & par le clamour de son peuple par leurs diverses petitions ent baillez avent en diverses parlementz devant ceste heure come autrement par la notoritee de la chose & experience de fait coment les esglises cathedralx collegialx abbeies priories & autres benefices de son roialme qe furent jadis founduz & richement doweiz par ses nobles progenitours en les quelles diverses dignities offices parsonies chanonries prebendes & autres benefices estoient solempnement & devoutement ordeinez & establiz del assent des ditz progenitours le roi & dautres leurs nobles fondours qi donerent as pastours de mesmes les esglises abbeies priories & dautres grantz lieuz avantditz ladvouons de mesmes les benefices al entente qe mesmes les benefices serroient donez as persones honestes & covenables du dit roialme pur Dieu servir & honurer pluis diligement & auxint pur hospitalitee tenir & pur enformer & enseigner le peuple & faire les autres nobles choses appartenantz a la cure des almes selonc lestat & qualitee des ditz benefices & ensi estoit faite de tout temps passe puis la fundation dycelle tanqe a un poie de temps passe qe parmy les informations instigations & procurement dascuns des liges nostre dit seigneur le roi mesmes les benefices aient este donez encontre la volente des foundours as

"Item, because that our lord the king hath perceived, as well by the complaints of his faithful liege people, and by their clamour by divers petitions thereof delivered in divers parliaments before this time, as otherwise by the perfect knowledge and experience of the deed, how the churches, cathedral and collegial, abbeys and priories and other benefices of his realm, which were late founden, and richly endowed by his noble progenitors, in which divers dignities, offices, personages, chanonries, prebends, and other benefices, were solemnly and devoutly ordained and established of the assent of the foresaid progenitors of the king, and of other their noble founders, which did give to the said pastors of the same churches, abbeys, priories, and of other great places, the advowsons of the same benefices, to the intent that the same benefices should be given to honest and meet persons of the realm, to serve and honour God diligently, and also to keep hospitality, and to inform and teach the people, and to do other worthy things pertaining to the cure of souls, after the estate and quality of the said benefices. And so was it done in all times past after the foundation of the same, till now of late, that by the informations, instigations and procurements of some of the king's liege people, the same benefices have been given, against the will of the founders, to divers people of another

4 Inst. 51, f. 5.
Enforced by
7 Rich. 2, c. 12,
and farther by
16 Rich. 2, c. 5.

The causes why advowsons of benefices were given to spiritual persons.

The inconveniencies which have ensued by giving of benefices to aliens.

STAT. 3 RICH.
2, c. 3.

language, and of strange lands and nations, and sometime to the utter enemies of the king and of his realm, which never made residence in the same, nor cannot, may not, nor will not in such wise bear and perform the charges of the same benefices, as in hearing confessions, preaching, nor teaching the people, keeping hospitality, nor accomplishing the other things necessary to the governance of the same benefices, but only thereof have and take the emoluments and temporal profits, not having regard to the spiritual cure, nor to other charges to the same benefices pertaining or belonging, but manifestly suffer the noble buildings in old times there made, when the same benefices were occupied by Englishmen, wholly to fall to decay, whereby the divine service is greatly diminished, the cure of souls neglected and left, the clergy enfeebled, the treasure of the said realm carried to the hands of aliens, and all the estate of holy church brought to less reverence than before it was wont to be. And though that in the time of the said grandfather, certain ordinances, statutes, and compositions were made and affirmed, wholly to put out, or at least to restrain the said mischiefs in this behalf; nevertheless the said aliens, not having regard to the same, do not refrain to take and receive such benefices within the said realm, but by the comfort, aid, and great succour which they have had of the king's liege people, that be their fermors, procurators, and attornies in this behalf and in every part of the said realm, do enforce themselves from day to day more and more to accept the greatest dignities and benefices within the said realm, and by divers cautelous manners, much prejudicial to the same realm if that was suffered, whereby the said mischiefs do daily increase, and much more will increase, if due remedy be not the sooner provided.

None shall take in ferm any benefices of the church of an alien without the king's licence.

"II. Our lord the king, by the advice and common assent of all the lords temporal being in this parliament, hath ordained and established, that none of the king's liege people, nor other person, of whatsoever estate or condition that he be, shall not take nor receive within the same realm of England, procuracy, letter of attorney, nor ferm, nor other administration by indenture, nor in any other

plusours diverses persones d'autrui lange & destranges terres & nations & a la foitz as vrais enemys du roi & de son roialme les queux ne fesoient unques residence en ycelles ne ne scievent ne poient ne veulent nullement porter ne faire les charges des ditz benefices come en oier les confessions prescher ne enseigner le poeple hospitalitee tenir ne accomplir les autres choses necessaires au gouvernement de mesmes les benefices Mais soulement querent & preignent les emolumentz & temporeles profitz nient eiantz regard a la cure espiritele ne as autres charges de mesmes les benefices appurtenantz ou incumbentz einz soeffrent notoirement les nobles edifices aucienement fait illoques quant mesmes les benefices estoient occupiez par les Engleis de tout cheier a ruyne par ont le divin service est tresgrantement diminue la cure des almes negligee & lessee & le clerge enfeblez le tresor du dit roialme emportez as mains des aliens & tout lestate de seinte eglise mesnez a meindre reverence qe devant ne soleit estre & coment qe en temps le dit aiel certains ordinances estatutz & compositions y feussent faitz & affermez pur ouster de tout ou a meins pur restreindre les ditz meschiefs en partie nientmeins les ditz aliens nient eiantz regard a cella ne se abstiegnent mye de prendre & recevoir tieux benefices deinz le dit roialme einz par my le confort eide & grant socour qils ont des liges nostre dit seigneur le roi qi sont lour fermers procurateurs & attornes en ycelle partie en chescun partie del dit roialme safforent de jour en autre puis & puis de accepter & avoir les greindres dignites & benefices deinz le roialme avantdite & par diverse manere molt prejudiciele a mesme le roialme si ceo fuist soefferte paront les ditz meschiefs en crescent de jour en autre molt outrageusement & puis en cresceront si due remede ne soit purveuz les puis en haste.

Nostre seigneur le roi par ladvis & commune assent de touz les seignurs temporels estantz en ce parlement ad ordeinez & establiz qe nul homme des liges le roi nautre persone quelconque de quel estat ou condition qil soit ne preigne ne receive deinz le roialme dEngleterre procuracie lettre dattourne ne ferme nautre administration par endenture ne en autre manere quelconque de nul per-

sone du monde dascun benefice deinz le dit roialme forsque tantoulement des liges de nostre seigneur le roi de mesme le roialme sans especial & expresse congie de nostre dit seigneur le roi par ladvis de son conseil. Et si ascuns devant cest heure eient acceptez dascuns aliens tielx procuracies fermes ou administration qils les lessent oultrement deinz xl. jours apres la publication de ceste ordinance. Et qe nul des ditz liges nautre qe purra estre treuve en dit roialme nenvoie par vertue de tiele procuracie ferme ou administration ore argent nautre tresor ne commodite hors du dit roialme par lettere deschange par merchandie nen autre manere quelconque au profit des ditz aliens sanz semblable congie du roi par ladvis de son dit conseil. E si ascun face le contraire en ascun point contenuz en cest ordinance encourge la peine & punissement contenuz en lestatut des provisours fait en temps le dit aiel lan de son regne xxvii^{me} par mesme le proces compris en dit estatut & par garnissement affaire a eux en leurs benefices ou autres leurs possessions deinz le roialme & sils soient pardehors le dit roialme & naient benefices ne possessions deinz mesme le roialme ou ils purront estre garniz adonques soit brief fait en la Chancellerie fondez sur ceste ordinance as viscontz de Londres ou al viscont del contee en quel ils furent ou serront neez a la suite le roi retournable en lun bank ou en lautre par quel brief soit comande proclamation estre fait overtement qils soient devant les justices en le bank ou le brief est retournable a certain jour compris en mesme le brief contenant l'espace de demy an pur respondre sur les matieres compris en le dit brief & cel brief retournez delors procedent les justices envers eux selonc la fourme desus ordeine. Et est defenduz depar le roi en dit parlement del assent avantdit qe nul evesque nautre persone de seint eglise par my le roialme ne se medle par voie de sequestration nen autre manere quelconque des frutz de tieux benefices donez ou adoners as ditz aliens au profit de mesmes les aliens sur le peril qappent. Et pur ce vous mandons qe les ditz estatutz facez duement proclamer & publier es lieux notables deinz vestre baillie & les fermement tenir & garder selonc a la fourme dicelles. Don' par tesmoignance de nostre grant seal a Westm' le

manner whatsoever, of any person of the world, of any benefice within the said realm, but only of the king's liege people of the same realm, without the special grace and express licence of our lord the king, by the advice of his council. And if any before this time have accepted of any aliens such procuracies, farms, or administration, that they shall utterly leave them within forty days after publication of this ordinance. And that none of the said liege people, nor other that may be found in the said realm, shall convey by virtue of such procuracy, ferm, or administration, gold, silver, nor other treasure nor commodity out of the said realm, by letter of exchange, by merchandise, nor in other manner, to the profit of the said aliens, without like licence of the king by the advice of his said council; and if any do the contrary in any point contained in this ordinance, he shall incur the pain and punishment contained in the statute of provisors, made in the time of the king's grandfather, the seven and twentieth year of his reign, by the same process comprised in the said statute, and by warning to be made to them in their benefices, or other their possessions within the realm; and if they be out of the said realm, and not beneficed, not having possession within the same realm where they may be warned, then a writ shall be made in the Chancery grounded upon this ordinance to the sheriff of London, or to the sheriff of the county in which they were or shall be born, at the king's suit, returnable in the one bench or the other; by which writ it shall be commanded, that proclamation be made openly, that they appear before the justices in the bench where the writ is returnable at a certain day comprised in the same writ, containing the space of half a year, to answer upon the matters comprised in the said writ, and after this writ returned, the justices shall proceed against them according to the form above ordained. And it is forbidden by the king in the same parliament, by the assent aforesaid, that no bishop, nor other person of holy church through the realm, shall meddle by way of sequestration, nor in any other manner, with the fruits of such benefices given or to be given to the said aliens, to the profit of the same aliens, upon the peril that belongeth. Dated, &c."

STAT. 3 RICH.
2, c. 3.

None shall convey money out of the realm for such ferm.

27 Edw. 3, de provisoribus.

Process awarded against offenders that are out of the realm.

None shall meddle by sequestration, nor in other manner, with a benefice given to an alien.

Confirmed by
1 Hen. 5, c. 7.

STAT. 3 RICH. It is said in the *Old Abridgement*, that xii. jour de Marz lan de nostre regne
2, c. 3. the lords spiritual did not assent to this tierce.
statute.

STAT. 4 RICH.
2, c. 2.

IX. STAT. 4 RICHARDI 2, c. 2(1). A.D. 1380.

"The King's Pardon of Escapes and Felons, and Clerks Convict."

STAT. 5 RICH.
2, St. II. c. 5.

X. STAT. 5 RICHARDI 2, St. II. c. 5(2). A.D. 1382.

*"Sheriffs commissioned to apprehend Preachers of Heresy, and their Abettors.
The Enormities ensuing the Preaching of Heresies."*

STAT. 7 RICH.
2, c. 12.

XI. STAT. 7 RICHARDI 2, c. 12. A.D. 1383.

"No Alien shall purchase or occupy any Benefice of the Church within this Realm."

27 Edw. 3, de
provisoribus.

"Item, whereas late in the parliament holden at Westminster, the third year of the reign of our said lord the king, at the request of the commons, and by the assent of the lords temporal, it was ordained and assented, and upon a grievous pain prohibited, that no subject of the king nor other person, of what estate or condition he were, should take, neither receive from thenceforth, within the realm of England, procuracy, letter of attorney, ne ferm, nor any other administration by indenture, or in any other manner, of any person concerning any benefice of holy church within the realm, but only of the king's subjects of the same realm, without the especial grace and express licence of our said lord the king, upon a certain pain contained in the said statute; it is assented and agreed by the same lords, that the same statute shall keep his force and effect in all points. And moreover it is assented, that if any alien have purchased, or from henceforth *shall purchase any benefice* (3) of holy church, dignity, or other thing, and in his proper person take possession of the same, or occupy it himself within the realm, whether it be to his own proper use, or to the use of another, without especial licence of the king, he shall be comprised within the same statute; and moreover shall incur all pains and forfeitures in all points as is before ordained by another statute made in the five and twentieth year of the noble king Edward the Third, grandfather to our lord the king that now is, against them that purchase provisions of

Item come nadgairs en parlement tenuz a Westm' lan du regne nostre dit seigneur le roi tierce a la requeste des communes & par assent des seignurs temporels estoit ordeigne & assentuz & sur grevouse peyne defenduz qe null liege de roi nautre persone quelconque de quel estat ou condition qil fuist prendroit ne reseivroit delors enavant deinz le roialme dEngleterre procuracie lettre dattourne ne ferme nautre administration par endenture nautre manere quelconque de nulle persone dascun benefice de seinte esglise deinz le dit roialme fors tantsoulement des lieges nostre seigneur le roi de mesme le roialme sanz especiale grace & expresse congie de nostre seigneur le roi sur certaine peine comprise en lestatut avantdit assentuz est ore & accordez par mesmes les seignurs qe mesme lestatut teigne ses force & vertue en toutz pointz. Et outre ceo est auxint assentuz qe si ascun alien eit purchacez ou desore purchase ascun benefice de seinte esglise dignite ou autre et en propre persone preigne possession dicelle ou loccupie de fait deinz mesme le roialme soit il a son oeps propre ou al oeps dautri sanz especiale congie du roi soit il compris en mesme lestatut & outre ceo encourage en toutz pointz tielz peines & forfaiture come sont ordeinez par un autre estatut fait en lan xxv. del regne luy noble roi E. aiel nostre seigneur le roi qore est contre ceux qi purchacent provisions dabbies ou priories. Et en outre au fyn qe tielx licences ne se facent desore enavant le roi voet & commande a toutz ses

A confirmation
of the statute
of 3 Rich. 2,
c. 3.

25 Edw. 3,
St. V. c. 22.

(1) Expired.

(2) Repealed by Stat. 1 Edw. 6, c. 12.

(3) *Shall purchase any benefice* :—Upon consideration of the statutes of 3 Rich. 2, and

1 Hen. 5, it was resolved, that if any alien, or stranger born, be presented to a benefice, the bishop ought not to admit him, but may lawfully refuse him. Gibson's Codex, 81.

lieges & autres qils lour abstiegnent de cy enavant de luy prier dascuns tiels licences doner. Et si voet auxi le roi luy mesmes abstiegnere de doner ascune tiele licence durantes les guerres horspris au Cardinal de Naples ou a autre especiale persone a qi le roi soit par especiale cause tenez.

abbeys or priories. And to the intent that such licences shall not be henceforth made, the king willet and commandeth to all his subjects and other, that they shall abstain from henceforth to pray him for any such licence to be given. And also the king himself will refrain to give any such licence during the wars, except to the Cardinal of Naples, or to some other special person to whom the king is beholden for a special cause."

STAT. 7 RICH. 2, c. 12.

The Cardinal of Naples excepted. Enforced by 16 Rich. 2, c. 5. And see 5 Eliz. c. 1.

XII. STAT. 9 RICHARDI 2, c. 4(1). A.D. 1385.

"Whether a Prior be dative and removeable, or perpetual(2), the Trial shall be by the Ordinary."

STAT. 9 RICH. 2, c. 4.

XIII. STAT. 9 RICHARDI 2, c. 5(3). A.D. 1385.

"The Fees of Priests taken in the Marshalsea of the King's House."

STAT. 9 RICH. 2, c. 5.

XIV. STAT. 11 RICHARDI 2, c. 1(4). A.D. 1387.

"The Archbishop of York and others attainted of High Treason."

STAT. 11 RICH. 2, c. 1.

"... Also we have received [another] petition delivered to us in the same parliament by the same commons, in the form following:

"Item, that the appeals, pursuits, accusations, process, judgments, and executions, made and given in this present parliament, or approved, affirmed, and established as a thing duly made for weal and profit of the king our sovereign lord, and of all the realm, notwithstanding(5) that the lords spiritual(6) and their

(1) Obsolete.

(2) There were two sorts of priors, *conventual* and *claustral*: the first are mentioned in the two Constitutions of Othobon, (*Ad hæc*, and *Statuimus Insuper*;) and are there called "*priores, proprios abbates non habentes*;" and by Lyndwood, (*v. Prioris*), *qui æquipollent abbati*, as being chosen by the convent, and the chief governors therein. Of this sort, were the cathedral priors, and most of those of the order of St. Austin. The second are, in the Constitution of Othobon, c. *De Infirmis*, called "*prior claustralis*," who, under the abbot, and in his absence, had the chief care of the house, and were removeable at the will of the abbot.

Besides which, there were a third sort, termed Priors, namely, they who presided over cells subordinate to some great abbey, and who were placed and displaced at the pleasure of the abbot sovereign. Of this number were the *priorities alien*, which were convents erected by foreign monasteries, in places where they had manors or tithes bestowed on them in England, and by them stocked with monks out of their own houses, who took care of their revenues, and were accountable to them.

(3) Expired.

(4) Vide Stat. 2 Hen. 4, c. 22.

(5) *Notwithstanding*:—Although the archbishop and bishop had declared in their protestation, made at their withdrawing from parliament, that what they did, was only in obedience to the canons, and that they did

not intend, by their absence, to invalidate their proceedings in parliament: ("Ad hæc insuper protestamur, et eorum quilibet protestatur, quod propter hujusmodi absentiam non intendimus, nec volumus, nec eorum aliquis intendit vel vult, quod processus habiti et habendi in presenti parlamento super materiis antedictis, in quibus non possumus nec debemus, ut præmittitur, interesse, quantum ad nos et eorum quemlibet attinet, futuris temporibus, quomodolibet impugnentur, infirmantur, seu etiam revocentur.") It is clear, notwithstanding this protestation, that there was an evident doubt, whether their proceedings were valid, by reason of such absence of the whole state of the clergy; and what was then a doubt, became certain in the 21st of the same reign: "That without the presence and state of the clergy, in person or by proxy, they could not be valid." Gibson's Codex, 126. *Vide etiam* De Lolme on the English Constitution, by Stephens, 124–126.

(6) *Lords spiritual*:—The lords spiritual and clergy who could not, by the canons of the church, be present in cases of life and member, appeared here by proxy; as they were constrained to do, at the petition of the commons, to the end, that the proceedings in parliament might be *valid*; which, without the presence of those who were to represent the state of the clergy, they could not be: as is plainly set forth, (Rot. Parl. 21 Rich. 2,) in the said petition, which is as follows:

"Item, Macredy prochein, &c. Item, on

STAT. 11 RICH. 2, c. 1. procurators did absent them out of the parliament at the time of the said judgments given, for honesty and salvation of their estate, as is contained in a protestation, by the same lords spiritual and procurators, delivered in this present parliament."

STAT. 12 RICH. 2, c. 11.

XV. STAT. 12 RICHARDI 2, c. 11(1). A.D. 1388.

"The Punishment of him that telleth Lies of the Peers or great Officers of the Realm."

2 Inst. 227, 228.
3 Edw. 1, c. 34.
2 Rich. 2, St. I. c. 5.
Dyer, 155, 285.
4 Co. 12.
Kel. 26.

"Item, whereas it is contained as well in the statute of Westminster the first, as in the statute made at Gloucester, the second year of the reign of our lord the king that now is, that none be so hardy to invent, to say, or to tell any false news, lies, or such other false things, of the prelates, dukes, earls, barons, and other nobles and great men of the realm, and also of the chancellor, treasurer, clerk of the privy seal, and steward of king's house, the justice of the one bench or of the other, and other great officers of the realm, and he that doth so shall be taken and imprisoned, till he hath found him of whom the speech shall be moved; it is accorded and agreed in this parliament, that when any such is taken and imprisoned, and cannot find him by whom the speech be moved, as before is said, that he be punished by the advice of the council, notwithstanding the said statutes."

Confirmed and extended by 1 & 2 Phil. & Mar. c. 3.
And farther by 1 Eliz. c. 6.

Item come contenuz soit sibien en lestatut de Westm' primer come en lestatut fait a Glouc' lan du regne nostre seigneur le roi qore est second qe null soit si hardy de controver dire ou conter aucune faux novell mensonge ou autre tiel fauxe chose des prelatz ducs counts barons & autres nobles & grantz du roialme & auxint da chancellor tresorer clerc du prive seal seneschall del hostel nostre seigneur le roi justices de lun bank & de lautre & dautres grantz officers du roialme & qi le fra soit pris & emprisonnes jesques autant qil eit trove celuy dont la parole serra moevee accordez est & assentuz en cest parlement qe qant ascun tiel soit pris & emprisonnez & ne poet trover celuy dont le parole serra moevee come devant eit dit qil soit puniz par advys du conseil nient contreteant les estatutz avantditz.

STAT. 12 RICH. 2, c. 12.

XVI STAT. 12 RICHARDI 2, c. 12(2). A.D. 1388.

"In what cases the Lords and Spiritual Persons shall be contributory to the Expences of the Knights of Parliament."

Tuesday next following, the commons showed to the king, how that, before these times, many judgments and ordinances made in the times of the progenitors of our lord the king in parliament, have been repealed and disannulled, because the *state of the clergy were not present in parliament*, at the making of the said judgments and ordinances; and therefore they prayed the king, that for the safety of his person, and salvation of his kingdom, the prelates and the clergy should make a *proctor*, with sufficient power to consent, in their names, to all things and ordinances to be justified in this parliament: and so, by this, every spiritual lord should speak his advice fully. Whereupon, the said spiritual lords, being severally examined, consented to commit their full power generally to one lay person, and namely, in especial, Sir Thomas Percy, knight, and thereupon delivered a *cedule* to the king, containing their said power, the which our lord the king received, and, the said Tuesday, commanded it to be entered upon record in the Parliament Roll."

Respecting what has been alleged, in opposition to the doctrine which is the plain result of this petition, viz. that *one* parliament sat *excluso clero*, in the time of Edw. 1, and that Keilway's Reports tell us of *one* resolution, that other parliaments may so sit; these, and the like cavils, would have been fully confuted by Bishop Stillington, (Eccl. Cas. 409,) in these few material words: "Our good, ancient, and legal constitution of parliament, may not be changed for the sake of any *single* precedents, and *rare* cases, and *obscure* reports, built upon weak and insufficient reasons."

It may be here observed, that from the language of Stat. 21 Rich. 2, c. 2, & Stat. 21 Rich. 2, c. 12, it seems, that the bishops and clergy voted in parliament by proxy, at the enactment of such statutes.

(1) *Vide* Stephens on Nisi Prius, tit. LIBEL, 2219—2264. Ibid. tit. SLANDER, 2550—2582. Stat. 6 & 7 Vict. c. 96.

(2) Obsolete; *sed vide* 1 Stephens on Parliamentary Elections, 296—309.

XVII. STAT. 12 RICHARDI 2, c. 15. A.D. 1368.

STAT. 12 RICH.
2, c. 15.

"He that will go out of the Realm to provide a Benefice within the Realm, shall be out of the King's Protection, and the Benefice shall be void."

"Item, that no liege man of the king, of what estate or condition that he be, great or little, shall pass over the sea, nor send out of the realm of England, by license nor without license, without special leave of the king himself, to provide or purchase for him benefice of holy church, with cure or without cure in the said realm, and if any do, and by virtue of such provision, accept by him, or by any other, any benefice of the same realm, that at that time the same provisor shall be out of the king's protection, and the same benefice void, so that it shall be lawful to the patron of the same benefice, as well spiritual as temporal, to present to the same an able clerk at his pleasure(1)."

XVIII. STAT. 13 RICHARDI 2, c. 1. A.D. 1380.

STAT. 13 RICH.
2, c. 1.

"The King's Presentee shall not be received to a Church full of an Incumbent, until he hath recovered it by Law."

En primes come ordeine soit par estatut fait lan du regne del aiel nostre seigneur le roy vint & quint qe a quelle heure qe le roy ferra collation ou presentement a null benefice en autre droit qe le tittle sur quoi il se fendra soit bien examine qil soit vrai & a quelle heure qe avant juggment rendu le tittle soit trove par bone enformation nient vray ne joust soit la collation ou presentement ent fait repellez & nient contrestant le dit estatut ascuns presenteez du roy par favour des ordinairs sont institutz & inductz en benefices de seinte esglise sanz due processe les parties nient garniz ne appelez & ascun foitz par enquestes meyns vrais favorablement pris & les incumbenz en tiele manere oustez ordeinez est & assentuz qe le dit estatut soit fermement tenuz & gardez. Et enoutre nostre seigneur le roy al reverence de Dieu & de seinte esglise voet & grante qe sil presente a ascun benefice qe soit plein dascun incumbent qe le presente du roy ne soit receu par lordinair a tiel benefice tanqe le roy eit recovere son presentement par proces du ley en sa court demesne & si ascun presente du roy soit autrement receu & lincumbent ouste sanz due proces come desuis est dit comence le dit incumbent sa suite deinz un an apres linduction du presente du roy a plustard.

"First, whereas it is ordained by a statute made the xxv. year of the reign of King Edward, the grandfather of our lord the king that now is, that at what time that the king shall make collation or presentment to any benefice in another's right, that the title upon which he groundeth himself shall be well examined that it be true; and at what time before judgment given the title be found by good information untrue, and not just, the collation or presentment thereupon made shall be repealed: and notwithstanding the same statute, some of the king's presentees, by favour of the ordinaries, be instituted and inducted in benefices of holy church without due process, the parties not warned nor called, and sometime taken by false inquests favourably, and the incumbents in such manner put out; it is ordained and assented, that the said statute be firmly holden and kept. And moreover our lord the king, for the reverence of God and holy church, doth will and grant, that if he present to any benefice that is full of any incumbent, that the presentee of the king shall not be received by the ordinary to the benefice till the king hath recovered his presentment by process of the law in his own court: and if any presentee of the king be otherwise received, and the incumbent put out without due process, as afore is said, the said incumbent shall begin his suit within a year after the induction of the king's presentee, at the least."

1 Mod. 279.
The statute of 25 Edw. 3, St. III. c. 3, confirmed, touching the examination of the king's title to a benefice when he presenteth in another's right.

4 Inst. 51, f. 3.

2 Hen. 4, f. 17.
8 Hen. 4, f. 21.
14 Hen. 7, f. 25.
25 Edw. 3, St. III. c. 3, and St. III. c. 7.
Enforced by 4 Hen. 4, c. 22.

(1) *Vide post.* 84, Stat. 13 Rich. 2, St. II. c. 2.

STAT. 13 RICH.
2, ST. II. c. 2.

XIX. STAT. 13 RICHARDI 2, ST. II. c. 2. A.D. 1389.

"A Confirmation (1) of the Statute of Provisors, made anno 25 Edw. 3, St. VI. and the Forfeiture of him that accepteth a Benefice contrary to that Statute."

1 Roll. 10, 92.

"Item, whereas the noble King Edward, grandfather to our lord the king that now is, at his parliament holden at Westminster, at the utas of the Purification of our Lady, the five-and-twentieth year of his reign, caused to be rehearsed the statute made at Carlisle in the time of King Edward, son of King Henry, touching the estate of the holy church of England; the said grandfather of the king that now is, by the assent of the great men of his realm, being in the same parliament, holden the said five-and-twentieth year, to the honour of God and of holy church, and of all his realm, did ordain and establish, that the free elections of archbishopricks, bishopricks, and all other dignities and benefices elective in England, should hold from thenceforth in the manner as they were granted by his progenitors, and by the ancestors of other lords founders: and that all prelates and other people of holy church, which had advowsons of any benefices of the gift of the king, or of his progenitors, or of other lords and donors, should freely have their collations and presentments; and thereupon a certain punishment was ordained in the same statute for them which accept any benefice or dignity contrary to the said statute made at Westminster the said twenty-fifth year, as afore is said; which statute our lord the king hath caused to be recited in this present parliament at the request of his commons in the same parliament, the tenor whereof is such as hereafter followeth: Whereas late in the parliament of good memory of Edward, king of England, &c. [*rehearsing the whole statute made the said twenty-fifth year*]. And then thus: Our lord the king that now is, of the assent of the great men of his realm, being in this present parlia-

Item come le noble Roi Edward aiel nostre seigneur le roi qor est a son parlement tenuz a Westm' al oetaves del Purification nostre Dame lan de son regne vynt & quynt fist reciter lestatut fait a Kardoile en temps son aiel le Roi Edward fitz au Roi Henr' touchant lestat de seint esglise d'Engleterre le dit aiel nostre seigneur le roi qore est del assent des grantz de son roialme en mesme le parlement tenuz le dit an vynt & quynt esteantz al honour le Dieu & de seint esglise & de tout son roialme ordeigna & establisset franks elections des archeveschies eveschies & touz outres dignitees & benefices electives en Engleterre se tendroient delors en manere come eles feurent grauntez par ses progenitours & par les auncestres des autres seignurs foundours & toutz prelates & autres gentz de seint esglise qe avoient avowesons de qiconques benefices de don le roi ou de ses progenitours ou dautres seignurs & donours eussent franchement lour collations & presentementz & sur ceo certain punyssement estoit ordeigne en mesme lestatut pur ceux qe acceptont ascun dignite ou benefice au contraire du dit estatut fait a Westm' le dit an xxv. come devaunt est dit le quele estatut nostre seigneur le roi ad fait recitier en cest present parlement al request de sa communalte en mesme le parlement la tenure de quele estatut est tiel come sy ensuyt: "Come jadys en le parlement" &c. [*prout*, Stat. 25, E. 3, St. vi. fol. 279, *usque* Et doit cest estatut tenir lieu commenceant al oetaves suisditz.] Et outre ce nostre dit seigneur le roi qore est de l'assent des grantz de son roialme esteantz en cest present parlement ad ordeigne & establi qe de toutz erceveschees eveschees & autres dignities & benefices electives & autres benefices de seint esglise qe con-

For all benefices which shall be void after the 29th

(1) *A confirmation*.—In the Parliament Roll, 13 Rich. 2, there is entered a protestation, made in parliament by the Archbishops of Canterbury and York, for themselves and their respective suffragans, of the following tenor: "Quòd nolumus, nec intendimus, alicui statuto in presenti parlamento nunc noviter edito, nec antiquo prætenso innovato, quatenus statuta hujusmodi, seu eorum ali-

quod, in restrictionem potestatis apostolicæ, aut in subversionem, enervationem, seu derogationem ecclesiasticæ libertatis tendere dignoscuntur, quomodolibet consentire, set eisdem dissentire, reclamare et contradicere, ac dissentimus, reclamamus, et contradicimus, in hiis scriptis, prout semper dissensimus, reclamavimus, et contradiximus temporibus retroactis."

ges qe comencerent destre voidez de fait le vint & noefisme jour de Januer lan du regne nostre dit seigneur le Roi Richard treszisme ou puis ou qe se voidront en temps avenir deinz le roialme dEngleterre le dit estatut fait dit an xxv. soit fermement tenuz pur touz jours & mys en due execution de temps en temps en toutz pointz. Et si ascun face ascun acceptation dascun benefice de seint esglise a contrarie de cest estatut & ce duement prove & soit depar dela demurge exile & banny hors du roialme pur toutz jours & ses terres tenementz biens & chateux forfaitz au roi & sil soit deinz le roialme soit il auxi exile & banny come devant est dit & encourage mesme la forfaiture & preigne son chemyn issint qil soit hors du roialme deinz sys semaignes prochein apres tiel acceptation. Et si ascun receite ascun tiel banny venant depar dela ou esteantz deinz le roialme apres les sys semaignes avaundit conisant de ce soit auxint exile & banny & encourage autiel forfaiture come devaunt est dit. Et qe lour procuratours notairs executours & somonours eient la forfaiture & peyne susditz.

Purveu nepurgant qe toutz yceux as queux nostre seint piere le Pape au ses predecessours ont purveu ascun erceveschee eveschee ou autre dignitee ou benefices electives ou autres benefices de seint esglise del patronage des gentz de seint esglise a cause de voidance devant le dit xxix. jour de Januer & ent furent en corporel possession devaunt mesme le xxix. jour eient & enjoient lour ditz erceveschees eveschees dignites & benefices paisiblement pur lour vies nient contrestantz les estatutz & ordinance avantditz. Et si le roi envoi par lettre ou en autre manere a la courte de Rome al excitation dascune persone ou si ascun autre envoie ou prie a mesme la courte parount qe la contrarie de cest estatut soit fait touchant ascun erceveschee eveschee dignitee ou autre benefice de seint esglise deinz le dit roialme si cely qe fait tiel excitation ou tiel prier soit prelate de seinte esglise paie au roi le

ment, hath ordained and established, that for all archbishopricks, bishopricks, and other dignities and benefices elective and all other benefices of holy church, which shall have begun to be void in deed the twenty-ninth day of January, the thirteenth year of the reign of our lord King Richard that now is, or after, or which shall be void in time to come within the realm of England, the said statute made the said twenty-fifth year shall be firmly holden for ever, and put in due execution from time to time in all manner of points. And if any do accept of a benefice of holy church contrary to this statute, and that duly proved, and be beyond the sea, he shall abide exiled and banished out of the realm for ever, his lands and tenements, goods and chattels, shall be forfeit to the king; and if he be within the realm, he shall be also exiled and banished, as afore is said, and shall incur the same forfeiture and take his way, so that he be out of the realm within six weeks next after such acceptance. And if any receive any such person banished coming from beyond the sea, or being within the realm after the said six weeks, knowing thereof, he shall be also exiled and banished, and incur such forfeiture as afore is said. And that their procurators, notaries, executors, and summoners have the pain and forfeiture aforesaid.

“II. Provided, nevertheless, that all they to whom the Pope of Rome, or his predecessors, have provided any archbishoprick, bishoprick, or other dignity or benefices elective, or other benefices of holy church, of the patronage of people of holy church, in respect of any voidance before the said xxix. day of January, and thereof were in actual possession before the same xxix. day, shall have and enjoy the said archbishopricks, bishopricks, dignities, and other benefices peaceably for their lives, notwithstanding the statutes and ordinances aforesaid. And if the king send by letter, or in other manner, to the court of Rome, at the intreaty of any person, or if any other send or sue to the same court, whereby any thing is done contrary to this statute, touching any archbishoprick, bishoprick, dignity, or other benefice of holy church within the said realm, if he that maketh such motion

STAT. 13 RICH. 2, ST. II. c. 2.

of January, an. 13 Rich. 2, the statute of 25 Edw. 3, St. VI. of provisors, shall be put in execution.

If any do accept of a benefice contrary to the said statute of 25 Edw. 3, St. VI. he shall be banished the realm.

The punishment of the receivers, procurators, &c. of offenders.

Beneficed persons, unto whom the Pope had before given dignities of the church, excepted.

The penalty of suing to the court of Rome to infringe the purport of this statute.

STAT. 13 RICH.
2, St. II. c. 2.

or suit be a prelate of holy church, he shall pay to the king the value of his temporalities of one year: and if he be a temporal lord, he shall pay to the king the value of his lands and possessions not moveable of one year; and if he be another person of a more mean estate, he shall pay to the king the value of the benefice for which suit is made, and shall be imprisoned one year. And it is the intent of this statute, that of all dignities and benefices of holy church, which were void in deed the said xxix. day of January, which be given, or to whom it is provided by the Pope of Rome before the same xxix. day, that they to whom such gifts or provisions be made, may freely of such gifts and provisions sue execution without offence of this statute. Provided always, that of no dignity or benefice which was full the said xxix. day of January, no man, because of any collation, gift, reservation, and provision, or other grace papal, not excepted before the said xxix. day, shall not sue thereof execution, upon the pains and forfeitures contained in this present statute."

Benefices full of an incumbent, 29 Die Jan. and 13 Rich. 2.

Enforced by 2 Hen. 4, c. 3, 7 Hen. 4, c. 8, and 3 Hen. 5, St. II. c. 4. See farther

16 Rich. 2, c. 5, which makes it *præmunire* to purchase bulls and other instruments from Rome, &c. See likewise 5 Eliz. c. 1, & 13 Eliz. c. 2, against maintaining the authority of the see of Rome, or bringing bulls, &c. from thence. Rast. 465.

value de ses temporaltees dun an & si soit seigneur temporel paie au roi le value de ses terres & possessions nient moebles dun an. Et sil soit autre persone destate pluïs bas paie au roi la value due benefice pur quel tiel prier soit fait & eit la prisone dun an. Et est lentention du cest estatut qe de toutz dignites & benefices de seint esglise gestoient voides de fait le dit xxix. jour de Janvier queux sont donez ou as queux soit purveu par lappostoill devaunt mesme le xxix. jour qe ceux as queux tielx douns ou provisiouns soient faitz puissent franchement des tiels douns & provisions suer execution sanz offence de cest estatut. Purveu toutzfoitz de qe nulle dignite ou benefice gestoit plein le dit xxix. jour de Januer null a cause dascun don collation reservation & provision ou dautre grace de lappostoill queconqe nient execute devaunt le dit xxix. jour ne sue ent execution sur les peynes contenuz en cest present estatut.

STAT. 13 RICH.
2, St. II. c. 3.

XX. STAT. 13 RICHARDI 2, St. II. c. 3. A.D. 1389.

"The Penalty of him which bringeth a Summons or Excommunication against any Person upon the Statute of Provisors, and of a Prelate executing it."

"Item, it is ordained and established, that if any man (1) bring or send within the realm, or the king's power, any summons, sentences, or excommunications against any person, of what condition that he be, for the cause of making motion, assent, or execution of the said Statute of Provisors, he shall be (2) taken, arrested, and put in prison, and forfeit all his lands and tenements, goods and chattels for ever, and incur the pain of life and of member (3). And if any prelate make execution of such summons, sentences, or excommunications,

Item ordeigne est & establi qe si aucun port ou envoie deinz le roialme ou le poair nostre dit seigneur le roy aucun somonces sentences ou escomengement envers aucun persone de quel condition qil soit a cause de la motion fesance assent ou execution du dit Estatut des Provisours soit il pris & arrestuz & mys en prisone & forface toutz ses terres & tenements biens & chateux pur touz jours & outre encourage la peyne de vie & de membre. Et si aucun prelat face execution des tieux somonces sentences ou escomengementz qe ses temporaltes

(1) *If any man*:—Though these words are general, yet they extend not to ecclesiastical persons, because there are special provisions for them afterwards.

(2) *He shall be*:—By the common law, when any person, either ecclesiastical or temporal, did, by pretext of foreign powers, impugn, or attempt to frustrate, any of the laws of this realm, several writs were provided; (*vide* Regist. f. 60(b), 61(a), 61(b);)

but the punishment provided by the common law was not sufficient, and therefore this and other statutes were made.

(3) *The pain of life and of member*:—i. e. of felony. But this, and the succeeding penalties in this statute, are altered by Stat. 13 Eliz. c. 2, by which such offence, whether committed by ecclesiastical or temporal persons, is made high treason.

soient prises & demurgent es mayns nostre dit seigneur le roy tanqe due redresse & correction en soit fait. Et si ascun person de meyndre estate qe prelat de quel condition qil soit face tiel execution soit pris & arrestuz & mys en prison & eit emprisonement & face fyn & raunceon solonc la discretion du conseil nostre dit seigneur le roy.

that his temporalities be taken and abide in the king's hands, till true redress and correction be thereof made. And if any person of less estate than a prelate, of what condition that he be, make such execution, he shall be taken, arrested, and put in prison, and have imprisonment, and make fine and ransom by the discretion of the king's council (1)."

STAT. 13 RICH.
2, St. II. c. 3.

XXI. STAT. 15 RICHARDI 2, c. 5. A.D. 1391.

"Assurance of Lands to certain Places, Persons, and Uses, shall be adjudged Mortmain."

STAT. 15 RICH.
2, c. 5.

Item come tenuz soit en lestatut de religious qe null religious nautre queconqe achate ne vende ou souz colour de doun ou terme ou dautre tite queconqe dascun reseive ou dascun en ascune manere par art ou par engyn a luy face approprier ascunes terres au tenementz sur forfaiture dyelles par quoi les ditz terres & tenementz purront en ascune manere devenir a mort mayn. Et qe si ascun religious ou ascun autre veigne encontre le dit estatut par art ou par engyn en ascune manere bien lise au roi & as autres seignurs les ditz terres & tenementz entrer sicome en le dit estatut est contenuz plus au plein. Et ore de novell par sotile ymagination & par art & engyn ascuns gentz de religion parsons vikers & autres persones espiritiels sont entrez en diverses terres & tenementz adjoignantz a lour esglise & dyelles par suffrance & assent de tenantz ont fait ciminters & par bulles de apostoill les ont fait dedier & sacrer & sepulture parochiele sont continuellement en ycelles sans licence du roi & des chiefs seignurs declare est en cest present parlement qe ce est overtement en cas du dit estatut. Et enoutre accordez est & assentuz qe toutz ceux qe sont possessionez par feoffement ou par autre voie al oeps de gentz de religion ou autre persones espiritiels des terres tenementz fees advoesons ou autres possessions queconques pur les

"Item, whereas it is contained in the statute *De religiosis*, that no religious, nor other whatsoever he be, do buy or sell, or under colour of gift, or term, or any other manner of title whatsoever, receive of any man, or in any manner by gift or engine cause to be appropriated unto him any lands or tenements, upon pain of forfeiture of the same, whereby the said lands and tenements in any manner might come to mortmain. And if any religious, or any other, do against the said statute by art or engine in any manner, that it be lawful to the king, and to other lords, upon the said lands and tenements to enter, as in the said statute doth more fully appear. And now of late by subtile imagination, and by art, and engine, some religious persons, parsons, vicars, and other spiritual persons, have entered in divers lands and tenements, which be adjoining to their churches, and of the same, by sufferance and assent of the tenants, have made church-yards, and by bulls of the Bishop of Rome have dedicated and hallowed the same, and in them do make continually parochial burying without licence of the king and of the chief lords; therefore it is declared in this parliament, that it is manifestly within the compass of the said statute. And moreover it is agreed and assented, that all they that be possessed by feoffment (2), or by other manner, to

7 Edw. 1,
St. II.

It is within the compass of the Statute of Mortmain to convert any land to a churchyard.

Mortmain where some be seised of lands to the use of religious or spiritual persons.

(1) The following ordinance succeeds this statute: "Rex vicecomiti Kan' salutem. Precipimus tibi firmiter injungentes quod quedam statuta & ordinationes per nos de assensu magnatum & communitatum regni nostri Anglie in parlamento nostro apud Westm' ultimo tento facta que tibi mittimus sub magno sigillo nostro in forma patenti infra comitatum tuum in locis ubi magis expediens fuerit sine dilatione legi & publice ex

parte nostra proclamari ac firmiter teneri & observari facias juxta formam statutorum & ordinationum predictorum. Et hoc sub incumbenti periculo nullatenus omittas."

(2) *By feoffment*:—To avoid the force of the statutes of mortmain, a new method had been adopted, namely, not to take any lands by purchase, gift, lease, or recovery, but to cause them to be conveyed by feoffment, or by some other mode, to divers persons and

STAT. 15 RICH.
2, c. 5.

the use of religious people, or other spiritual persons, of lands and tenements, fees, advowsons, or any manner other possessions whatsoever, to amortize them, and whereof the said religious and spiritual persons take the profits, that betwixt this and the feast of St. Michael next coming, they shall cause them to be amortised by the licence of the king and of the lords, or else that they shall sell and aliene them to some other use between this and the said feast, upon pain to be forfeited to the king, and to the lords, according to the form of the said statute *De religiosis*, as lands purchased by religious people; and that from henceforth no such purchase be made, so that such religious or other spiritual persons take thereof the profits, as afore is said, upon pain aforesaid. And that the same statute *extend* (1) and be observed of all lands, tenements, fees, advowsons, and other possessions, purchased, or to be purchased to the use of *gilds or fraternities* (2). And moreover it is assented, because mayors, bailiffs, and commons of cities, boroughs, and other towns which have a perpetual commonalty, and others which have offices perpetual, be as perpetual as people of religion, that from henceforth they shall not purchase to them, and to their commons or office, upon pain contained in the said statute *De religiosis*. And whereas others be possessed, or hereafter shall purchase to their use, and they thereof take the profits, it shall be done in like manner as is afore said of people of religion."

Mortmain to purchase lands to gilds, fraternities, offices, commonalties.

Mortmain in respect of taking of lands in use, 3 Hen. 4, f. 15.
1 Co. 123.
9 Hen. 3, St. I. c. 36. 13 Edw. 1, St. I. c. 32. 18 Edw. 1, St. I. c. 3. 18 Edw. 3, St. III. c. 3.

STAT. 15 RICH.
2, c. 6.

XXII. STAT. 15 RICHARDI 2, c. 6(3). A.D. 1391.

"*In Appropriation of Benefices there shall be Provision made for the Poor and the Vicar.*"

39 Hen. 6.
f. 20.

"Item, because divers damages and hindrances oftentimes have happened, and daily do happen, to the parishioners

amortiser & dont les ditz religieuses & persones espiritiels preignent les profitz qe parentre cy & le fest de Seint Michel prochain venant ils les facent estre amortisez par licence du roi & des seignurs ou autrement qils les vendent & alienent a autre oeps parentre cy & le dit fest sur peine destre forfaitz au roi & as seignurs solonc la fourme de lestatut de religious come tenementz purchasez par gentz de religion & qe de cez temps enavant null tiel purchase se face issint qe tielx religieuses ou autres persones espiritiels ent preignent les profitz come desuis sur la peine avaunt dite. Et mesme cest estatut sextende & soit tenuz de toutz terres & tenements fees advowsons & autres possessions purchasez & a purchasers al oeps des gildes & fraternitees. Et enoutre est assentuz pur ce qe mairs baillifs & communes de citees burghs & autres villes qont commune perpetuel & autres qont offices perpetuels sont aussi perpetuels come gentz de religion qe de cest temps enavaunt ils ne purchacent a eux & a lour commune ou office sur la peine contenue en le dit estatut de religieuses. Et de ce qe autres sont possessionez ou ferra purchasez en temps avenir a lour oeps & ils ent preignent ou prendront les profitz soit semblablement fait come devaunt est dit de gentz de religion.

Item pur ce qe plusours damages & deseases sont sovent avenuz & aveignent de jour en autre as parochiens de diverses

their heirs, to the use of them and their successors; by reason whereof, they took the profits. 2 Inst. 75.

(1) *Extend*.—The statutes of mortmain hitherto made, related only to ecclesiastical corporations; civil institutions began now, however, to attract the public attention, and the same inconveniences were felt from the appropriation of lands or tenements by such bodies, as had been experienced from the acquisition of property by ecclesiastical corporations.

(2) *Gilds or fraternities*.—From Stat. 15

Rich. 2, c. 5, it is evident, that the doctrine of mortmain did not before apply even to gilds or fraternities; and still less to mayors, bailiffs, and commons of cities and boroughs, and other towns which are stated to be perpetual bodies; but it is obvious, that they were only considered as such, by natural succession, and not by any artificial notion of a body corporate or politic. Had they been so, this statute would have been unnecessary. Merewether and Stephens' Hist. of Boroughs, 728.

(3) Confirmed by Stat. 4 Hen. 4, c. 12.

lieux par l'appropriation des benefices de mesmes les lieux accordez est & assentuz qen chescune licence desore a faire en la Chauncellerie d'appropriation dascune esglise parochielle soit expressement contenuz & compris qe le diocesan del lieu en l'appropriation de tielx esglises ordeine solonc la value de tielx esglises une covenable somme d'argent destre paiez & distributz annuellement des fruitz & profitz de mesmes les esglises par ceux qaveurent les dites esglises en propre oeps & par lour successeurs as povres parochiens des dites esglises en eide de lour vivre & sustenance a toutz jours & qe le viker soit auxint bien & covenablement doweze.

of divers places, by the *appropriation* (1) of benefices of the same places; it is agreed and assented, that in every licence from henceforth to be made in the Chancery, of the appropriation of any parish church, it shall be expressly contained and comprised, that the diocesan of the place, upon the appropriation of such churches, shall ordain, according to the value of such churches, a convenient sum of money to be paid and distributed yearly of the fruits and profits of the same churches, by those that shall have the said churches in proper use, and by their successors, to the poor parishioners of the said churches, in aid of their living and sustenance for ever; and also that the vicar be well and sufficiently endowed."

STAT. 15 RICH.
2, c. 6.
Plow. 495.
6 Hen. 7, f. 13.
10 Hen. 7,
f. 19.
3 Edw. 3, f. 11.
38 Hen. 6,
f. 19.
11 Co. 9.
Cro. Jac. 516.
2 Roll. 99,
100.

XXIII. STAT. 16 RICHARDI 2, c. 5 (2). A.D. 1392.

"*Præmunire for purchasing Bulls from Rome. The Crown of England* (3)
subject to none."

STAT. 16 RICH.
2, c. 5.

Item come les communes du roialme en cest present parlement eient monstrez a nostre tresredoute seigneur le roi gre-

"Item, whereas the commons of the realm in this present parliament have shewed to our redoubted lord the king,

1 Leon. 292.
12 Co. 37, 40.

(1) *Appropriation*.—This evil had been gradually increasing from the time of the Conquest; when the Norman lords withdrew the tithes of their manors from the parochial clergy who were English, and, as such, were hated by them, and endowed with such tithes the monasteries which they built for the Norman monks. But in other nations, the mischief commenced earlier, and it was with great difficulty, that the monks were compelled to make tolerable provision for those who attended the cures. Pope Alexander the Third, in a Decretal Epistle (Extra. l. 3, t. 5, c. 12,) ordained as follows: "De monachis, qui vicarios parochialium ecclesiarum gravant, ut hospitalitatem tenere non possint, eam providentiam habeas, quod ad presentationem monachorum nullum recipias, nisi tantum ei de proventus ecclesiæ coram te fuerit assignatum, unde jura episcopalia possit persolvere, et congruam sustentationem habere."

And when the monks, resolving not to make a competent allowance, and foreseeing that their clerks would not be admitted on any other terms, refused to present to the bishop, and placed and displaced at pleasure, Clement the Third made the following rule: "Nisi prædictæ persone, infra tempus in Lateranensi concilio constitutum, ad vacantes ecclesias tibi personas idoneas præsentaverint, extunc tibi liceat (appellatione remota) in eisdem ordinare rectores, qui eis præesse noverint, et prodesse. Extra. l. i. t. 10, c. 2.

And when they screened themselves by pretence of exemption, the same pope relieved the bishops and the parochial clergy

in that point also: "Præsenti decreto statuimus et mandamus, constitutionem hujusmodi," (reciting the Decretal Epistle of Alexander the Third, which enjoins the bishop not to admit their clerks,) "quoad omnes patronos ecclesiarum, religiosos tam exemptos quam non exemptos, et alios, inviolabiliter observari; consuetudine contraria non obstante." Sext. Decret. l. 3, t. 4, c. 1.

Finally, Pope Clement the Fifth, finding such restraints ineffectual, placed the matter upon another basis, viz. that, if they presented, the bishop should enjoin them to assign *portionem congruam* to their clerks; and if they complied not in the time limited, "Ne factum eorum noceat præsentato, statuimus ut extunc diocesani debeant præsentatum (nisi aliud canonicum obstat) admittere; et in penam præsentantium ad diocesanos ipsos potestas assignationis hujusmodi devolvatur." Clement. l. 3, t. 12, c. 1.

But either the bishops were too favourable to the monks, or the monks too powerful for the bishops; so that no redress was acquired, until the present statute, (which was obtained upon the earnest petition of the commons in parliament,) made the sufficient endowment for the vicar, a necessary condition, not of admitting the clerk, but of appropriating the benefice. Rot. Parl. 15 Rich. 2. Gibson's Codex, 716.

(2) This statute, the Pope called *execrabile statutum*, and the passing thereof, *fædum et turpe facinus*. 2 Burn's E. L. by Phillimore, 36.

(3) *Vide* Stat. 12 Geo. 3, c. 11, regulating the marriages of the royal family.

STAT. 16 RICH.
2, c. 5.

The remedy to recover presentments to benefices in the king's court, and the execution thereof, is done by the bishop.

The Pope awarded processes and sentences of excommunication against certain bishops for executing judgments given in the king's court.

The Pope's translation of prelates out of the realm, or from one spiritual living to another.
25 Edw. 3,
St. VI. de provisoribus.

grievously complaining, that whereas the said our lord the king, and all his liege people, ought of right, and of old time were wont, to sue in the king's court, to recover their presentments to churches, prebends, and other benefices of holy church, to the which they had right to present, the cognizance of plea of which presentment belongeth only to the king's court of the old right of his crown, used and approved in the time of all his progenitors kings of England; and when judgment shall be given in the same court upon such a plea and presentment, the archbishops, bishops, and other spiritual persons which have institution of such benefices within their jurisdiction, be bound, and have made execution of such judgments by the king's commandments of all the time aforesaid without interruption (for another lay person cannot make such execution), and also be bound of right to make execution of many other of the king's commandments, of which right the crown of England hath been peaceably seised, as well in the time of our said lord the king that now is, as in the time of all his progenitors till this day: but now of late divers processes be made by the Bishop of Rome, and censures of excommunication upon certain bishops of England, because they have made execution of such commandments, to the open disherison of the said crown, and destruction of the regality of our said lord the king, his law, and all his realm, if remedy be not provided. And also it is said, and a common clamour is made, that the said Bishop of Rome hath ordained and purposed to translate some prelates of the same realm, some out of the realm, and some from one bishoprick into another within the same realm, without the king's assent and knowledge, and without the assent of the prelates, which so shall be translated, which prelates be much profitable and necessary to our said lord the king, and to all his realm; by which translations (if they should be suffered) the statutes of the realm should be defeated and made void; and his said liege sages of his council, without his assent, and against his will, carried away and gotten out of his realm, and the substance and treasure of the realm shall be carried away, and so the realm destitute as well

vousement compleignantz qe par la ou mesme nostre seigneur le roi & toutz ses liges deivent de droit & soloient de tout temps purseuer en la courte mesme nostre seigneur le roi pur recouurer lour presentementz as esglises prebendes & autres benefices de seinte esglise as queux ils ount droit a presenter la conisance de plee de quelle presente appartient soulement a courte mesme nostre seigneur le roi dauciene droit de sa coroune use & approve en temps de touz ses progeniteurs rois dEngleterre & qant juggement soit rendu en mesme sa courte sur tiel plee & presente les ercevesques evesques & autres persones spiritueles qount institution de tiele benefice deinz lour jurisdiction sont tenuz & ont fait execution des tieux juggementz par mandement des rois de tout le temps avantdit sanz interruption qare autre lay persone ne poet tiele execution faire & auxint sont tenuz de droit de faire execution de plusieurs autres mandementz nostre seigneur le roi de quele droit la corone dEngleterre ad este peisiblement seisy sibien en temps nostre dit seigneur le roi come en temps de touz ses progeniteurs tanqe enca mes ore tarde diverses procesces sont faitz par le seint piere le Pape & censures descomengementz sur certains evesques dEngleterre pur ceo qils ount fait execution des tieux mandementz en overte desheritance de la dite corone & destruction du regalie nostre dit seigneur le roy sa ley & tout son roialme si remedie ne soit mys. Et auxint dit est & commune clamour y ad qe le dit seint piere le Pape ad ordeigne & purpose de translater aucuns prelates de mesme le roialme ascuns hors du roialme & aucuns de un eveschee a autre deinz mesme le roialme saunz assent & conisance nostre seigneur le roy & saunz assent du prelat qi ensy serroit translate queux prelatz sont moult profitables & necessaries a nostre dit seigneur le roi & tout son roialme par queux translations sils fusesnt sufertz les estatutz du roiaume serront defaitz & anientez & ses sages lieges de son conseil sanz son assent & encoutre sa volutee subtrez & esloignez hors de son roiaume & lavoit & tresore du roiaume serroit emporte & ensi mesme le roiaume destitut sibien de counseill come davoit a final destruction de mesme le roialme & ensy la corone dEngleterre qad este si frank de tout temps qele nad hien

null terrien souveraine mes immediate subgit a Dieu en toutes choses touchantz la regalie de mesme la corone & a null autre serroit submys a Pape & les leys & estatutz du roialme par luy defaitz enientez a sa volente en perpetuele destruction de la souveraynte nostre seigneur le roy sa corone & sa regalie & tout son roialme qe Dieu defende.

Et disoient outre les communes avantdites qe les dites choses ensi attemptez sount overtement encountre la corone nostre seigneur le roi & sa regalie use & approve du temps du toutz ses progenitours par quoy ils & touz les lieges communes du mesme le roialme veullant estere avec nostre dit seigneur le roi & sa dite corone & sa regalie en les cases avantdites & en touz autres cases attemptez encountre luy sa corone & sa regalie en toutz pointz a vivre & murer. Et prierent outre a nostre seigneur le roi & luy requistrent par voy de justice qil vorroit examiner toutz les seigneurs en parlement sibien spirituelles come temporeles severalment & toutz les estatutz du parlement coment lour semble des cases avaunt ditz qe sount si overtement encountre la corone nostre seigneur le roy & en derogation de sa regalie & coment ils voillent estere en mesmes les cases ovesqe nostre seigneur le roy en sustenance des droitz de ses ditz corone & regalie. Sur quoy les seigneurs temporelx ensi demandez ount respondu checun par soy qe mesmes les cases avantdites sont overtement en derogation de la corone nostre seigneur le roy & de sa regalie come notoirement est & ad este de tout temps conuz & qe ils veullent estere avec mesmes les corone & regalie en mesmes cestes cases en especial & en touz autres cases qe serront attemptez encountre mesmes les corone & regalie en toutz pointz ove tout lour poair. Et outre ce demandez estoit des seigneurs spirituels illeques esteantz & des procuratours des autres absents de lour estre avys & volente en ceux cases queux seigneurs cestassavoir ecevesques evesques & autres prelates esteantz en le dit parlement severalment examinez fesantz protestations qil nest pas lour

of council as of substance, to the final destruction of the same realm; and so the crown of England, which hath been so free at all times, that it hath been in no earthly subjection, but immediately subject to God in all things touching the regalty of the same crown, and to none other, should be submitted to the Pope, and the laws and statutes of the realm by him defeated and avoided at his will, in perpetual destruction of the sovereignty of the king our lord, his crown, his regalty, and of all his realm, which God defend.

“II. And moreover, the commons aforesaid say, that the said things so attempted be clearly against the king’s crown, and his regalty, used and approved of the time of all his progenitors; wherefore they and all the liege commons of the same realm will stand with our said lord the king, and his said crown, and his regalty in the cases aforesaid, and in all other cases attempted against him, his crown and his regalty in all points, to live and to die. And moreover, they pray the king, and him require by way of justice, that he would examine all the lords in the parliament, as well spiritual as temporal, severally, and all the states of the parliament, how they think of the cases aforesaid, which be so openly against the king’s crown, and in derogation of his regalty, and how they will stand in the same cases with our lord the king, in upholding the rights of the said crown and regalty. Whereupon the lords temporal, so demanded, have answered every one by himself, that the cases aforesaid be clearly in derogation of the king’s crown, and of his regalty, as it is well known, and hath been of a long time known, and that they will be with the same crown and regalty in these cases specially, and in all other cases which shall be attempted against the same crown and regalty in all points, with all their power. And moreover it was demanded of the lords spiritual there being, and the procurators of others being absent, their advice and will in all these cases; which lords, that is to say, the archbishops, bishops, and other prelates, being in the said parliament severally examined, making protestations, that it is not their mind to say, nor affirm, that the Bishop of Rome may not ex-

STAT. 16 RICH. 2, c. 5.

The freedom of the crown of England, and that it is in subjection to no realm.

The promise of the commons to assist the king in defence of the liberties of the crown.

The like promise of the lords temporal.

STAT. 16 RICH.
2, c. 5.

The promise of
the lords spiri-
tual touching
the commons'
petition.

The promise of
the procurators
of the lords
spiritual being
absent.

communicate bishops, nor that he may make translation of prelates after the law of holy church, answered and said, that if any executions of processes made in the king's court as before be made by any, and censures of excommunications to be made against any bishops of England, or any other of the king's liege people, for that they have made execution of such commandments; and that if any executions of such translations be made of any prelates of the same realm, which prelates be very profitable and necessary to our said lord the king, and to his said realm, or that the sage people of his council, without his assent, and against his will, be removed and carried out of the realm, so that the substance and treasure of the realm may be consumed, that the same is against the king and his crown, as it is contained in the petition before named. And likewise the same procurators, every one by himself examined upon the said matters, have answered and said in the name, and for their lords, as the said bishops have said and answered, and that the said lords spiritual will and ought to be with the king in these cases, in lawfully maintaining of his crown, and in all other cases touching his crown and his regalty, as they be bound by their ligeance; whereupon our said lord the king, by the assent aforesaid, and at the request of his said commons, hath ordained and established, that if any purchase or pursue, or cause to be purchased or pursued, in the court of Rome, or *elsewhere* (1), by any such

entention de dire ne affermer qe nostre seint pere le Pape ne poet excomenger evesques ne quil poet faire translations des prelatz solonc la ley de seinte esglise respoignent & diount qe si aucunes executions, des processes faitz en la courte du roi come devaunt soient faitz par ascuny & censures de escomengementz soient faitz encountre ascun evesque dEngleterre ou ascun autre liege du roi pur ce qils ont fait execution des tieux maundementz & qe si ascuns .executions des tieux translations soient faitz dascuns prelatz de mesme le roialme queux seignurs sount moult profitables & necessairs a nostre dit seigneur le roi & a son roiaume suisdit ou qe les sages lieges de son conseil saunz son assent & encountre sa volunte soient sustretz & esloignez hors du roialme siqe lavoier & tresor du roialme purroit estre destruit qe ce est encountre le roi & sa corone sicome est contenuz en la petition avant nome. Et semblablement les ditz procurateurs chescun par soy examine sur le ditz matieres ount respondu & dit en noun & pur lour seignurs come les ditz evesques ount dit & respondu & qe les ditz seignurs espiritueles veullent & deivent estere ovesqe le roi nostre seigneur en ceux cases loialment en sustenance de sa corone & en toutz autres cases tochantz sa corone & regalie come ils sount tenuz par lour ligeance sur quoy nostre dit seigneur le roi del assent avaunt dit & a la priere de sa dit communalte ad ordeigne & establie qe si ascun purchase ou pursue ou face purchacer ou persuer en la courte de Rome ou aillours ascuns

(1) *Or elsewhere*.—This hath been interpreted by the books of common law, to be a restraint upon the ordinary spiritual courts of this realm, from intermeddling in any matters of a temporal nature; and that if they do, they are subject to a *præmunire* according to this statute. And though it hath been alleged, that the words, *or elsewhere*, may be fairly interpreted of the Popes residing *elsewhere than at Rome*, as at *Avignon*, where they did reside, about that time, for seventy years together; and that it had been credibly reported, that certain learned judges, when living, were of opinion that for an ecclesiastical judge to deal in a matter appertaining to a temporal court, yet for some nearness and coherence by him probably supposed to be an ecclesiastical cause, could not at this day be a *præmunire*, but subject only to a prohibition, and punishable as a contempt, as it was at the common law, upon an attachment after a

prohibition; and though, lastly, the supposition of such a terrible punishment for a *mistake*, seems to carry in it great rigour and hardship, especially, when the temporal courts have other sufficient remedies against the encroachments of the spiritual; yet, notwithstanding all this, it is very certain, that the words were taken and understood in the sense that my Lord Coke gives them, long before the Reformation; as appears, not only from the several judgments of *præmunire* against ordinaries, and others, upon suits in the ecclesiastical courts for temporal causes; but also from the repeated endeavours of the bishops and clergy in convocation, for redress against this obstruction and persecution from the temporal courts. In the course of which endeavours, they did (ann. 1439,) obtain answer from the king to this effect: "That though he had not fully deliberated with his council about it, he would give order that no such writ should

tieux translations processes & sentences de escomengementz bulles instrumentz ou autre chose qe conque qe touche le roi

translations, processes, and sentences of excommunications, bulls, instruments, or any other things whatsoever which

STAT. 16 RICH. 2, c. 5.

issue, before the next parliament, but what was first approved by him and his council." 3 Inst. 120, 121. Act. Convoc. A.D. 1434, 1439, 1444.

It is affirmed in the Acts of Convocation, A.D. 1434, that such writs had been only recently introduced into England; and all the judgments referred to by Lord Coke, except one in the time of Edw. 4, were given in the time of Hen. 7; so that, very probably, at the time of the making of this statute, and during the reigns of Hen. 4, Hen. 5, and Hen. 6, it was understood, according to the plain drift and tendency of the act, to be a prohibition only, from suing at the court of Rome, in matters which belonged to the king's courts.

After Stat. 1 Eliz. c. 1, had restored to the crown all spiritual and ecclesiastical power within this realm, it was pleaded, against the said interpretation, and in behalf of the liberties of the church, that, however proceedings in the spiritual courts might be said to be in derogation of the royal dignity, while the Pope usurped all spiritual jurisdiction, and while it was in fact separated from the crown; yet, being now united to the crown, both in fact and law, and the laws and judges styled the king's ecclesiastical laws, and the king's ecclesiastical judges; none of their proceedings could properly be said, according to the terms of the writ, to be in *coronæ et regie dignitatis præjudicium*, and no proceedings but what were so, could be liable to that writ. But this point coming under consideration in the 5th of King James I, (12 Co. tit. *PREMUNIRE*, 37, 38,) it was resolved by divers justices, "That all such proceedings, by colour of ecclesiastical law, before any ecclesiastical judges, who were in danger of *præmunire* before the said act 1 Eliz., are now in case of *præmunire*, after the said act;" and by way of answer to the objection just now mentioned, it was said, "That although both jurisdictions belonged to the crown, yet, inasmuch as the crown itself is directed descendable by the common law, are all treasons against the crown punished by this law; when the ecclesiastical judge usurps upon the common law, it is said, *contra coronam et dignitatem*."

Lord Coke lays down three rules, by which it may be judged, in what cases a *præmunire* lies, and in what not. 12 Co. tit. *PREMUNIRE*, 39. *Waterhouse (Lady) v. Bawde*, Cro. Jac. 133, 134.

1. When the cause originally belongs to the cognizance of the ecclesiastical court, and suit is prosecuted there, in the same nature as the cognizance belongs to them, although, in truth, the cause, all circumstances being disclosed, belongs to the court of the king, and to be determined by the common law, yet no *præmunire* lies; as, if suit be for subtraction of tithes, when in reality they were severed from the nine parts, and carried away; or, for *sylva cadua*

under the age of twenty years, whereas they were above that age; in these, and the like cases, *præmunire* lieth not, but only prohibition, because (being of spiritual cognizance according to the tenor of the libel) it may be, that neither the plaintiff nor judge knew the circumstances, which devolved the cognizance to the temporal courts.

2. Although the cause originally appertains to the cognizance of the ecclesiastical court; yet if it be sued for, in the nature of a suit which belongs to the common law, (as if a parson sues, for carrying away his tithes severed from the nine parts, or for tithes of wood above twenty years' growth; in which, and the like cases, it is apparent to the ecclesiastical court by the libel, that the matter appertains to the common law,) *præmunire* lies.

3. When the cause originally belongs to the cognizance of the common law, and not to the ecclesiastical court; there, although they libel for it according to the course of the ecclesiastical law, yet the *præmunire* lies, because this draws the cause, which is determinable at the common law, *ad aliud examen*, viz. to be decided by the civil or ecclesiastical law, and so, deprives the subject of the benefit of the common law, which is his birthright.

In the Journal of Parliament, 4 Edw. 6, (2 App. p. 269, art. 8, 9,) mention is made of a bill there depending, with this title: "That no spiritual persons shall incur *præmunire* for executing his office, till forbid by prohibition." And it seems to be a great hardship, that ecclesiastical judges, in executing the laws of the church, should lie under any such terrible apprehension, as is that of a *præmunire*; since the jurisdiction of the temporal courts is secured by an action upon the case, (*Waterhouse (Lady) v. Bawde*, Cro. Jac. 133; 12 Co. tit. *FALSE AFFIDAVITS*, 128,) for suing in the spiritual court for a temporal matter; by prohibition to the court to stay such suit and process; and by attachment and fine, with damages and costs to the party aggrieved, if they go on, notwithstanding the prohibition. *Russel v. Backhurst*, 2 Bulst. 285. *Anger v. Brewer*, 1 Vent. 348, 350. *Facy v. Lange*, Cro. Car. 559. Gibson's Codex, 1020.

Archbishop Bancroft, in his objections against the heavy restraints of the temporal courts upon the spiritual, made his concluding motion to the lords of the council in the following language: "Whereas, for the better preserving of his majesty's two jurisdictions, the ecclesiastical and the temporal, that the one might not usurp upon the other, two means heretofore have of ancient time been ordained, that is to say, the censure of excommunication, and the writ of prohibition; the one to restrain the encroachments of the temporal jurisdiction upon the ecclesiastical, the other of the ecclesiastical upon the temporal: we most humbly desire your lord-

STAT. 16 RICH.
2, c. 5.

Præmunire for purchasing of bulls or other instruments from Rome, or elsewhere.

27 Edw. 3,
St. 1. c. 1.

7 Rich. 2, c. 12.

5 Edw. 4, f. 6.

9 Edw. 4, f. 3.

See 5 Eliz. c. 1,

for the penalty of maintaining the authority of Rome, and 13 Eliz. c. 2, against bringing bulls, &c. from Rome.

Regist. Jud. 82.

Co. Pla. 435.

Rast. 24, 465.

touch the king, against him, his crown, and his regality, or his realm, as is aforesaid, and they which bring within the realm, or them receive, or make thereof notification, or any other execution whatsoever within the same realm or without, that they, their notaries, procurators, maintainers, abettors, fautors, and counsellors, *shall be put out of the king's protection* (1), and their lands and tenements, goods and chattels, forfeit to our lord the king; and that they be attached by their bodies, if they may be found, and brought before the king and his council, there to answer to the cases aforesaid, or that process be made against them by *præmunire facias*, in manner as it is ordained in other statutes of provisors, and other which do sue in any other court in derogation of the regality of our lord the king."

nostre seigneur encountre luy sa corone & regalie ou son roialme come devant est dit & ceux qe les porte deinz le roialme ou les reseive ou face ent notification ou autre execution queconqe deinz mesme le roialme ou dehors soient ils lour notairs procuratours meintenours abbettours fautours & counseillours mys hors de la protection nostre dit seigneur le roi & lours terres & tenementz biens & chatieus forfaitz au roy nostre seigneur & qils soient attachez par lour corps sils purront estre trovez & amesnez devaunt le roy & son conseil pur y respondre es cases avaunteditz ou qe processe soit fait devers eux par *præmunire facias* en manere come est ordeigne en autres estatutz des provisors & autres qui seuent en autry courte en derogation de la regalie nostre seigneur le roy.

STAT. 21 RICH.
2, c. 5.

XXIV. STAT. 21 RICHARDI 2, c. 5(2). A.D. 1397.

"The Oaths and Fealty of great Men shall be inrolled in Parliament."

STAT. 21 RICH.
2, c. 8.

XXV. STAT. 21 RICHARDI 2, c. 8(3). A.D. 1397.

"The King shall have the Collation to all Benefices so forfeited."

ships, that by your means, the judges may be induced to resolve us, why excommunications may not as freely be put in use, for the preservation of the jurisdiction ecclesiastical, as *prohibitions* are, under pretence to defend the temporal; especially, against such contentious persons as do wittingly and willingly, upon false and frivolous suggestions, to the delay of justice, vexation of the subjects, and great scandal of ecclesiastical jurisdiction, daily procure, without fear either of God or men, such undue prohibitions, as we have heretofore mentioned."

To which the answer of the judges, was: "The excommunication cannot be gainsaid; neither may the prohibition be denied, upon

the surmise made, that the matter pursued in the ecclesiastical court, is of temporal cognizance; but as soon as that shall appear to us judicially to be false, we grant the consultation." 2 Inst. 617.

(1) *Shall be put out of the king's protection*:—By these words, the persons attainted in a writ of *præmunire* are disabled to have any action or remedy by the king's law, or the king's writs; for the law and the king's writs are the things whereby a man is protected and aided, so as he, who is out of the king's protection is out of the aid and protection of the law. 3 Inst. 125.

(2) Expired; *sed vide* Stat. 1 Hen. 4, c. 3.

(3) Repealed by Stat. 1 Hen. 4, c. 3.

STATUTA HENRICI IV.

A.D. 1399—1413.

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I. STAT. 1 HENRICI 4, c. 1. A.D. 1399.

STAT. 1 HEN.
4, c. 1.

"A Confirmation (1) of the Liberties of the Church, and of all Statutes not repealed. Justice shall be done, and Peace kept."

II. STAT. 2 HENRICI 4, c. 3. A.D. 1400.

STAT. 2 HEN.
4, c. 3.

"If any do accept a Provision granted by the Pope to a Religious Person to be exempt from Obedience, he shall be within the Danger of the Statute of Provisors."

Item ordeignez est & establiz qe si aucune provision soit fait par nostre sient pier le Pape a aucune persone de religion ou a autre persone quelconque destre exempte dobedience reglere ou dobedience ordinaire ou davoit aucune office perpetual deinz maisons de religion ou atant come une reglere persone religieuse ou deux ou plusours ont en ycelles qe si tiels provisours desore enavant acceptent ou enjoient aucune tiele provision qils encourgent les peynes comprizee en Estatut des Provisours fait lan treszisme le roi Richard second.

"Item, it is ordained and stablished, that if any provision be made by the Bishop of Rome to any person of religion, or to any other person, to be exempt of obedience regular, or of obedience ordinary, or to have any office perpetual within houses of religion, or as much as one regular person of religion, or two or more, have in the same; that if such provisours from henceforth do accept or enjoy any such provision, they shall incur the pains comprized in the Statute of Provisours, made in the xiii. year of King Richard the Second."

25 Edw. 3,
St. VI.
13 Rich. 2,
St. II. c. 2 & 3.
16 Rich. 2, c. 5.
See 5 Eliz. c. 1,
and 13 Eliz.
c. 2, against
maintaining
the authority
of the see of
Rome, or
bringing bulls,
&c. from
Rome.

III. STAT. 2 HENRICI 4, c. 4. A.D. 1400.

STAT. 2 HEN.
4, c. 4.

"The Penalties for purchasing of Bulls to be discharged of Tithes."

Item por ce qe nostre seigneur le roy sur grevous complaint a luy fait en cest parlement ad entenduz qe les religieuses hommes de lordre de Cisteux del roialme dEngleterre ont purchacez certaines bulles destre quitz & deschargiez de leur dismes paier de leur terres tenementz & possessions lessez a ferme ou cultivez & occupez par autres persones qe par eux mesmes en grant prejudice & derogation da la liberte de seint esglise & des pluseurs lieges du roialme

"Item, for as much as our lord the king, upon grievous complaint to him made in this parliament, hath perceived, that the religious men of the order of Cisteaux, in the realm of England, have purchased certain bulls to be quit and discharged to pay the tithes of their lands, tenements, and possessions, let to ferm, or manured, or occupied by other persons than by themselves, in great prejudice and derogation of the liberty of holy church, and of many

2 Roll. 480.

(1) *Vide etiam*, Stat. 2 Hen. 4, c. 1. Stat. 4 Hen. 4, c. 1. Stat. 7 Hen. 4, c. 1. Stat. 9 Hen. 4, c. 1. Stat. 13 Hen. 4, c. 1.

STAT. 2 HEN.
4, c. 4.

liege people of the realm; our lord the king, willing thereupon to ordain remedy, by the advice and assent of the lords spiritual and temporal, and at the instance and request of the said commons, hath ordained and stablished, that the religious persons of the order of Cisteaux shall stand in the estate that they were before the time of such bulls purchased; and that as well they of the said order, as all other, religious and seculars, of what estate or condition they be, which do put the said bulls in execution, or from henceforth do purchase other such bulls of new, or by colour of the same bulls purchased, or to be purchased, do take advantage in any manner, that process shall be made against them and every of them by garnishment of two months by writ of *premunire facias*; and if they make default, or be attainted, then they shall incur the pains and forfeitures contained in the Statute of Provisors, made the thirteenth year of the said King Richard."

13 Rich. 2,
St. II. c. 3.
See 13 Eliz.
c. 2, for the
penalty of
bringing bulls,
&c. from
Rome.

nostre seigneur le roi veullant sur ceo purvoir de remede de ladvis & assent des toutz les seignurs espirituelx & temporelx & al instance & request des ditz communes ad ordeinez & establiz qe les religieuses de lordre de Cisteux estoient en lestat qils feurent devant le temps des tielx bulles purchasez. Et qe sibien ceux du dit ordre come toutz autres religieuses & seculars de quel estat ou condition qils soient qi mettent les dites bulles en execution ou desore enavant purchacent autres tielx bulles de novel ou par colour de mesmes les bulles purchasez ou a purchacers preignent avantage en aucune manere qe proces soit fait devers eux & chescun de eux par garnisement de deux moys par brief de premunire facias. Et sils facent default ou soient atteintz qils encourgent les peines & forfaitures comprises en Lestatut des Provisours fait lan xiii^{me} le Roy Richard suisdit.

STAT. 2 HEN.
4, c. 13.

IV. STAT. 2 HENRICI 4, c. 13. A.D. 1400.

[*Act of General Pardon.*]

"Except those lands, tenements, and possessions, which be aliened into mortmain without the licence royal."

STAT. 2 HEN.
4, c. 15.

V. STAT. 2 HENRICI 4, c. 15 (1). A.D. 1400.

"*The Orthodoxy of the Faith of the Church of England asserted, and Provision made against the Oppugners of the same; with the Punishment of Hereticks.*"

STAT. 4 HEN.
4, c. 2.

VI. STAT. 4 HENRICI 4, c. 2 (2). A.D. 1402.

"*The words Insidiatores viarum, &c. (3) shall not be put in any Indictments, &c.*"

"... yet nevertheless such clerks shall have and enjoy the privilege of holy church, and shall be delivered to the ordinaries them demanding, or their deputies, without any impeachment, or any delay."

STAT. 4 HEN.
4, c. 3.

VII. STAT. 4 HENRICI 4, c. 3. A.D. 1402.

"*A Confirmation of the Liberties of the Church and Clergy. A Clerk convict for Treason, or being a common Thief, shall not make his Purgation.*"

STAT. 4 HEN.
4, c. 12.

VIII. STAT. 4 HENRICI 4, c. 12. A.D. 1402.

"*In Appropriations of Benefices, Provision shall be made for the Poor and the Vicar.*"

A confirmation
of the statute

"Item, it is ordained, that the Statute of Appropriation of Churches, and of the

Item ordeignez est & establiz qe lestatut de lappropriation des esglises & de

(1) Repealed by Stat. 25 Hen. 8, c. 14.
Stat. 1 Eliz. c. 1.

(2) Expired.

(3) *Insidiatores viarum, &c.*—Of these words, it is said by John de Athon, (Othob. ad Tutel. v. *Ut etiam*.) "Ratio exceptio-

nis factæ de publico latrone, et de nocturno agrorum depopulatore, quod non gaudeant immunitate ecclesiæ, est, quia de his duobus generibus hominum præsumitur semper quod insidiosè fecerunt."

lendowment des vicairs en ycelles fait lan quinzisme le Roy Richard Second soit fermement tenuz & gardez & mys en due execution & si ascune esglise soit approprie par licence du dit Roy Richard ou de roy nostre seignur qorest puis le dit an xv^{me} contre le forme du dit estatut qe ce soit duement refourmez selonc leffect de mesme lestatut parentre cy & la fest de Pasqe proschein advenir. Et si tiele reformation ne ce face deins le temps suisdit qe les appropriation & licence ent faitz soient voidez & de tout repellez & adnullez pur toutz jours forspis lesglise de Hadenham en le diocis dEly la quele pur eschuire plusours damages discordes & debates qont este devant ces heures parentre lEvesqe dEly & lErcedeaken dEly sur l'exercise de lour jurisdiction come y feust overtement declarez par mesme levesqe en presence de roy & de seignurs en parlement nadgairs par licence du roy nostre seignur feust appropriez a lErcedeaken dEly & ses successours pur y faire divines services hospitalite tenir & autres charges supporter come affert. Et outre ceo ordeignez est & establiz qe toutes les vicaries uniz annexes ou appropriez & les licences ent eues puis lan primer le dit Roy Richard combien qe ceux qont uniz annexes ou appropriez tieux vicaries soient en possession de mesmes les vicaries ou par vertue des dites licences purront ascunement estre en possession dicelles en ascun temps advenir soient auxint detout voidez revokez repelles adnullez & disappropriez pur toutz jours & qe desore enavaunt en chescune esglise ensi appropriee ou appropriere une seculere persone soit ordeigne vikair perpetuel institut & induct canonikement en ycelle & covenablement en-

endowment of vicars in the same, made the fifteenth year of King Richard the Second, be firmly holden and kept, and put in due execution; and if any church be appropriated by licence of the said King Richard, or of our lord the king that now is, sithence the said fifteenth year, against the form of the said statute, the same shall be duly reformed according to the effect of the same statute, betwixt this and the feast of Easter next coming. And if such reformation be not made within the time aforesaid, that the appropriation and licence thereof be made void, and utterly repealed and adnulled for ever; except the church of Hadenham, in the diocese of Ely, which, for to eschew divers damages, discords, and debates, that have been before this time betwixt the Bishop of Ely and the Archdeacon of Ely, upon the exercise of their jurisdiction, (as it was openly declared by the same bishop in presence of the king, and of the lords in parliament,) was of late appropriated, by the licence of the king our lord, to the archdeacon and his successors, to do divine service, keep hospitality, and to support other charges as pertaineth. Moreover, it is ordained and stablished, that all the vicarages united, annexed, or appropriated, and the licences thereof had after the first year of the said King Richard, how well soever that they which have united, annexed, or appropriated such vicarages, be in possession of the same vicarages, or by the virtue of such licences may in any wise be in possession of the same in any time to come, they shall be also utterly void, revoked, repealed, adnulled, and disappropried for ever; and that *from henceforth* (1) in every church *so appropriated* (2), or to be appropriated, a

STAT. 4 HEN. 4, c. 12.

of 15 Rich. 2, c. 6, touching the appropriation of churches. Cro. Jac. 516. 2 Roll. 99, 100.

The church of Hadenham, in the diocese of Ely, appropriated to the Archdeacon of Ely.

All appropriations of vicarages made since the 1st year of Rich. 2 shall be void. Plow. f. 495.

A vicar endowed shall be a secular man,

(1) *From henceforth*:—This statute extendeth not to appropriations made before this time. *Britton v. Ward*, 2 Roll. 127.

(2) *So appropriated*:—If the benefice was given, *ad mensam monachorum*, and so not appropriated in the common form, but granted by way of union, *pleno jure*; in that case, it was served by a monk of their own body, and who was removeable at their pleasure;—and this is the foundation of *stipendiary curacies*, where the impropiators are bound to provide divine service, but who may do it by curates, not instituted, if they be licensed by the bishop. The monks served such offices: and because the Acts of Dissolution gave the lands to the king, in the same

manner and form, as the monks held them, they who derive from the crown have considered themselves under no restraint to present a vicar to the bishop, for institution. But though the canon law is clear, that such benefices as were united *mensæ monachorum*, &c., might be served by monks, without institution; yet, the law also was, that in case such cures were supplied by *seculars*, they must have institution; and there being now no supply but by seculars, it seems to follow, that by law, no benefices can be now served by stipendiary curates without institution; but the received practice is otherwise. *Clem. l. i., t. 5. Gibson's Codex, 717. Jacob v. Dallo*, 6 Mod. 230.

STAT. 4 HEN.
4, c. 12.
and not a
religious.
3 Hen. 6, f. 23.

secular person be ordained vicar perpetual (1), canonically *institute and induct* (2) in the same, and *covenably endowed* (3) *by the discretion of the ordinary* (4), to do divine service, and to inform the people, and to keep hospitality there, except the church of Hadenham aforesaid; and that *no religious* (5) be in any wise made vicar in any church so appropriated, or to be appropriated by any means in time to come."

dowez par la discretion del ordinaïr pur faire divine service & enfourmer le poeple & hospitalitee tenir illoeqes forspis lesglise de Hadenham suisdite. Et qe nul religious ascunement soit fait vicair en ascune esglise ensi appropriee ou appropriere par nulle voie en temps advenir.

STAT. 4 HEN.
4, c. 17.

IX. STAT. 4 HENRICI 4, c. 17. A.D. 1402.

"Infants are not to be received into the Order of Friars, without the Consent of their Parents, &c."

(1) *A secular person be ordained vicar perpetual*.—This was the rule of the canon law: "In ecclesiis ubi monachi habitant, populus per monachum non regatur; sed capellanus qui populum regat, ab episcopo per consilium monachorum instituatur: ita ut ex solius episcopi arbitrio, tam ordinatio ejus quam depositio, et totius vitæ pendeat conversatio;" (Extra. l. 3, t. 37, c. 1;) and it was the complaint of Clement the Third, "Vicarios in eis pro sua instituunt et destituunt voluntate." Ibid. l. 1, t. 10, c. 2. But, notwithstanding this statute, it seems the religious were dispensed with in some cases: for in Archbishop Warham's Register, 356 (b), there is a licence to the Abbot of Boxley, to serve a parochial cure, "per capellanum secularem removibilem."

In *Bonsey & Lee*, (1 Vern. 247,) it was decreed, that where there is no vicarage endowed, the impropiator of the small tithes is bound to maintain a priest; and upon an information by the attorney-general for that purpose, the king may assign to the curate such an allowance or proportion of the small tithes, as he shall think fit; but otherwise it is, where the vicar is endowed, though but of never so small a matter.

In appropriated churches, where no vicar has been endowed, the officiating minister is appointed by the appropriator or impropiator, and is called perpetual curate. 1 Black. Comm. by Chitty, 388.

(2) *Institute and induct*.—Institution and induction seem to be the specific difference between a vicar and a perpetual curate: both can only be in a church that was appropriated. But this must be understood only where the curacy is parochial; for, as to curates of chapels, there seems to be no similitude between them and curates of parishes. But yet it seems this cannot be so: for then, *quare*, what is the difference between a donative vicarage and a perpetual curacy? for it is commonly said, that vicarages may be donative, and even rectories may be so. And yet it is contrary to this act, that any vicarage, created on an appropriation since the act, should be donative; and therefore donative vicarages must have been such as were made on appropriations before the act,

or upon appropriations *ad mensam monachorum*, which are not within the act; and these last, if any such there were, seem to differ only in name from perpetual curacies. A vicar is in for life; a curate, as it seems, at will. *Price v. Pratt*, Bunb. 273. The former is always (*quod* or at least usually) endowed, the latter never, (Ibid.) except since Queen Anne's Bounty. *Vide* Stat. 1 Geo. 1, St. II. c. 10. A donative, it seems, is always endowed, but a perpetual curacy is never. *Price v. Pratt*, Bunb. 273. And if so, then the endowment is a specific difference between a donative vicarage and a perpetual curacy. It may be also observed, that, where there is a curate, the parson is incumbent; where there is a vicar, the vicar is incumbent. Serjt. Hill's MSS. Notes.

(3) *Covenably endowed*.—So as, without endowment, the appropriation was not good. *St. John (Lord) v. Gloucester (Dean of)*, 12 Co. 4.

But yet, at this day, no appropriation shall be declared invalid, though an endowment cannot be found, because, where a benefice hath been ever reputed and taken to be appropriate, and a vicar presented, admitted, instituted, and inducted as a vicar, the law will presume, that the vicarage was lawfully endowed, because, "omnia præsumuntur solenniter esse facta." Ibid. *Hunston v. Cocket*, Cro. Jac. 252.

(4) *By the discretion of the ordinary*.—Before this, it could not be done but with the consent of the *patron*, but there was no necessity of the licence of the *king*, (as in the case of appropriation,) because no damage accrued to the crown, (2 Rol. Abr. *Parson* (A), 334,) and the vicar was a corporation at common law.

(5) *No religious*.—So said the canon law: "In ecclesiis ubi monachi habitant, populus per monachum non regatur." Extra. l. 3, t. 37, c. 1. *Vide supra*, n. (1). But notwithstanding both statute law and canon law, there are in the Records of Canterbury two licences or dispensations to the monks, to serve the cures by themselves: one by reason of the contiguity of the churches, the other by reason of the poverty of the house. Court. 72 (b). Staff. 18 (b).

X. STAT. 4 HENRICI 4, c. 22. A.D. 1402.

STAT. 4 HEN.
4, c. 22.

"The Remedy where by the King's Presentation any Incumbent is put forth."

Item come ordeigne soit par estatut fait lan vint & quint le Roy Edward aiel nostre dit seigneur le roy qe si le roy ferra collation ou presentement a nulle benefice en autri droit qe le tittle sur qi il se fondera serroit bien examine qil serroit verrai & a quel heure qe avant juggement rendu le tittle soit trove par bone enformation nient verroi ne joust soit la collation ou presentement ent faitz repellez & anientez. Et enoutre soit ordeigne & establi en estatut fait apres en temps du Roy Richard qe si le roy presente a ascun benefice qi soit plein dascun incumbent qe le presentee le roy ne soit resceu par lordinaire tanqe le roy eit recovrez son presentement par proces de ley en sa court demesne & si ascune presentee du roy soit autrement resceu & le incumbent ouste sanz due proces come desuis est dit commence le dit incumbent sa suyte deinz un an apres la induction de presentee du roy nostre seigneur le roy considerant le grant meschief du dit incumbent celle partie ad ordeigne & establiz de lassent avaunt dit qe si aucun tiel incumbent soit ouste de son benefice sanz processe en la manere suisdite qe le dit incumbent issint ouste sanz processe puisse estre a large & suir remede par le dit estatut & comencer sa dite seute en ce cas a quel temps qe luy plerra deinz lan ou apres a sa voluntee & ce sibien pur temps passe come pur temps advenir nient contreteant le dit terme ensi limite par le dit estatut.

"Item, whereas it is ordained by the statute made the twenty-fifth year of King Edward, grandfather to our lord the king, that if the king make collation or presentment to any benefice in another's right, that the title whereupon he groundeth him should be well examined that it be true; and at what time, before judgement given, the title be found by good information untrue and unjust, the collation or presentment thereof made shall be repealed and adnulled. And moreover, in a statute made after in the time of King Richard, it was ordained and established, that if the king present to any benefice that is full of any incumbent, that the king's presentee shall not be *received by the ordinary*(1) till the king hath recovered his presentment by process of the law in his own court; and if any presentee of the king be otherwise received, and the incumbent put out without due process, as afore is said, the same incumbent shall commence his suit within a year after the induction of the presentee: our lord the king considering the *great mischief*(2) of the incumbent in this behalf, hath ordained and established, by the assent aforesaid, that if any such incumbent be put out of his benefice without due process in the manner aforesaid, that the said incumbent so put out without process, may be at large, and sue for his remedy by the said statute, and begin his suit in this case at what time shall please him, within the year, or after, at his will; and that as well for the time past, as for the time to come, notwithstanding the term so limited by the said statute."

25 Edw. 3,
St. III. c. 3.

13 Rich. 2,
St. I. c. 1.
1 Mod. 279.

(1) *Received by the ordinary*:—There was a petition of the commons in parliament 1 Hen. 4, for redress against the favour shown by ordinaries to those undue presentments; and the prayer was: "That all such incumbents, ousted and spoiled in such manner, without title tried by process of law, be by the chancellor of our lord the king, (the parties appealing to him without delay,) restored to their possessions, till the king hath recovered his presentment by process of law." To which the answer was, "The king will, that a prohibition be granted, where the benefice is full; according to the form

of the statute therefore made." Rot. Parl. 1 Hen. 4.

(2) *Great mischief*:—The words of the petition in parliament, upon which this statute was grounded, are: "Pleaseth it our lord the king to consider a great damage and mischief to the said incumbent, in this part, (that is to say of this, that he ought to commence his suit within one year after the induction of the king's presentee,) that the said incumbent may have many causes of impediment, by divers ways, to commence his suit within one year, and so lose his right and his livelihood." Rot. Parl. 4 Hen. 4.

STAT. 5 HEN.
4, c. 11.

XI. STAT. 5 HENRICI 4, c. 11. A.D. 1403.

"The Fermors of Aliens shall pay their Tithes to the Parson of the same Parishes."

STAT. 6 HEN.
4, c. 1.

XII. STAT. 6 HENRICI 4, c. 1 (1). A.D. 1404.

"The Penalty (2) of those which pay to the Court of Rome more for the First-fruits of any Bishoprick, &c. than had wont to be paid."

STAT. 7 HEN.
4, c. 6.

XIII. STAT. 7 HENRICI 4, c. 6. A.D. 1405.

"The Penalty of him which purchaseth a Bull to be discharged of Tithes."

STAT. 7 HEN.
4, c. 8.

XIV. STAT. 7 HENRICI 4, c. 8. A.D. 1405.

"No Provision, Licence, or Pardon, shall be granted of a Benefice full of an Incumbent."

25 Edw. 3,
St. VI.

"Item, to eschew many dissensions, discords, and debates, and divers other mischiefs very like to rise and grow because of many provisions made, and to be made, by the Pope, and also in respect of licences granted upon the same by the king our sovereign lord; it is ordained and established, that no *licence or pardon* (3) so granted before this time, nor to be granted in time to come, shall be available to any benefice full of any incumbent, at the day of the date of such licence or pardon granted."

Item pur eschuir plusours dissensions discordez & debates & diverses autres meschiefs verray semblables a sourdre & avenir a cause des plusours provisions faitz & affaires par lappostoill & auxi a cause des licences sur ce grantez par le roi nostre souveraigne seigneur ordeignez est & establiz qe nul tiel licence ou pardon ainsi graunte devant ces heures ne a grantier en temps advenir ne soit vailable a ascune benefice plein daucun incumbent a jour de la date de tiel licence ou pardone grante.

Enforced by
3 Hen. 5, c. 4.

STAT. 9 HEN.
4, c. 8.

XV. STAT. 9 HENRICI 4, c. 8. A.D. 1407.

"The carrying of Money out of the Realm to the Court of Rome, prohibited; and all Statutes against Provisors, and Translation of Archbishopricks, &c. confirmed."

STAT. 9 HEN.
4, c. 10.

XVI. STAT. 9 HENRICI 4, c. 10. A.D. 1407.

"A Pardon granted by the King to all that have purchased Provisions, or Translations to Archbishopricks, Bishopricks, &c."

STAT. 11 HEN.
4, c. 4.

XVII. STAT. 11 HENRICI 4, c. 4 (4). A.D. 1409.

"He that playeth at unlawful Games [Sundays and other Festival Days] prohibited by the Statute of 12 Rich. 2, c. 6 (5), shall be six days imprisoned."

(1) Expired.

(2) *Vide* Stat. 25 Hen. 8, c. 20.

(3) *Licence or pardon*:—Concerning the exercise of the regal authority, supposed in this statute, in dispensing with the Statutes of Provisors, and pardoning the breach of of them, there are two entries in the Records of Canterbury; one, a process of institution upon a papal bull, with the king's

writ of pardon for the contempt, notwithstanding the Statute of Provisors; (Reg. Arund. 26(a);) the other a general dispensation of the king with all the Statutes of Provisors, upon a papal provision directed to the Archbishop of Canterbury. *Ibid.* 558(a).

(4) Repealed by Stat. 21 Jac. 1, c. 28, s. 11.

(5) *Ibid.*

STATUTA HENRICI V.

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I. STAT. 1 HENRICI 5, c. 7. A.D. 1413.

STAT. 1 HEN.
5, c. 7.

"A Confirmation of the Statute 3 Rich. 2, c. 3, restraining Aliens to accept any Benefices in England(1)."

II. STAT. 2 HENRICI 5, St. I. c. 1 (2). A.D. 1414.

STAT. 2 HEN.
5, St. I. c. 1.

"Ordinaries shall inquire of, and reform the Estates of Hospitals."

"First, forasmuch as many hospitals within the realm of England, founded as well by the noble kings of this realm, and lords and ladies both spiritual and temporal, as by divers other estates, to the honour of God and of his glorious Mother, in aid and merit of the souls of the said founders, to the which hospitals the same founders have given a great part of their moveable goods for the buildings of the same, and a great part of their lands and tenements, therewith to sustain impotent men and women, lazars, men out of their wits, and poor women with child, and to nourish, relieve, and refresh other poor people in the same; be now for the most part decayed, and the goods and profits of the same, by divers persons, as well spiritual as temporal, withdrawn and spent in other use, whereby many men and women have died in great misery for default of aid, living, and succour, to the displeasure of God, and peril of the souls of such manner of spenders: the king our sovereign lord, considering the meritorious and devout intents of the founders aforesaid, and the unaccustomed government in the same, hath by the advice and assent aforesaid, ordained and established, that as to the hospitals which be of the patronage and *foundation of the king*(3), the *ordinaries*, by virtue of the king's commissions to them directed, *shall inquire*(4) of the manner and foundation of the said hospitals, and of the governance and estate of the same, and of all other matters necessary and requisite in this behalf, and the inquisitions thereof taken shall certify in the king's chancery. And as to other hospitals which be of another foundation and patronage than of the king, the ordinaries shall inquire of the manner of the foundation, estate, and governance of the same, and of all other matters and things necessary in this behalf, and upon that make thereof correction and reformation according to the laws of holy church, as to them belongeth."

The causes of
the erection of
hospitals.

6 Hen. 7, f. 14.

(1) *Vide antè 77*, Stat. 3 Rich. 2, c. 3; *et antè 84*, Stat. 13 Rich. 2, St. II. c. 2.

(2) This act is considered to be of importance in an historical point of view, as showing that charitable purposes experienced general encouragement.

(3) *Foundation of the king*:—The Chancellor of England for the time being, had, *de jure communi*, the exclusive right of visiting all hospitals of royal foundation. Regist. f. 40 (b). *Vide etiam*, Reyn. 32 (b), 46 (b).

(4) *The ordinaries* . . . shall inquire:—This is according to the ancient rule of the canon law: "De Xenodochiis, et aliis similibus

locis, per sollicitudinem episcoporum, in quorum diocesi existunt, ad easdem utilitates, quibus constituta sunt, ordinentur. Extra. I. 3, t. 36, c. 3. And it is said in the Journal of Parliament, (3 Hen. 8.) that abuses relating to hospitals ought to be reformed in convocation: "Conclusum est per dominos spirituales, quod defectus specificati in quadam petitione missa a domo communi, concernente hospitalia et domos eleemosynarum, reformari debent in convocatione. Sed vide *Case Le Sutton's Hospital*, 10 Co. 31(a). Regist. f. 41 (a).

STAT. 2 HEN.
5, ST. I. C. 3.

III. STAT. 2 HENRICI 5, ST. I. C. 3. A.D. 1414.

"A Copy of the Libel in the Spiritual Court shall be delivered (1)."

12 Co. 61.
13 Co. 41.

"Item, forasmuch as divers of the king's liege people be daily cited to appear in the spiritual court before spiritual judges, there to answer to divers persons, as well of things which touch freehold, debt, trespasses, covenants, and other things whereof the cognisance pertaineth to the court of our lord the king, as of matrimony and testament; and when such persons so cited appear and demand a libel of that which against

Item pur ceo qe diverses lieges nostre seigneur le roy sont citez de jour en autre dapparoir en courte christiene devaunt juges espirituelx a y respondre as diverses persones sibien des choses qe touchent frank tenement dette trespassez covenantz & autres des queux la conisance appartient al courte nostre seigneur le roy come de matrimonie & testament & qant tielx persones issint citeez appiergent & demandent un libell de ceo qe lour est

(1) The first *plea* bears different names, in the different descriptions of causes. In criminal proceedings, the first plea is termed the *articles*; in form, it runs in the name of the judge, who *articles* or *objects* the facts charged against the defendant; in plenary causes, not criminal, the first plea is termed the *libel*, and it runs in the name of the party or his proctor, who *alleges* and *proounds* the facts founding the demand; in testamentary causes, the first plea is termed an *allegation*. Every subsequent plea, in all causes, whether responsive or rejoining, and by whatever party given, is termed an *allegation*. Each of these pleas contains a statement of the facts upon which the party founds his demand for relief, or his defence; resembling the bill and answer in equity, except that the allegation is broken into separate positions or *articles*; the facts are alleged under separate heads, according to the subject matter, or the order of time in which they have occurred. Under this form of pleading, the witnesses are *produced* and examined only to particular *articles* of the *allegation*, containing the facts within their knowledge; a notice or *designation* of the witnesses being delivered to the adverse party, who is thereby distinctly apprised of the points to which he should address his cross-examination of each witness, as well as the matters which it may be necessary for him to contradict or explain by counterpleading. Before a plea of any kind, whether articles, libel, or allegations, is admitted, it is open to the adverse party to *object* to its admission either in the whole or in part; in the whole, when the facts altogether, if taken to be true, will not entitle the party giving the plea to the demand which he makes, or to support the defence which he sets up: in part, if any of the facts pleaded are irrelevant to the matter in issue, or could not be proved by admissible evidence, or are incapable of proof. These *objections* are made and argued before the judge, and decided upon by him; and his decision may be appealed from. For the purpose of the argument, all the facts capable of proof are assumed to be true; they are, however, so assumed, merely for the argument, but are not so admitted in the cause; for the party who offers the plea, is no less bound afterwards to prove the facts; and the party who objects to the plea, is no less at liberty afterwards to contradict the

facts. This proceeding is attended with great convenience in abridging the introduction of unnecessary and improper matter, to which parties themselves are generally too much disposed. They are apt to consider trivial circumstances to be important, and desire them to be inserted in the plea; a desire which neither the honest reluctance of the practitioners, nor the judicious advice of counsel, is always able to counteract: even the authority and vigilance of the court itself cannot altogether prevent redundant pleading, and can only check it by taking it into consideration on the question of costs.

The proceedings just referred to, have also the convenience of enabling parties, in many instances, to take the opinion of the court in a very summary way, particularly in amicable suits; if the facts are candidly stated, and the court, upon the plea being objected to, should be of opinion, that if proved, the facts either will or will not support the prayer of the plea; in the one case, if the plea is admitted, the further opposition may be withdrawn; in the other case, if the plea is rejected, the party offering it either abandons the suit, or appeals in order to take the judgment of a superior tribunal. This course saves the expense and delay consequent upon proving the facts by witnesses, in cases where there exists no doubt of the facts being correctly alleged in pleas, and where the question between the parties is principally or perhaps altogether a question of law, arising out of the facts so stated in plea. When a plea has been admitted, a time, or *term probatory*, is assigned to the party who gives the plea, to examine his witnesses; and the adverse party is assigned, except in criminal matters, to give in his answers upon oath, to his knowledge or belief of the facts alleged. The defendant may proceed then, if he think proper, or he may wait until the plaintiff has examined his witnesses, to give an *allegation* controverting his adversary's plea. This *responsive allegation* is proceeded upon in the same manner; objections to its admissibility may be taken, answers upon oath be required, and witnesses examined. The plaintiff may, in like manner, reply by a further allegation; and on that, or any subsequent allegation, the same course is pursued. The *pleadings* thus bring forward all the facts intended to be relied upon and proved on each side, and no surprise can well take place.

surmys pur estre enforme a doner lour respons illoques ou autrement a purchacer brief nostre seignur le roy de prohibition selonc lour cas quell libell lour est denie par les ditz juges espirituelx al entent qe tielx persones ne serront mye par nul tiel brief aidez encontre ley & as graundes damages de tielx persones issint empledrez nostre dit seignur le roy del advis & assent suisditz & a la prier des ditz communes ad ordeigne & establee qe a quelle heure la copie de la libell est graunteable par la ley qil soit graunte & livre a la partie sanz difficulte.

them is surmised, to be informed to give their answer thereunto, or otherwise to purchase a writ of our lord the king, of prohibition, according to their case, which libel to them is denied by the said spiritual judges, to the intent that such persons should not be aided by any such writ, against the law, and to the great damage of such persons so impleaded: Our said lord the king, by the advice and assent of the lords spiritual and temporal, and at the request and instance of the said commons, hath ordained and established, that at what time the libel is grantable *by the law* (1), that it may be granted and delivered to the party without any difficulty."

STAT. 2 HEN. 5, ST. I. c. 3.

1 Lutw. 134.
4 Edw. 4, f. 37.
Cro. Jac. 37.
3 Bulstr. 51,
120.

Rast. 483.

IV. STAT. 2 HENRICI 5, ST. I. c. 7 (2). A.D. 1414.

"*The Intent of the Hereticks called Lollards. Magistrates shall assist the Ordinaries in extirpating Heresies and punishing Hereticks. Penalty on Hereticks convict.*"

STAT. 2 HEN. 5, ST. I. c. 7.

V. STAT. 2 HENRICI 5, ST. II. c. 2 (3). A.D. 1414.

"*The yearly Wages of Chaplains and Parish Priests settled.*"

STAT. 2 HEN. 5, ST. II. c. 2.

VI. STAT. 3 HENRICI 5, ST. II. c. 1. A.D. 1415.

"*A Confirmation of the Liberties of the Church, and of all Persons, Cities, &c.*"

STAT. 3 HEN. 5, ST. II. c. 1.

VII. STAT. 3 HENRICI 5, ST. II. c. 2 (4). A.D. 1415.

"*Privilege given to certain Abbots, &c. to make their Attorneys in the Courts of Stancliffe and Frendles.*"

STAT. 3 HEN. 5, ST. II. c. 2.

VIII. STAT. 3 HENRICI 5, ST. II. c. 4 (5). A.D. 1415.

"*All Provisions, Licences, and Pardons, of a Benefice full of an Incumbent, shall be void.*"

STAT. 3 HEN. 5, ST. II. c. 4.

Item combien en temps le Roi Henry Quart pier a roi nostre tressoverain seignur q̄ Dieu assoille lan de son regne septisme pur eschuer pluseurs discordes & debates & diverses autres meschieves verraisemblables a sourder & avenir a cause des plusours provisions adonques faitz & affairz par lappostoill & auxi des licences sur ceo grauntez par le dit nadgairs roi entre autres chosez ordeignez estoit & establiz qe null tiele licence ou pardon ensy grantee pardevaunt mesme lordinaunce ne a grantier en apres serroit vaillable a ascune benefice plein dascun incumbent a jour del date de tiele licence ou pardon grante. Nientlemins

"Item, whereas in the time of King Henry the Fourth, father to our sovereign lord, whom God forgive, the seventh year of his reign, to eschew many discords and debates, and divers other mischiefs which were likely to rise and happen, because of many provisions then made, or to be made, by the Pope, and also of licences thereupon granted by the said late king, amongst other things it was ordained and established, that no licence or pardon so granted before the same ordinance, nor after to be granted, should be available to any benefice full of an incumbent at the day of the date of such licence or pardon granted. Not-

7 Hen. 4, c. 8.
1 Roll. 453.

(1) *By the law*:—Therefore this statute was not introductory of a new law, but only an affirmance of the common law. *Burrows v. The High Commission Court.* 3 Bulst. 51, 53.

(2) Repealed by Stat. 1 Edw. 6, c. 12, s. 3;

revived by Stat. 1 & 2 P. & M. c. 6; repealed by Stat. 1 Eliz. c. 1, s. 15.

(3) Repealed by Stat. 21 Jac. 1, c. 28, s. 4.

(4) Expired.

(5) *Vide* Stat. 10 Geo. 4, c. 7, s. 33.

STAT. 3 HEN.
5, ST. II. c. 4.

withstanding several persons having provisions of the Pope of divers benefices in England, and elsewhere, and licences royal to execute the said provisions, have, by colour of the same provisions, licences, and acceptations of the said benefices, subtilly excluded divers persons of their benefices, in which they have been incumbents by a long season, of the collations of the patrons spiritual, to them duly made to their intent, to the utter destruction and subversion of the estates of the said incumbents: The king willing to remove such mischief, hath ordained and established, that all the incumbents of every benefice of holy church, of the patronage, collation, or presentation of spiritual patrons, may peaceably and quietly enjoy, and shall enjoy their said benefices, without being inquieted, molested, or any wise grieved by any colour of such provisions, licences, and acceptations whatsoever; and that all the licences and pardons upon and by such provisions made in any manner, shall be void and of no value. And if any feel himself grieved, molested, or inquieted in any wise from henceforth by any, by colour of such provisions, licences, pardons, or acceptations, that the same molesters, grievors, and inquieters, and every of them, shall suffer and incur the pain and punishments contained in the Statutes of Provisors before this time made, and that by process of *premunire facias* formed upon the case; and that the party which shall sue by the same writ, shall recover his treble damages, if the defendants named in the same writ, or any of them, be convict in that behalf."

25 Edw. 3,
St. VI.
16 Rich. 2, c. 5.
See 5 Eliz. c. 1,
against main-
taining the
authority of
the see of
Rome, and
13 Eliz. c. 2,
against bring-
ing bulls, &c.
from Rome.

diverses persones eiantz provisions de lappostoill de diverses benefices en Engleterre & aillours & licences roialx pur executer les ditz provisions ont par colour dicelles provisions & licenees & acceptations des ditz benefices subtilment oustez diverses persones de lour benefices es queux ils ont estez incumbentz par long temps dell collation des verraies patrons espirituelx a eux faitz duement a lour entent a finall destruction & enervation destates dicelx incumbentz le roy voillant oustier tiele meschief Si ad ordeigne & establee qe toutz les incumbentz de qeconques benefices de seinte esglise del patronage collation ou presentation des patrons espirituelx puissent peisiblement & quietement enjoier & enjoient lour ditz benefices sanz estre inquietez moletez ou grevez ascunement par ascuny par colour de tieux provisions ou licences & acceptations queconques. Et qe toutz les licences & pardons sur & pur tieux provisions faitz en ascun manere soient voidez & de null value. Et si ascuny se sente grevee moleste ou inquiete ascunement desorenavaunt par ascuns ou ascuny par colour de tieux provisions licences pardons ou acceptations qe mesmes les grevours molestours ou inquietours & chescun de ceux eient & encourgent ait & encourage les peines & punissemmentz en les estatutz & ordeignances des provisors avant ces heures faitz contenuz & ceo par proces de *premunire facias* fourmee sur le cas & qe la partie qi pursuera mesme le brief recovra ses damages a treble si les defendantz en mesme le brief nomez ou ascuny dicelles soient ou soit convietz ou convict ceste partie.

STAT. 3 HEN.
5, ST. II. c. 2.

IX. STAT. 3 HENRICI 5, ST. II. c. 3(1). A.D. 1415.

"Ordinaries shall take no more for proving of Testaments, with their Inventories, than was taken in the time of King Edward the Third."

STAT. 4 HEN.
5, c. 6.

X. STAT. 4 HENRICI 5, c. 6(2). A.D. 1416.

"Penalty on Irish Prelates for collating an Irishman to a Benefice in England, or bringing an Irishman to Parliament to discover the Counsel of Englishmen to Rebels."

STAT. 9 HEN.
5, ST. I. c. 9.

XI. STAT. 9 HENRICI 5, ST. I. c. 9(3). A.D. 1421.

"No Abbot or Prior shall be appointed by any Bishop to collect Dismes or Subsidies out of the County where he dwelleth."

(1) Expired.

(2) Superseded by Stat. 39 & 40 Geo. 3,
c. 67.

(3) Expired; *sed vide* Stat. 27 Hen. 8,
c. 28. Stat. 31 Hen. 8, c. 13.

STATUTA HENRICI VI.

A.D. 1422—1461.

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I. STAT. 2 HENRICI 6, c. 1. A.D. 1423.

"A Confirmation of the Liberties of the Church, and of all Persons, Cities, &c."

STAT. 2 HEN.
6, c. 1.

II. STAT. 2 HENRICI 6, c. 2. A.D. 1423.

"A Remedy for the Master, &c. of the Hospital of St. Leonard in York, to recover a Thrave of Corn due to them, &c."

STAT. 2 HEN.
6, c. 2.

III. STAT. 8 HENRICI 6, c. 1. A.D. 1429.

"The Clergy of the Convocation shall have such liberty (1) as the great Men and Commonalty which come to the Parliament."

STAT. 8 HEN.
6, c. 1.

In primis quia prelati & clerus regni Anglie ad convocationem evocati eorumque servientes & familiares qui cum eisdem ad convocationem hujusmodi veniunt sepius ac frequenter arestantur molestantur & inquietantur Volens igitur dictus dominus noster rex pro securitate & quiete dictorum prelatorum & cleri in hac parte prospicere gratiose ad supplicationem eorundem prelatorum & cleri & de assensu procerum magnatum & communitatis predictorum ordinavit & statuit quod vocandi in futurum ad convocationem cleri pretextu brevis regii eorumque servientes & familiares eadem libertate sive immunitate veniendo expectando & redeundo plene gaudeant & utantur perpetuis futuris temporibus qua gaudent & gaudere consueverunt sive gaudere debent in futurum proceres sive magnates & communitas regni Anglie ad parliamentum domini regis vocati sive vocandi.

"First, because the prelates and clergy of the realm of England called to the convocation, and their servants and familiars that come with them to such convocation, oftentimes and commonly be arrested, molested, and inquieted; our said lord the king, willing graciously in this behalf to provide for the security and quietness of the said prelates and clergy, at the supplication of the same prelates and clergy, and by the assent or the great men and commons aforesaid, hath ordained and established, that all the clergy hereafter to be called to the convocation by the king's writ, and their servants and familiars, shall for ever hereafter fully use and enjoy such liberty or defence in coming, tarrying, and returning, as the great men and commonalty of the realm of England, called or to be called to the king's parliament, do enjoy, and were wont to enjoy, or in time to come ought to enjoy."

5 Hen. 4, c. 6.
11 Hen. 6,
c. 11, inflicts
penalty on
those who as-
sault any that
come to
Parliament.

IV. STAT. 9 HENRICI 6, c. 4. A.D. 1430.

"An Identitate nominis maintainable by Executors, &c."

STAT. 9 HEN.
6, c. 4.

(1) *Liberty*:—In the Journals of the House of Lords, there are to be found several applications to their lordships for redress, in cases where this *liberty* of the

convocation-clergy had been invaded; and redress was accordingly granted to the applicants.

STAT. 9 HEN.
6, c. 10.

V. STAT. 9 HENRICI 6, c. 10. A.D. 1430.

"A Rehearsal and Confirmation of the Statute of 3 Hen. 5, c. 2, authorizing certain Abbots and other Religious Persons to make their Attorneys."

STAT. 9 HEN.
6, c. 11.

VI. STAT. 9 HENRICI 6, c. 11. A.D. 1430.

"Proclamations before a Writ be awarded to the Bishop to certify Bastardy."

"Item, whereas by a supplication delivered in this present parliament by the commons of the same, it was declared by Margaret dutchess of Clarence, Johan dutchess of York, sisters, and amongst other heirs to Edmond earl of Kent, Richard duke of York, Richard earl of Salisbury, and Alice his wife, Ralph earl of Westmoreland, John lord of Typtoft and of Powys, and Joyce his wife, and Henry Gray, cousins, and other of the heirs of the said Edmond, late earl, as in the same supplication is supposed; that is to say, the said duke, son to Anne daughter of Alianour, another of the sisters of the said Edmond; the said Alice, daughter to Alianour another sister of the said Edmond; the said Ralph, son to Elizabeth, another sister of the said Edmond; the said Joyce, daughter to the said Alianour mother of Anne; and the said Henry Gray, son to Johan, daughter of the same Alianour; that whereas Alianour, wife to James lord Audley, pretending, calling, and affirming herself daughter and heir to the said Edmond late earl of Kent, and begotten and born in marriage pretended, had betwixt him and Constance late wife of Thomas lord Despensser, where by the said supplication it is supposed, that the said Alianour, wife to the said James, is bastard, and never was any marriage made, had, nor solemnized betwixt the said Edmond and Constance, but the said Edmond (by the ordinance, will, and agreement of King Henry the Fourth, grandfather to our lord the king that now is, after great, notable, and long ambassage had and sent to the Duke of Millain, for a marriage to be had betwixt the said Edmond and Luce, sister to the said Duke of Milan,) did take to wife, and openly and solemnly married the said Luce at London; the said Constance then living, and being there present, not claiming the said Edmond to her husband, nor any dower of his lands after his decease; which marriage betwixt the said Edmond and Luce so had and solemnized, continued without any

Item come par une supplication baillee en cest parlement par les communes dicell estoit declarez par Margarete duchesse de Clarence Johan duchesse dEverwyk soers & entre autres heirs a Edmond nadgairs count de Kent Richard duc dEverwyk Richard count de Sarisbirs & Alece sa femme Rauf count de Westmerland John sire de Tiptoft & de Powys & Joiuse sa femme & Henri Gray cosyns & autres des heirs du dit Edmond nadgairs count sicome en mesme la supplication est supposez cest-assavoir le dit duk fitz a Anne file a Alianore une autre des soers du dit Edmond la dite Aleyse file a Alianore une autre soer du dit Edmond le dit Rauf fitz a Elizabeth une autre soer du dit Edmond la dit Jojouse file ditz Alianore mere a Anne & le dit Henri Grey fitz a Johanne file a mesme la Alianore qe la ou Alianore femme a James sire dAudeley pretendand appellant & affermant luy mesme file & heir au dit Edmond nadgairs count de Kent & engendre & nee en espouselx pretensez euez parentre luy & Custance nadgairs femme a Thoma sire Despensser la ou par la dit supplication est suppose qe la dite Alianore feme au dit James est bastard & jammes nulles espouselx feurent en fait euez ou solempnisez parentre les ditz Edmond & Custaunce mes qe le dit Edmond par lordinaunce volunte & agreement du Roi Henri le quart aiel nostre seigneur le roi qorest depuis graunde notable & longe ambassiatt euez & enjoiez a le Duke de Melayne pur mariage a estre euez parentre le dit Edmond & Luce soer au dit Duk de Melayne prist a femme & overtement & solempnement espousa la dite Luce a Loundres vivant cell temps la dite Custaunce & illoeqes esteant present nient clamant le dit Edmond a son baron ne aucun dower de ses terrez puis son decease les queux espouilles parentre le dit Edmond & Luce ensi euz & solempnisez continuerent saunz aucun interruption du dite Custaunce ou dascun autre durant la vie du dit Edmond sicome

divers seignurs & autres credibles & notables persones du dit roialme ount bien en lour memorie et coment puis la decesse du dit Edmond lavaundite Luce fuist endowe de ses terres come sa loyall femme continuant en son estate peisiblement par tout sa vie.

Nientmeins la dite Alianore femme James sur grande subtilite processe ymagine prive labour & autres menes & voies coloures a lentent qele deveroit estre certifiez muliere par ascun ordinarie en cas qe bastardie serroit alegge en sa persone ad porte a ceo qest dit en examination devant certains jugges en courtz Christen & espirituel nient enfourmez ne aiantz conisaunce du dit subtilite processe ymagine prive labour colourez mesnes & voies certaines subornatz proves & persones de sa assent & covine depousantz pur ele come en espouselx euez & solempnisez parentre les ditz Edmond & Custaunce & la dite Alianore femme James pur estre engrendrez & neez dedeins mesmes les espouselx les ditz Duchesse Duke d'Everwyk Count de Sarisbirs Aleise Count de Westmerland John sire de Tiptoft Joieuse & Henri ne null deux ent nient garniz ne sachantz tange par longe temps apres la dite deposition fait dount les ditz suppliantz se doutent estre grevez & empeschez de lour enheritaunce euez par le dit Edmond par autre subtilite & labour en le temporell a estre laboure & oevere par les ditz Sire d'Audeley & Alianore sa femme sicome ils voloient prendre ascun action envers ascunes persones de lour assent & covyne ou autrement faire ascuns persones de tiel assent & covyne prendre une action envees eux sicome il est suppose qils lour ordignent a ceo faire en la quell action par les assent & covyne suisditz bastardie deut estre allegge en la persone du dite Alianore femme James et sur ceo par assent & covyne issue estre pris & un brief destre envoie a ascun ordinarie ou lour plerroit nient advertise des ditz subtilite assent & covyne pur certifier si la dite Alianore femme James fuist muliere ou nemye devant quill ordinarie mesme la Alianore femme James voet allegger de prover luy mesmes muliere par la dite deposition des ditz subornatz provez & adonques la par-

interruption of the said Constance, or of any other, during the life of the said Edmond, as divers lords and other credible and notable persons of the said realm do well remember; and how after the decease of the said Edmond, the said Luce was endowed of his lands as his lawful wife, continuing thereof her estate peaceably all her life.

"II. Nevertheless the said Alianour, the wife of James, upon great subtilty, process imagined, privy labour, and other means and coloured ways, to the intent that she ought to be certified mulier by some ordinary, in case that bastardy should be alleged in her person, hath brought (as it is said) in examination before certain judges in the spiritual court, not informed, nor having knowledge of the said subtilty, imagined process, privy labour, and coloured ways, certain suborned proofs and persons of her assent and covin, deposing for her, that the said Alianour, the wife of James, was begotten within marriage, had and solemnized betwixt the said Edmond and Constance; the said Duchess, the Duke of York, and Earl of Salisbury, and Alice, Earl of Westmorland, John the lord of Typtoft, Joyce and Henry, nor any of them thereof warned, nor knowing until long time after the deposition so made, whereof the said suppliants do fear them to be grieved and impeached of their inheritance had by the said Edmond, by another subtilty and labour in the temporal law, to be practised and wrought by the said Lord of Audley and Alianour his wife; as if they will commence any action against any persons of their own assent and covin, or otherwise will cause such persons of such assent and covin to pursue an action against them, as it is supposed that they intend to do; in which action, by the covin and assent aforesaid, bastardy ought to be alleged in the person of the said Alianour, wife of James, and thereupon, by the assent and covin, an issue is to be taken, and a writ to be sent to some ordinary (where it pleased them not advertised of the said subtilty, assent, and covin) to certify if the said Alianour, the wife of James, be mulier or not, before which ordinary the same Alianour, wife of James, will alledge and prove herself mulier by the said depositions of the said suborned wit-

A secret practice to prove one mulier in the spiritual court who is a bastard.

A practice to prove one mulier by the common law who is indeed a bastard.

STAT. 9 HEN.
6, c. 11.

STAT. 9 HEN.
6, c. 11.

nesses; and then the party reputed as adversary against the Lord of Audley and Alianour his wife, in the said action taken or to be taken by assent and covin aforesaid, will alledge no proof nor matter, nor make any defence, before the said ordinary against the same Lord Audley and Alianour his wife, but suffer the matter before the said ordinary to proceed according to the meaning of the said Lord of Audley and Alianour his wife; so that it is very likely that the same ordinary will certify the said Alianour, the wife of James, mulier; which certificate so had and made, ought by the law of England to disherit the said Duchesses, Duke of York, Earl of Salisbury, Earl of Westmorland, John lord of Typtoft, Alice, Joyce, and Henry, and their issue for ever, of the whole inheritance aforesaid. Whereupon the premisses, tenderly considered, and to eschew such subtil disheritances, as well in the said case, as in other cases like in time to come, by the advice and assent of all the lords spiritual and temporal, and also at the special request of the said commons, in this parliament assembled, it is ordained and established by authority of this parliament, that if the said Alianour, the wife of James, be certified mulier in any court before this time, that no manner of certificate heretofore made for the said Alianour, wife of James, shall in any wise put to prejudice, bind, indamage, nor conclude any person or persons, but him or his heirs that was party to the plea. And from henceforth all justices of or in the courts where any plea is or shall be depending, taken, or moved, in which plea, so depending, taken, or moved, bastardy is or shall be alledged against any person party to the same plea, and thereupon an issue joined, or to be joined, which by the law ought to be certified by the ordinary, that the judges, or one judge of or in the courts where the said plea is or shall be depending, taken, or moved, before the time that any writ of certificate pass out of the same court to the ordinary, to certify upon the issue so joined, or to be joined, shall make remembrance under their seals, or his seal, at the suit of the demandant or tenant, plaintiff or defendant in the plea, in which the bastardy is or shall be alledged, reciting

tie eu come adversarie envers les dits Sire dAudeley & Alianore sa femme en la dit action pris ou apprendre par assent & covyne suisditz ne veulle null prove ne matier alegger ne defence fair devant le dit ordinarie envers mesmes les Sire dAudeley & Alianore sa femme mes la suffrer la matier devant le dit ordinarie proceder solonc lentent des ditz Sire dAudeley & Alianore sa femme parensi qe verisemblable et qe mesmes lordinarie verroit certifier la dite Alianore femme James muliere la quelle certificat issint eu & fait deussoit par la ley dEngleterre disheriter les ditz Duchesse Duk dEverwyk Count de Sarisbirs Aleyse Count de Westmerl' John sire de Tiptoft Joyouse & Henri & leur issue pur toutz jours de lentier enheritaunce avaunt dit. Sur qy les premisses tendierment considerez & pur eviter tielx subtilx disheritaunces si bien en la dit cas come en autres cases semblables en temps avenir del advis & assent des seignurs espirituelx & temporelx & auxi a la special request des ditz communes en cest parlement assemblez ordeinez est & establez par auctorite de mesme la parlement qe si la dite Alianore femme James soit certifie muliere en ascun court devant ces heures qe null maner de tiel certificat pardevant fait pur la dite Alianore femme James mette a ascun prejudice leye endamage ne conclude ascun persone ou persones forsque celui & ses heirs qi fuist fait partie a la plee Et qe desore enavaunt toutz juges de ou en les courtz la ou ascun plee est ou serra pendant pris ou moeve en queux plees ensi faitz pendantz pris ou moevez bastardie est ou serra allegge envers ascun persone partie a mesme le plee & sur ceo issue joinee ou a joyner le quell par la ley droit estre certifie par lordinarie qe lez juges ou un juge de ou en les courtz ou le dit plee est ou serra pendant pris ou moeve devant le temps qe ascun brief de certificat passe hors de cell court al ordinarie pur certifier sur lissue ensi joyne ou a joyner face une remembrance desouth leur seax ou son seal al suyt le demandant ou tenant pleintif ou defendant en le plee en quell bastardie est ou serra allegge recitant lissue qest joyne en mesme le plee de bastardie & certifiant a le chaunceller du Roy dEngleterre pur le temps esteant a lentent qe sur

ceo proclamation soit fait en la dite chauncerie par trois moys un foitz en chescun moys qe toutz les persones qi pretendent aucun interesse pur objecter encountre la partie qe luy pretende destre muliere qils suent al ordinarie a qi le brief de certificat est ou serra direct pur faire lour alleageances & objections envers la partie qe luy pretende destre muliere sicome la ley de seint esglise requiert Et le dit chaunceller eiant notice del dit remembraunce & issue joynee & requis par le dit demaundant ou tenant pleintiff ou defendant avaunt-ditz aiant mesme la remembraunce de fair la dite proclamation come desuis est dit mesme le chaunceller pur le temps esteant ferra fair proclamation en la fourme avauntdit & la proclamation ensi fait certifiera en la court ou le dit plee en quell la bastardie est allegge alors serra pendant. Et qe les juges de ou en la court ou le dit plee est ou serra pendant pris ou moeve devaunt aucun proclamation ensi affaire en la chauncerie facent un foitz autiel proclamation evertement en mesme la court & auxi autre foitz quant les proclamations seront certifiez par le chaunceller & en la fourme reherce faitz & adonques le dit juge agardera le dit brief de certificat al ordinarie pur certifier sur lissue issint joynee ou a joyner. Et si aucun brief de certificat soit fait ou graunte devaunt ceo qe toutz les ditz proclamations en la fourme devaunt reherce soient faitz & certifiez qe adonques cell brief de certificat & le certificat del ordinarie sur ceo faite ou affaire soit voide en ley & de null effect. Et si aucun brief devaunt cest temps soit direct a aucun ordinarie pur certifier si la dite Alianore femme James soit bastard ou nemye &

the issue that is joined in the same plea of bastardy, and certifying to the chancellor of the King of England for the time being, to the intent that thereupon proclamation be made in the said chancery by three months, once in every month, that all persons pretending any interest to object *against the party which pretendeth himself to be mulier*(1), that they sue to the ordinary to whom the writ of certificate is or shall be directed, to make their allegations and objections against the party which pretendeth him to be mulier, as the law of holy church requireth; and the said chancellor having notice of the said remembrance and issue joined, and being required by the said demandant or tenant, plaintiff or defendant having the said remembrance, to make the said proclamation as afore is said, the same chancellor for the time being shall cause to be made proclamation in the form aforesaid; and the proclamation so made shall certify in the court where the said plea in which the bastardy is alledged another time shall be depending. And that the judges of or in the court where the same plea is or shall be depending, taken, or moved, before any proclamation so to be made in the chancery, make one time such proclamation openly in the same court, and also another time when the proclamation shall be certified by the chancellor of England, and made in the form above rehearsed; and then the said judge shall award the said writ of certificate to the ordinary to certify upon the issue so joined, or to be joined; and if any writ of certificate be made or granted, before that all the proclamations in the form aforesaid be made and certified, that then the said writ of certificate,

STAT. 9 HEN.
6, c. 11.

Proclamations
before a writ
awarded to the
ordinary to cer-
tify bastardy.

(1) *Against the party which pretendeth himself to be mulier*:—Mulier hath three significations: 1, It signifieth a woman, in general; 2, a virgin; 3, a wife; and this is the most proper signification of it in our laws: and a son or a daughter born of a lawful wife, is called *filius mulieratus*, or *filia mulierata*, a son *mulier*, or a daughter *mulier*; and it is always used in contradistinction to a bastard: thus, a bastard is an illegitimate issue, and *mulier* is legitimate. 1 Inst. 244 (a). If a man have two sons, the eldest of whom is a bastard, and the second legitimate, the eldest is called *bastard eigne*, and the second *mulier puisne*. And if the bastard enter on the lands of his father, and die seised thereof, leaving issue, the *mulier* hath no remedy; because, as Lord Coke

says: "Justum non est aliquem post mortem facere bastardum, qui toto tempore vitæ suæ pro legitimo habebatur." Ibid. To which may be added, that such a bastard is *mulier* by the ecclesiastical law; and therefore hath a colour to enter as heir to his father. 1 Burn's E. L. by Phillimore, 129. But this rule applies only to the case of a *bastard eigne* and *mulier puisne*, where the father and mother intermarry after the birth of the bastard; (*Pride v. Bath and Montague* (Earls of), 1 Salk. 121;) for a jury may try the fact which proves a marriage void, and thereby bastardize the issue, after the death of the parties, although it is then too late for the spiritual court to proceed *pro salute animæ*. Ibid.

STAT. 9 HEN.
6, c. 11.

Rist. 29, 105,
208.
Farther pro-
visions relating
hereto,
18 Eliz. c. 3,
7 Jac. 1, c. 4,
3 Car. 1, c. 4,
and 6 Geo. 2,
c. 31.

and the certificate of the ordinary there-
upon made or to be made, *shall be void
in law, and of none effect* (1). And if
any writ before this time be directed to
any ordinary, to certify if the said Alia-
nour, wife of James, be bastard or not,
and at this time not certified, if it be
certified hereafter by virtue of the said
writ, that the same certificate of the
said ordinary so made, be void, and of
none effect."

a cest temps nient certifie sil soit certifie
enapres par vertu du dit brief qe mesme
le certificat du dit ordinarie ensi fait soit
voide & de null effect.

STAT. 15 HEN.
6, c. 7.

VII. STAT. 15 HENRICI 6, c. 7. A.D. 1436.

*"All Persons, Religious and Secular, may make their General Attorneys to sue
or plead for them in every Hundred and Wapentake."*

STAT. 27 HEN.
6, c. 5.

VIII. STAT. 27 HENRICI 6, c. 5. A.D. 1448.

"Certain Days wherein Fairs and Markets ought not to be kept(2)."

"Item, considering the abominable
injuries and offences done to Almighty
God, and to his saints, always aiders and
singular assisters in our necessities, be-
cause of fairs and markets upon their
high and principal feasts, as in the feast
of the Ascension of our Lord, in the day
of Corpus Christi, in the day of Whitsun-
day, in Trinity Sunday, with other Sun-
days, and also in the high feast of the
assumption of our blessed Lady, the day
of All Saints, and on Good Friday, accus-
tomably and miserably holden and used
in the realm of England; in which prin-
cipal and festival days, for great earthly
covetise, the people is more willingly
vexed, and in bodily labour foiled, than
in other ferial days, as in fastening and
making their booths and stalls, bearing

Item consideratis abhominabilibus in-
juriis & offensis omnipotenti Deo nostro
sanctisque suis nostris semper in necessi-
tibus adiutoribus & succursoribus sin-
gularibus causa feriarum & mercatorum
super eorum summa & principalia festa
veluti in festo Ascensionis Domini die
corporis Christi die Pentecostes die Do-
minica sancte Trinitatis cum aliis diebus
Dominicis ac etiam in summo festo
Assumptionis beate Marie die Omnium
Sanctorum & in die Parasceues consue-
tudinalliter & miserrime in regno Anglie
tentorum & usitatorum factis & per-
petratis in quibus principalibus festi-
valibusque diebus pro magna cupiditate
terrena populus voluntarie plus vexatus
& in labore corporali deturbatus existit
quam aliis diebus ferialibus videlicet in

(1) *Shall be void in law, and of none ef-
fect*:—Before this statute, bastards had a way
of tricking themselves (as it were) into legiti-
macy. For they used to bring feigned
articles, and suborned witnesses, before the
bishop, to prove their legitimation, and then
procured the certificate to be returned of
record; after which, their legitimation could
never be contested; which being returned of
record, as a point adjudged by its proper
judges, and remaining among the memorials
of the court, all persons were concluded by it.
This created great inconveniences; for the
evidences of the contrary parties concerned
were never heard at the trial, and yet their
interest was concluded. To remedy such
inconveniences, this statute was made. 1
Burn's E. L. by Phillimore, 130.

(2) In the 8th & 9th of Queen Elizabeth,
a bill was read the first and second time, to
postpone fairs and markets from Sunday to
the next work-day following; which therefore
seems to be the bill, that had been prepared

in the convocation of 1562, whereby it was
provided, "That upon every sabbath-day,
and principal feast-day, be kept neither open
fair, nor market, throughout the year, and
that all persons or corporations, having by
patent such days expressed, may change the
same days with the days immediately follow-
ing, or going before, the said Sundays, or
principal feast-day." Str. Hist. Ref. 316.

In the 3rd year of Charles 1, a national
fast having been appointed, the Bishop of
Winchester was directed to move the king,
that, whereas, on that day, divers fairs and
markets were granted to divers towns by
charter, his majesty would be pleased, that
in those places they might have liberty to
keep the said fast the next day after the
said fairs ended, notwithstanding his ma-
jesty's proclamation to that day: with which
his majesty was well pleased, and the bishops
of each diocese were directed by the house
of lords to take care accordingly. Dom.
Proc. Apr. 10.

infigendo & faciendo bothas & stallas portando & vehendo levando & collocando mercimonia sua extrorsum & domorsum quasi nichil habentes in memoria horribilem inquisitionem animarum suarum in emptione & venditione deceptivis multimodis mendaciis & falso perjurio cum ebrietate & contentionibus & specialiter se ipsos & eorum servientes a divino servitio subtrahendo prefatus dominus rex de avisamento & assensu dominorum spiritualium & temporalium ac communitatis regni sui Anglie in dicto parlamento existentium nec non auctoritate ejusdem parlamenti ordinavit quod omnimoda ferie & mercata in dictis principalibus festis & diebus Dominicis ac die Parasceues penitus cessent ab omnimoda monstracione aliquorum bonorum vel mercandis necessariis victualibus exceptis sub pena forisfacture omnium bonorum predictorum sic monstratorum domino franchise ubi hujusmodi bona in contrarium istius ordinationis sunt vel erunt monstrata quatuor diebus Dominicis in autumpno exceptis. Nichilominus ex sua gratia speciali auctoritate supradicta concedens potestatem illis qui ex antiquo nullum diem ad tenendum feriam vel mercatum suum nisi solummodo super diebus festivalibus predictis habent ad tenendum ea auctoritate & vigore antike concessionis sue infra tres dies prox' ante festa predicta vel prox' post cum proclamatione prius facta ad simplicem vulgarem populum super quem diem feria predicta tenebitur semper certiorand' absque aliquo fine seu feodo ad usum domini regis capiendo. Et illi qui habent ex antiquo per specialem concessionem dies sufficientes ante supradicta festa vel post plenum numerum dierum suorum observent consimili supradicto modo ad tenend' suas ferias vel mercata dictis diebus festivalibus & Dominicis ac die Parasceues exceptis.

Proviso semper quod presens ordinatio incipiat sumere effectum ad festum sancti Michaelis proximo futurum & non ante & durabit usque ad proximum parliamentum & sic deinde nisi in dicto prox' parlamento allegetur monstretur & probetur causa rationabilis pro qua videbitur non expediens quod ordinatio predicta sic perdurabit.

and carrying, lifting and placing their wares outward and homeward, as though they did nothing remember the horrible defiling of their souls in buying and selling, with many deceitful lyes, and false perjury, with drunkenness and strifes, and so specially withdrawing themselves and their servants from divine service; the aforesaid lord the king, by the advice and assent of the lords spiritual and temporal, and the commons of this realm of England, being in the said parliament, and by authority of the same parliament, hath ordained, that all manner of fairs and markets in the said principal feasts and Sundays, and Good Fridays, shall clearly cease from all showing of any goods or merchandises (necessary victual only except) upon pain of forfeiture of all the goods aforesaid, so shewed, to the lord of the franchise or liberty where such goods, contrary to this ordinance, be or shall be showed (the four Sundays in harvest except). Nevertheless, of his special grace, by authority aforesaid, granteth to them power, which of old time had no day to hold their fair or market but only upon the festival days aforesaid, to hold by the same authority and strength of his old grant, within three days next before the said feasts, or next after, proclamation first made to the simple common people, upon which day the aforesaid fair shall be holden, always to be certified, without any fine or fee to be taken to the king's use. And they which of old time have, by special grant, sufficient days before the feasts aforesaid, or after, shall in like manner, as is aforesaid, hold their fairs and markets the full number of their days, the said festival days and Sundays, and Good Fridays, except.

"II. Provided always, that this present ordinance shall begin to take effect at the feast of St. Michael, next coming, and not before, and shall endure until the next parliament, *and so forth* (1), except in the said parliament a reasonable cause be alleged, shewed, and proved, for the which it shall seem not expedient that the foresaid ordinance so shall endure."

STAT. 27 HEN.
6, c. 5.

The penalty on those who shall keep fairs or markets upon Sundays.

(1) *And so forth*.—In the canons of 1571, this prohibition was absolute: "Nun-

dinas et mercatus publicos celebrare diebus Dominicis non licebit."

STAT. 27 HEN.
6, c. 6.

IX. STAT. 27 HENRICI 6, c. 6. A.D. 1448.

"The King's Pardon granted to all Priests, as well Secular as Religious, of several Offences, Forfeitures, &c."

STAT. 32 HEN.
6, c. 1. [IR.]

X. STAT. 32 HENRICI 6, c. 1. [IRELAND.] A.D. 1454.

"An Act that all Statutes made against Provisours, as well in England as in Ireland, shall be had and kept in force."

All statutes
against provi-
sours in Eng-
land and Ire-
land, to be in
force in Ire-
land.
Ir. 7 Edw. 4,
c. 23.
10 Hen. 7, c. 5.
Eng. 25 Edw.
3, c. 22.
13 Ric. 2, c. 2.
16 Ric. 2, c. 5.
2 Hen. 4, c. 3.
7 Hen. 4, c. 8.
3 Hen. 5, c. 4.
Treble da-
mages and 20l.
on conviction.

"At the request of the commons, that where divers statutes and ordinances, as well within the realm of England, as within this realm of Ireland, have been made against all them, that sue provisions to the court of Rome, as by the statutes and ordinances thereof made, as well in England as in Ireland, more plainly appeareth. This notwithstanding, provisions are sued from day to other, more now than before this time: Wherefore the premisses considered, it is ordained and established by authority of the said parliament, that from henceforward all the acts, ordinances, and statutes, made against the provisours, as well in England as in Ireland, be had and kept in force within this land of Ireland. And also, if any provisour or provisours do henceforward sue any provision upon any man beneficed within this land of Ireland, and by cause of the provision do enter into any benefice or benefices of the church, and do take any goods or chattels from any beneficer of the church, against whom any such provisions are sued: that then the party grieved may recover treble damages, and he that taketh such goods, and thereof is convicted, shall pay twenty pounds, the half to the king, and half to him that will sue."

STAT. 33 HEN.
6, c. 1.

XI. STAT. 33 HENRICI 6, c. 1 (1). A.D. 1455.

"A Remedy for Executors against Servants that embezzle their Master's Goods after his Death."

STAT. 36 HEN.
6, c. 1. [IR.]

XII. STAT. 36 HENRICI 6, c. 1 (2). [IRELAND.] A.D. 1458.

"An Act that beneficed Persons shall keep Residence."

Beneficed per-
sons must
keep residence;
in default, one
half of the pro-
fits to go to
the use of their
churches, the
other to be ex-
pended in the
wars in defence
of the kingdom.

"At the request of the commons, that whereas divers persons advanced to benefices within the land of Ireland, do absent them out of the said land in other lands, whereby the issues and profits of the said benefices be yearly taken forth of the said land of Ireland, to the great impoverishment and weakening of the same, diminishing of God's service, and withdrawing of hospitality: it is ordained and established by authority of the said parliament, that all manner of benefices within the said land, of whatsoever condition that they be, shall keep residence continually in their proper persons in the said land within twelve months after the said parliament finished, and otherwise the issues and profits of the said benefices (divine service and ordinary charges kept) shall be divided, the half to the commodity and profit of their benefices and churches, the other half to be expended in our sovereign lord the king's wars in defence of this poor land of Ireland, and any grants of absency made by our sovereign lord the king to them or any of them, or to be made and granted in time coming to the contrary hereof, to be void and of no force in law, unless that it be by authority of parliament. Excepted students, pilgrims, and such as will of necessity, must sue by way of appeal, or any other lawful way, for reformation of their benefices."

Grants by the
king to the
contrary, un-
less by parlia-
ment, void.
Students, &c.
excepted.

(1) Repealed by Stat. 7 & 8 Geo. 4, c. 27. Stat. 3 & 4 Gul. 4, c. 37. Stat. 4 & 5 Gul. 4, c. 90. Stat. 6 & 7 Gul. 4, c. 99.
(2) Repealed, as to alienation, &c., by the clergy, by Stat. 5 Geo. 4, c. 91. *Vide etiam,*

STATUTA EDWARDI IV.

A.D. 1461—1483.

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I. Stat. 1 Edw. 4, c. 1	113	IV. Stat. 7 Edw. 4, c. 2 [Ir.]	113
II. 4 Edw. 4, c. 7	113	V. c. 3 [Ir.]	114
III. 5 Edw. 4, c. 1 [Ir.]	113	VI. 18 Edw. 4, c. 2 [Ir.]	114

I. STAT. 1 EDWARDI 4, c. 1(1). A.D. 1461.

STAT. 1 EDW.
4, c. 1.

"Which Acts done by King Henry 4, King Henry 5, and King Henry 6, or by others during their Reigns, shall continue good, and which not."

[Confirmations of licences or pardons of alienation, or to enter into lands descended after an ancestor's death:—Licences to found any spiritual place or house, or any fraternity, guild, &c., or to give any lands to them:—Licences of appropriation or to make elections:—Founding religious houses, touching the sites of the same:—Lands assured in mortmain by the king, which were given to him to that intent:—Collations, gifts, and presentations to benefices during the incumbents' lives:—and Confirmation of a grant by Henry 6 to the Abbot of Biland, of the manor of Kilbourn, in the county of York.]

II. STAT. 4 EDWARDI 4, c. 7(2). A.D. 1464.

STAT. 4 EDW.
4, c. 7.

"Regulations to be observed by the Shoemakers of London, and those within three miles of the same. The Privileges of the Inhabitants of St. Martin's le Grand saved."

[No cordwainer shall sell shoes on Sundays or certain holydays.]

III. STAT. 5 EDWARDI 4, c. 1. [IRELAND.] A.D. 1465.

STAT. 5 EDW.
4, c. 1. [Ir.]

"An Act, that like Challenges shall be made touching the Feoffee to use, as should be touching him, to whose use he standeth enfeoffed."

IV. STAT. 7 EDWARDI 4, c. 2. [IRELAND.] A.D. 1467.

STAT. 7 EDW.
4, c. 2. [Ir.]

"An Act, that none shall purchase Benefices from Rome."

"At the request of the commons, whereas of ancient time all maner of parsons and vicars, having competent benefices, did keep hospitality to the honour of God, and to the profit of poor people, and now of late diverse men of the holy church, suing to the court of Rome, hath purchased bulls from the holy father the Pope to have as well abbeys, priories, and other dignities, as parsonages and vicarages in *commendam*, to the final extinguishment of divine service and hospitalitie: whereupon the premisses considered, in eschewing of those mischiefs it is ordeyned, enacted, and established by authority of the said parliament, that whatsoever maner man of holy church purchase any maner of dignity, parsonage, or vicarage, by bulls of the Pope to hold in *commendam*, and the said bulls, dignities, parsonages, or vicarages, except that they shall be out of the protection of the king, and forfeit the value of the said benefices during his life naturall, notwithstanding whatsoever his benefice be, dignity or parsonage, or vicarage, and shall incurre in all penalties of the estatutes or ordinances made against provisors or benefices; and

None shall
purchase bene-
fices in *com-
mendam* from
Rome.

(1) Obsolete.

(2) Repealed by Stat. 14 Hen. 8, c. 9. Stat. 5 Eliz. c. 8. Stat. 1 Jac. 1, c. 22.

STAT. 7 EDW.
4, c. 2.

Not to be par-
doned but by
Act of Parlia-
ment.

that no pardon or licence of the king made or to be made be available, but void, if it be not by act of parliament. And if any maner man of the church occupy now, or hereafter do occupy any parsonage or vicarage by way of *commendam* by the bulls apostolique, if it be of his owne collation, that he shall make collation thereof within six moneths; and if he do not, that then the dean and chapter of the diocesse, in which diocesse the said benefice is, shall make collation of the said benefice within six moneths then next ensuing. And if the said dean and chapter be negligent, and make no collation of the said benefice within six moneths, as before is said, that then it shall be lawful to the king to present to the said benefice for that time, and as often as the case require, as is aforesaid."

STAT. 7 EDW.
4, c. 3. [Ir.]

V. STAT. 7 EDWARDI 4, c. 3. [IRELAND.] A.D. 1467.

"An Act, whereby Letters Patents of Pardon from the King to those that sue to Rome for certain Benefices, is void."

Letters patent
of pardon to all
who claim
from Rome
benefices at
the time full of
an incumbent,
void.

"Item, at the request of the commons it is ordeyned and established by authority of the said parliament, that all maner letters patents of the king of pardons or pardon granted by the king, or hereafter to be granted to any provisor, that claim any title by the bulls of the Pope to any maner benefices, where at the time of the impetrating of the said bulls of provision the benefice is full of an incumbent, that then the said letters patents of pardon or pardons be void in law, and of none effect."

STAT. 18 EDW.
4, c. 2. [Ir.]

VI. STAT. 18 EDWARDI 4, c. 2. [IRELAND.] A.D. 1478.

"An Act concerning the choosing of Knights and Burgesses of Parliament (1)."

[Acts formerly passed, that not one beneficed in the diocese should be admitted proctor, declared to be void, from the difficulty of observing them.]

STATUTUM RICHARDI III.

A.D. 1483—1485.

STAT. 1 RICH.
3, c. 14.

I. STAT. 1 RICHARDI 3, c. 14 (2). A.D. 1483—1485.

"Accomptants for Dismes of the Clergy not chargeable to answer other Men's Suits in the Exchequer."

(1) Repealed.

(2) Expired.

STATUTA HENRICI VII.

A.D. 1485—1509.

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I. Stat. 1 Hen. 7, c. 4	115	VI. Stat. 7 Hen. 7, c. 2	116
II. 3 Hen. 7, c. 5	115	VII. c. 6	116
III. c. 10	115	VIII. 10 Hen. 7, c. 5 [Ir.]	116
IV. 4 Hen. 7, c. 5	115	IX. 11 Hen. 7, c. 8	116
V. c. 13	116		

I. STAT. 1 HENRICI 7, c. 4(1). A.D. 1485.

STAT. 1 HEN.
7, c. 4.*"An Act to punish Priests, for Incontinency, by their Ordinaries."*

II. STAT. 3 HENRICI 7, c. 5(2). A.D. 1486.

STAT. 3 HEN.
7, c. 5.*"All Bargains by the name of Dry Exchange, shall be void, whereby any certain Sum shall be lost."*

[Spiritual censures shall be inflicted for usury, notwithstanding the temporal penalties.]

III. STAT. 3 HENRICI 7, c. 10(3). A.D. 1486.

STAT. 3 HEN.
7, c. 10.*"Costs, &c. awarded to the Plaintiff where the Defendant sueth a Writ of Error."*

"Item, that where oftentimes plaintiff or demandant, plaintiffs or demandants, that have judgement to recover, be delayed of execution, for that the defendant or tenant, defendants or tenants, against whom judgement is given, or other that been bound by the said judgement, sueth a writ or writs of error to adnul and reverse the said judgement, to the intent only to delay execution of the said judgement: it is enacted, ordained, and established, by the advice of the lords spiritual and temporal, and at the prayer of the commons, in the said parliament assembled, and by authority of the same, that if any such defendant or tenant, defendants or tenants, or if any other that shall be bound by the said judgement, sue, afore execution had, any writ of error to reverse any such judgement, in delaying of execution, that then if the said judgement be affirmed good in the said writ of error, and not erroneous, or that the said writ of error be discontinued in the default of the party, or that any person or persons that sueth writ or writs of error, be non-sued in the same, that then the said person or persons, against whom the said writ of error is sued, shall recover his costs and damage for his delay and wrongful vexation in the same, by discretion of the justice afore whom the said writ of error is sued."

on affirmance after verdict; and 4 Ann. c. 16, s. 25, which provides farther for costs on quashing writ of error.

31 Edw. 3,
St. I. c. 12.
1 Salk. 205.
Mod. Cases in
Law, 314.Dyer, 77.
Cro. Eliz. 588,
659.
Cro. Car. 145.
Raym. 134.Co. pla. f. 2,
24, 162, 292.
Confirmed by
19 Hen. 7,
c. 20. And
see 13 Car. 2,
St. II. c. 2, s. 9,
which gives
double costs

IV. STAT. 4 HENRICI 7, c. 5(4). A.D. 1487.

STAT. 4 HEN.
7, c. 5.*"A Repeal of all Letters Patents granted to any Spiritual Persons to be discharged of the Payment or Collection of Dismes."*

(1) Repealed by Stat. 3 & 4 Vict. c. 86.

(2) This statute, and Stat. 3 Hen. 7, c. 6, were repealed by Stat. 11 Hen. 7, c. 8, and Stat. 37 Hen. 8, c. 9.

(3) Dr. Burn, (1 E. L. by Phillimore, 45,) in commenting upon this statute, observes, "By virtue of this statute, the court of Queen's Bench have, upon a writ of error, awarded damages according to the value of the church found by the verdict; but as the real damage which the plaintiff sustains is, only the being kept out of the half-year's value, the legal interest on that seems to be

all that he is entitled to." Bull. N.P. 125. This was not so by the common law, (*Holt v. Holland*, Skin. 25; 3 Lev. 59,) but by Stat. 4 & 5 Gul. 4, c. 39, in actions of *quare impedit*, full costs in addition to damages are recoverable, but no costs can be given against an archbishop or bishop who had probable cause of defence, but if the defence be grounded upon former presentations or collations, such an excuse cannot be held "probable cause."

(4) Expired.

STAT. 4 HEN.
7, c. 13.

V. STAT. 4 HENRICI 7, c. 13 (1). A.D. 1487.

"Clergy shall be allowed but once. A convict Person shall be marked with the Letters M or T. A Provision for them which be within Orders."

STAT. 7 HEN.
7, c. 2.

VI. STAT. 7 HENRICI 7, c. 2 (2). A.D. 1490.

"Every Person that shall be in the King's Wages beyond the Sea, or on the Sea, shall have a Protection. . . ."

[Pleas of *quare impedit*, excepted in protections for the war.]

STAT. 7 HEN.
7, c. 6.

VII. STAT. 7 HENRICI 7, c. 6 (3). A.D. 1490.

"Letters Patents made to several Spiritual Persons to be discharged of Dimes and Quinzimes, shall extend no further than they did in the time of King Edward 4."

STAT. 10 HEN.
7, c. 5. [Ir.]

VIII. STAT. 10 HENRICI 7, c. 5. [IRELAND.] A.D. 1495.

"An Act against Provisors to Rome."

All statutes, as well in England as Ireland, against provisors to Rome, confirmed and to be executed here.
Ir. 32 Hen. 6, c. 1.
7 Edw. 4, c. 2 & 3.
Eng. 25 Edw. 3, c. 22.
13 Rich. 2, c. 2.
16 Rich. 2, c. 5.
2 Hen. 4, c. 3.
7 Hen. 4, c. 8.
3 Hen. 5, c. 4.

"Prayen the commons assembled in this present parliament, that where afore this time there hath been, and yet be within the said land of Ireland, many debates and strifes betwixt the prelates and other of the church of Ireland, by reason of diverse provisors suing by false and untrue suggestions made unto the court of Rome, for to deprive and put out of possession the said prelates and other beneficers from their livelyhood and benefices, and by colour and cause whereof many of the king's true subjects, prelates, and beneficers in that land, wrongfully by strength and might be put out of their livelyhood, and such persons provisors be put in their places, contrary to the Statutes of Provision in that behalf ordained, and contrary to reason, right, and good conscience: wherefore be it ordained, enacted, and established by the authority of this present parliament, that all maner of estatutes, as well made within the realm of England, as within the said land of Ireland, against provisors, by the authority of this present parliament, be authorised, approved, and confirmed, and be deemed good and effectual in the law; and also by authority aforesaid, that all and every of the statutes, made against provisors, be from henceforth duely and straightly executed in all points within the said land, according to the effect of the same. And the king's justices, and commissioners of the said land, diligently enquire at their sessions, and all other times requisite and behoveful, of all and every maner of person or persons that hereafter offend the said statutes, or any of them, and every of the said persons so founden defective or trespassing in any of the said Statutes, from henceforth be duely corrected and punished, in example of all other in time to come, according to the tenure and purport of the said estatute."

STAT. 11 HEN.
7, c. 8.

IX. STAT. 11 HENRICI 7, c. 8 (4). A.D. 1494.

[An Act for the Punishment of Usurers.]

[Reserving always to the spiritual jurisdiction, their lawful punishments in every cause of usury.]

(1) Repealed by Stat. 6 Geo. 4, c. 25, and Stat. 7 & 8 Geo. 4, c. 27.

(2) Expired.

(3) Expired.

(4) Repealed by Stat. 37 Hen. 8, c. 9. *Vide antè*, 49, n. (1).

STATUTA HENRICI VIII.(1)

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(1) The English and Irish statutes have been classified according to the years of the reign, and the numbers of the chapters, but a discrepancy respecting dates exists.

STAT. 1 HEN.
8, c. 14.

I STAT. 1 HENRICI 8, c. 14 (1). A.D. 1509.

[*Concerning Reformation of Apparel* (2).]

[Spiritual men were exempted from the regulations of this Statute.]

STAT. 21 HEN.
8, c. 1.

II. STAT. 21 HENRICI 8, c. 1 (3). A.D. 1529.

[*Act concerning the King's general Pardon.*]

[Robberies of goods in churches; alienations in mortmain; actions of *quare impedit*; were excepted from this general pardon (4).]

STAT. 21 HEN.
8, c. 4.

III. STAT. 21 HENRICI 8, c. 4. A.D. 1529.

"The Sale of Lands by part of the Executors lawful."

2 Roll. 336.
Land devised
to be sold by
divers execu-
tors, cannot by
common law
be sold by part
of them.
4 Edw. 3, c. 7.
9 Edw. 3,
St. I. c. 3.
25 Edw. 3,
St. V. c. 5.

Part of the
executors, who
take upon
them the
charge of a
will, may sell
any land de-
vised by the
testator to be
sold.
3 Cro. 80.
Bro. Deive,
10, 31.
Co. Lit. 113
(a).

"Where divers sundry persons before this time, having other persons seised to their use of and in lands and other hereditaments to and for the declaration of their wills, have by their last wills and testaments willed and declared such their said lands, tenements, or other hereditaments to be sold by their executors, as well to and for the payments of their debts, performance of their legacies, necessary and convenient finding of their wives, virtuous bringing up and advancement of their children to marriage, as also for other charitable deeds to be done and executed by their executors for the health of their souls. And notwithstanding such trust and confidence so by them put in their said executors, it hath oftentimes been seen, where such last wills and testaments of such lands, tenements, and other hereditaments have been declared, and in the same divers executors named and made, that after the decease of such testators some of the same executors, willing to accomplish the trust and confidence that they were put in by the said testator, have accepted and taken upon them the charge of the said testament, and have been ready to fulfil and perform all things contained in the same; and the residue of the same executors, uncharitably contrary to the trust that they were put in, have refused to intermeddle in any wise with the execution of the said will and testament, or with the sale of such lands so willed to be sold by the testator. And forasmuch as a bargain and sale of such lands, tenements, or other hereditaments so willed by any person to be sold by his executors after his decease, after the opinion of divers persons, can in no wise be good or effectual in the law, unless the same bargain and sale be made by the whole number of the executors named to and for the same; by reason whereof, as well the debts of such testators have rested unpaid and unsatisfied, to the great danger and peril of the souls of such testators, and to the great hindrance, and many times to the utter undoing of their creditors: As also the legacies and bequests made by the testator to his wife, children, and for other charitable deeds to be done for the wealth of the soul of the same testator that made the same testament, have been also unperformed, as well to the extream misery of the wife and children of the said testator, as also to the let of performance of other charitable deeds for the wealth of the soul of the said testator, to the displeasure of Almighty God. For remedy whereof, be it enacted, ordained, and established by the authority of this present parliament, that where part of the executors named in any such testament of any such person so making or declaring any such will of any lands, tenements, or other hereditaments to be sold by his executors, after the death of any such testator, do refuse to take upon him or them the administration and charge of the same testament and last will wherein they be so named to be executors, and the residue of the same executors do accept and take upon them the cure and charge of the same testament and last will; that then all

(1) Stat. 6 Hen. 8, c. 1, and Stat. 7 Hen. 8, c. 6, embody regulations for the wearing of apparel, but the clergy were excepted from restrictions.

(2) Repealed by Stat. 1 Jac. 1, c. 25, s. 45.

(3) Expired.

(4) Similar exceptions occur, in Stat. 22 Hen. 8, c. 15; Stat. 26 Hen. 8, c. 18; but these statutes have become obsolete.

bargains and sales of such lands, tenements, or other hereditaments, so willed to be sold by the executors of any such testator, as well heretofore made, as hereafter to be made by him or them only of the said executors that so doth accept, or that heretofore hath accepted and taken upon him or them any such cure or charge of administration of any such will or testament, shall be as good and as effectual in the law, as if all the residue of the same executors named in the said testament, so refusing the administration of the same testament, had joined with him or them in the making of the bargain and sale of such lands, tenements, or other hereditaments so willed to be sold by the executors of any such testator, which heretofore hath made or declared, or that hereafter shall make or declare any such will, of any such lands, tenements, or other hereditaments after his decease, to be sold by his executors.

“II. Provided alway, that this act shall not extend to give power or authority to any executor or executors at any time hereafter to bargain or put to sale any lands, tenements, or hereditaments, by virtue and authority of any will or testament heretofore made, otherwise than they might do by the course of the common law afore the making of this act.”

IV. STAT. 21 HENRICI 8, c. 5 (1). A.D. 1529.

“*What Fees ought to be taken for Probate of Testaments.*”

“Where in the parliament holden at Westminster, in the thirty-first year of the reign of the noble king of famous memory, Edward the Third, upon the complaint of his people for the outrageous and grievous fines and sums of money taken by the ministers of bishops, and of other ordinaries of holy church, for the probate of testaments, and for the acquittances by the said ordinaries to be made concerning the same, the said noble king, in the same parliament, openly charged and commanded the Archbishop of Canterbury, and the other bishops for the time being, that amendment thereof should be had; and if none amendment were thereof had, it was by the authority of the same parliament accorded, that the king should thereof make inquiry by his justices, of such oppression and extortions; and that the same justices should hear and determine them as well at the suit of the king, as of the party, as of old time hath been used, as by the same statute plainly appeareth. And where at the parliament holden at Westminster, in the third year of the reign of King Henry the Fifth, it was recited, that the commons of the realm had oftentimes complained them in divers parliaments, for that divers ordinaries do take for the probate of testaments, and other things thereunto belonging, sometime *xl. s.*, sometime *lx. s.*, and sometimes more, against right and justice, where, in the time of King Edward the Third, men were wont to pay for such causes but *ii. s. vi. d.*, or *v. s.* at the most, by which unlawful exactions the testaments of the testators might not be executed according to their last wills; it was then enacted, for the avoiding of such oppressions, that no ordinary from thenceforth should take for the probate of any testament or inventory, or for any other thing to the same belonging, any more than was accustomed and used in the time of the said noble King Edward the Third, upon pain to yield to the party so grieved, three times as much as the said ordinaries did so receive; which act did endure but to the next parliament following, by reason that the ordinaries did then promise to reform and amend the said oppressions and exactions; and for that the said unlawful exactions of the said ordinaries, and their ministers, be nothing reformed nor amended, but greatly augmented and increased, against right and justice, and to the great impoverishing of the king’s subjects:

“II. The king our sovereign lord, by the assent of the lords spiritual and temporal, and the commons, in this present parliament assembled, and by authority of the same, hath ordained, established, and enacted, that from the first day of April, in the year of our Lord M.D.XXX., nothing shall be demanded, received, nor taken by any bishop, ordinary, archdeacon, chancellor, commissary,

STAT. 21 HEN.
8, c. 4.

Wills made
before this
statute.
See farther
concerning
executors,
43 Eliz. c. 8,
30 Car. 2, c. 7.
4 & 5 Gul. &
Mar. c. 24,
s. 12.

STAT. 21 HEN.
8, c. 5.

31 Edw. 3.
St. I. c. 4.
Litch, 68.
31 Edw. 3,
St. I. c. 11.

3 Hen. 5, c. 8.

The ordinaries’
duties for pro-
bate of testa-
ments in the
time of King
Edward 3.

4 Inst. 336.
The fees for
probate of a
testament,
where the
goods exceed

STAT. 21 HEN.
8, c. 5.
not the value
of c. s.

official, or any other manner of person or persons, whatsoever they be, which now have, or which at any time hereafter shall have, authority or power to take or receive probaton, insinuation, or approbation of testament or testaments, by himself, or themselves, nor by his or their registers, scribes, praisers, summoners, apparators, or by any other of their ministers, for the probaton, insinuation, and approbation of any testament or testaments, or for writing, sealing, praising, registering, fines, making of inventories, and of giving acquittances, *or for any other manner of cause concerning the same*(1), where the goods of the testator of the said testament, or person so dying, do not amount clearly over and above the value of c. s. sterling, except only to the scribe to have for writing of the probate of the testament of him deceased, whose goods shall not be above the same clear value of c. s. vi. *d.*, and for the commission of administration of the goods of any man deceasing intestate, not being above like value of c. s. clear vi. *d.*, and that nevertheless, the bishop, ordinary, or other person or persons having power or authority to take or receive the probaton or approbation of testaments, refuse not to approve any such testament, being lawfully tendered or offered to them to be proved or approved, whereof the goods of the testator, or person so dying, amount not above the value of c. s. sterling, so that the said testament be exhibited to him or them in writing, with wax thereunto affixed ready to be sealed, and that the same testament be lawfully proved before the same ordinary (before the sealing) to be true, whole, and the last testament of the same testator, in such form as hath been commonly accustomed in that behalf.

Commission of
administration
where the
goods exceed
not the value
of c. s.

The fees of the
probate of a
testament,
where the
goods do ex-
ceed c. s. and
not xl. *li.*

“III. And when the goods of the testator do amount over and above the clear value of c. s. and do not exceed the sum of xl. *li.* sterling; that then no bishop, ordinary, nor other manner of person or persons, whatsoever he or they be, now having, or which hereafter shall have, authority to take probaton or approbation of any testament or testaments, as is aforesaid, by themselves, nor any of their said registers, scribes, praisers, summoners, apparators, nor any other their ministers, for the probaton, insinuation, and approbation of any testament or testaments, or for the registering, sealing, writing, praising, making of inventories, giving of acquittances, fines, or any other thing concerning the same, shall take, or cause to be taken of any person or persons but only three shillings vi. *d.* and not above, whereof to be to the said bishop or ordinary, or to any other person or persons having power and authority to take the probaton or approbation of any testament or testaments, for him and his ministers, ii. s. vi. *d.* and not above, and xii. *d.* residue of the said iii. s. vi. *d.* to be to the scribe for the registering of the same; and where the goods of the testator, or person or persons so dying, do amount over and above the clear value of xl. *li.* sterling, that then the bishop nor ordinary, nor other person or persons, now having, or which hereafter shall have authority or power to take probate of testaments, as is aforesaid, by him or themselves, nor any of his or their said registers, scribes, praisers, summoners, apparators, or any other their ministers, for the probaton, insinuation, and approbation of any testament or testaments, or for the registering, sealing, writing, praising, making of inventories, fines, giving of acquittances, or any thing concerning the

2 Roll. 158,
263, 449.
The fees of the
probate of a
testament,
where the
goods do ex-
ceed xl. *li.*

(1) *Or for any other manner of cause concerning the same*:—It has been held, that it made no difference whether the probate be written upon the testament itself, or upon a transcript engrossed; and in this latter case, if a greater fee were taken by the judge on account of engrossing, it was within the prohibition of this statute: thus, in *Rouse v. Real*, (4 Inst. 335, 336; Gibson's Codex, 485,) where the fee taken amounted to 4s. 10*d.*, it was said, that if the executor required any to engross the testament, he may agree with him, whom he requireth to do it, as he can, but the judge ought not to exact any fee on that account due to him.

Respecting such fees, Dr. Gibson observes, (Codex, 487,) “it is agreed, on all hands,

that the fees given by this act are become much too small, by the great alteration of the value of money and the prices of things; and therefore, now the rule is, the known and established custom of every place being reasonable, which, as I am informed, hath been adjudged a good rule.” *Sed vide* Stat. 55 Geo. 3, c. 184, Sched. Part 3.

By Can. 132, it is ordained, that no judge or register shall in any wise receive for the writing, drawing, or sealing, of any such *commission*, (as in the said canon is mentioned,) above the sum of 6s. 8*d.*, whereof one moiety to be for the judge, and the other for the register of the court. 4 Burn's E. L. by Phillimore, 339.

same probate of a testament, shall from the first day of April, take, or cause to be taken, of any person or persons, but only v. s. and not above, whereof to be to the said bishop, ordinary, or other person having power to take the probatation of such testament or testaments, for him and his ministers ii. s. vi. d. and not above, and ii. s. vi. d. residue of the said v. s. to be to the scribe for registering of the same, or else the same scribe to be at his liberty to refuse those ii. s. vi. d., and to demand and have for writing of every ten lines of the same testament, whereof every line to contain in length ten inches, i. d., and that every such bishop or ordinary, and other person or persons so having, or which hereafter shall have authority or power to take or receive the probatation or approbation of any testament or testaments, as is abovesaid, their registers, scribes, and ministers shall approve, insinuate, seal, and register, from time to time, the said testaments, and deliver the same sealed with the seal of their office, to the executor or executors named in any such testaments, for the said sum or sums abovesaid, and in manner and form as is above rehearsed, to deliver it with convenient speed, without any frustratory delay; and in case any person die intestate, or that the executors named in any such testament refuse to prove the said testament, then the said ordinary, or other person or persons having authority to take probate of testaments, as is abovesaid, shall grant the administration of the goods of the testator, or person deceased, *to the widow of the same person deceased, or to the next of his kin* (1), or to both (2), as

STAT. 21 HEN.
8, c. 5.

Testaments
shall be sealed
and delivered
without delay.

Hob. 250.
Administration
granted of the
goods of the
intestate.
1 Salk. 36.
Moore, 871,
pl. 1210.
Bro. Admin.
47.

(1) *To the widow of the same person deceased, or to the next of his kin:*—The Stat. 21 Hen. 8, c. 5, applies only to such as are next of kin at the time of the death. *Savage v. Blythe*, 2 Hag. App. 150.

It has been said, that the construction of this statute, upon the proximity of degrees, must be according to the common law; (*Blackborough v. Davis*, 12 Mod. 616; 1 P. Wms. 50;) but modern cases seem to have fully established, that it shall be construed according to the civil law. 4 Burn's E. L. by Phillimore, 360.

Administration may be granted of the goods of a son or daughter, to the father or mother, as next of blood.

If one die intestate, leaving a grandmother and uncles and aunts, the grandmother is entitled to the administration, in exclusion of the uncles and aunts. Prec. Cha. 527.

If there be a grandfather, father, and son, and the father die intestate, the son shall have the administration, and not the grandfather. *Crooke v. Watt*, 2 Vern. 125.

Administration must be granted to the brother of the half-blood before the uncle, for he has the immediate blood of the father, which the uncle hath not. *Collingwood v. Pace*, 1 Ventr. 425.

And the half-blood in this respect is esteemed as near as the whole. But if there be a brother and a sister of the half-blood, and the sister be married, then it must be granted to the brother, and not to her and her husband, because in effect it makes the husband administrator, who is not of kin to the intestate; and if she die, the husband would still continue administrator, and so might possess himself of the whole personal estate. *Sir George Sands' case*, 3 Salk. 21.

Generally, by this statute, administration shall be granted to the wife or next of kindred.

There is one exception to the rule as to the next of kin, furnished by cases where the executor refuses, or accepting dies intestate, and that is, with respect to the residuary

legatee: because he is bound for his own sake to be careful in collecting the effects and improving the estate; and the presumption of the statute, that the testator would have given it to the next of kin, is destroyed. *Repington v. Holland*, 2 Lee, 254. *West v. Willby*, 3 Phill. 381. *Friswell v. Moore*, Ibid. 140. *Wetdrill v. Wright*, 2 Phill. 243. In *Atkinson v. Barnard*, (Ibid. 317,) the residuary legatee is said to be "the testator's choice," and which construction will apply, even where there is no prospect of a residue. *Thomas v. Butler*, 1 Ventr. 219. *Sed quære*, as to whether, when residuary legatee in trust. As to substituted trustees, vide *Hutchinson v. Lambert*, 3 Add. 27. *Cousmaker v. Chamberlayne*, 2 Lee, 243. *Boddicott v. Dalzeel*, Ibid. 294. *Fawkenor (Sir Everard) v. Jordan*, Ibid. 327. *Creswell v. Creswell*, 2 Add. 347. 4 Burn's E. L. by Phillimore, 360.

In *Bubbers v. Harby*, (3 Curt. 50,) a motion for administration with will annexed to the attorney of a residuary legatee, a married woman, upon her proxy alone, her husband refusing to join, was rejected; Sir Herbert Jenner Fust observing: ". . . In the present case, the husband states his reasons for refusing to join in the proxy, and I do not think, that they are ill-founded; and I do not think, that I ought to put him in a situation, that may make him liable for costs, beyond the property to which he would be entitled. In the case of *Hardinge*, (2 Curt. 640,) the wife was entitled to the whole of the property, and she released her interest only; if the husband had any interest he was only relieved of the responsibility. I do not think, that I can in this case accept the proxy, without the consent, or rather against the consent, of the husband."

The residuary legatee, as well as every person possessing a prior right, must be cited before the grant will be made to any other person.

(2) *Or to both*:—And this, either jointly or separately; for the ordinary may grant

STAT. 21 HEN. 8, c. 5. by the discretion of the same ordinary shall be thought good, taking surety of him or them, to whom shall be made such commission, for the true administration of the goods, chattels, and debts, which he or they shall be so authorized to

3 Co. 40.
9 Co. 39.

several administrations of several parts of the goods of the intestate. 1 Rol. Abr. *Executor* (G), 908.

Thus, in *Fawtry v. Fawtry*, (1 Salk. 36,) a man died intestate, leaving a wife and a brother. The ordinary had granted the administration of some particular debts to the brother, and of the residue to the wife, and a *mandamus* was moved for to grant administration to the wife. But the court held, that the ordinary may grant administration to the brother *quoad* part, and to the wife for the rest; in which case, neither can complain; since the ordinary need not have granted any part of the administration to the party complaining. But if the intestate leave a bond of 100*l.* the ordinary cannot grant administration for 50*l.* to one person, and 50*l.* to another, because this is an entire thing.

But the court of probate always prefers, *ceteris paribus*, a sole to a joint administration. *Leggatt v. Leggatt*, 1 Lee, 348. *Warwick v. Greville*, 1 Phill. 126. *Bell v. Timiswood*, 2 Ibid. 22. *Dampier v. Colson*, Ibid. 54. And in modern practice the wife is preferred under ordinary circumstances, (*Webb v. Needham*, 1 Add. 495; *Hughes v. Cook*, 1 Lee, 386; *Stretch v. Pynn*, Ibid. 30; *Cunningham v. Ross*, 2 Ibid. 478; *Repington v. Holland*, Ibid. 254; *Lloyd v. Lloyd*, Ibid. 321,) in preference to a brother. And the court has refused, after decreeing administration to a widow under one *caveat*, to allow it to be stopped from passing the seal by another *caveat*. *Wingfield v. Wingfield*, 1 Ibid. 340. Nevertheless, the grant is discretionary, and upon *good cause* the next of kin are preferred. In the goods of *J. Williams*, 3 Hagg. 217. And such cases as the following, have been deemed *good causes*. The elopement of a wife from her husband, and cohabitation with another person, whom at his death she married; (*Fleming v. Pelham*, *in not. Ibid.*;) so lunacy of the widow; but there the court required an inventory and justifying securities. In the goods of *J. Williams*, Ibid. 217. The right of the applicant may be contested on the ground of the invalidity of her marriage; (*Plunkett v. Sharp*, 2 Lee, 35; *Taylor v. Taylor*, 1 Ibid. 571; 2 Ibid. 274;) but where a prior marriage is pleaded in bar to the interests of an asserted widow, strict proof of such marriage is required. *Taylor v. Taylor*, Ibid. Administration has been granted to a second wife, the first having been divorced *à vinculo* according to the law of a foreign country, of which they were both subjects; (*Ryan v. Ryan*, 2 Phill. 332;) but a second marriage works no defeazance of a wife's right in this matter, although where there are children who would be entitled to two-thirds of the distributive authority, and the mother only to one, such circumstances might induce the court to grant the administration to a child in preference. *Webb v. Needham*, 1 Add. 494, 496. Administrations have been granted to

the widow, where wills have been lost, in some instances. *Vallance v. Vallance*, 1 Hagg. 693. In the goods of *B. Campbell*, 2 Ibid. 555. But a wife divorced *à mensa et thoro*, seemingly forfeits her title to administration. 4 Burn's E. L. by Phillimore, 361, 362. *Pettifer v. James*, Bunb. 16.

A sentence of the Prerogative court pronouncing against a will, and decreeing administration to the daughter, having been affirmed by the court of Delegates, and the cause remitted; the court will not allow the execution of the sentence to be delayed,—by a prayer for an answer to the interest of the widow, who had been cognizant of, though not cited to see proceedings,—nor by a *caveat*. *Dew v. Clark*, 1 Hagg. 311.

If a *feme covert* die intestate, administration of her goods of right appertains to her husband, as her next and most lawful friend within the statute. 1 Rol. Abr. *Executor* (K), 910. In the goods of *Gill*, 1 Hagg. 341. Vide etiam, *Ree v. Bettesworth*, Str. 891, 1112. *Squib v. Wyn*, 1 P. Wms. 381. *Elliot v. Collier*, 3 Atk. 526. *Browning v. Reane*, 2 Phill. 69. But where a marriage is proved to have been *ab initio* void from some *impedimentum dirimens*, such as incapacity to contract from madness, prior marriage, &c., the pretended husband has no right to administration. 4 Burn's E. L. by Phillimore, 364. Vide etiam, *Wilkinson v. Gordon*, 2 Add. 152. *Reece v. Strathford*, 1 Hagg. 347. *Fielder v. Hanger*, 3 Ibid. 769. *Stevens v. Rogwell*, 15 Ves. 139. *Salmon v. Hays*, 4 Hagg. 386. *Ross v. Ever*, 3 Atk. 160. *Bozley v. Sturbington*, 2 Lee, 537. *Taylor v. Diplock*, 2 Phill. 261. *Wright v. Sarmuda*, Ibid. 266. *Lugg v. Lugg*, 2 Salk. 593. *General Stanwin's case*, Fearne's Posthumous Work, 37. Formerly voidable marriages, (*Browning v. Reane*, 2 Phill. 69,) did not disentitle the husband to the administration of his wife's effects, if a sentence of nullity had not been passed during her life-time. But a question, as to the legitimacy of the deceased, may be raised in the Prerogative court on a dispute as to the administration of his effects. *Smyth v. Chamberlayne*, 4 Burn's E. L. by Phillimore, 364. If the wife be executrix to another, then, as to the goods which she had in that capacity, administration must be granted to the next of kin to the testator. *Anon.* 3 Salk. 21. *Smith v. Jones*, Bulstr. 45. *Jones v. Roe*, Jones (Sir W.), 176. In fact, the administration is considered as one *de bonis non* of the testator, and governed by the rules applicable to that kind of administration.

If a *feme covert*, as next of kin, have a right to administer, the administration ought not to be granted to the husband and wife; for then, if she die before him, he would continue administrator, against the meaning of the statute. *Brown v. Wood*, Aleyn, 36. *Style*, 74, 75.

minister; and in case where divers persons claim the administration as next of kin, which be equal in degree of kindred to the testator or person deceased, and where any person only desireth the administration as next of kin, where indeed

STAT. 21 HEN.
8, c. 5.
Cro. Eliz. 163.
Cro. Car. 9,
106.

But it was said, that if it had been granted to them only during the coverture, perhaps it might be good; because, if granted to the wife only, the husband might, during the coverture, have administered. *Ibid.*

If the wife, as residuary legatee, hath a right to take administration, but refuseth, and prays it may be granted to another, and not to her husband, yet it may be granted to her husband. *Vanthienen's case*, Fitz-Gibb. 203.

For the husband may administer in right of his wife without her consent, but she cannot administer without the consent of her husband. *Thrustout d. Levick v. Coppin*, Black. (Sir W.), 801.

In *Lover v. Lover*, (6 Jurist, 156,) the queen's advocate prayed the Prerogative court to grant administration to a married woman, of a will, in which there were two executors who renounced, and three residuary legatees, two of whom declined; the third was the applicant. The husband refused his consent, alleging that he was afraid of being involved in chancery proceedings. *Suter v. Christie*, 2 Add. 150. In the goods of *Hardinge*, 2 Curt. 640.

To which the court observed: "The general rule is, that a married woman cannot take out administration, without her husband's consent. The cases cited are exceptions to this rule, and are not to be extended by inference beyond the particular circumstances of each. In *Suter v. Christie*, leave was given to the wife to appoint a proctor in the absence of her husband, in order to be a party to a cause; but it was under very particular circumstances, and security against costs was given for the protection of the husband's interests, who was at the Cape of Good Hope. But this case does not at all come up to the mark of the present application. In the goods of *Hardinge*, was a totally different case. The application there was to relieve the husband from responsibility. The proxy of renunciation, tendered by the wife without the husband's joining in it, was for his benefit. Administration cannot be decreed to this lady without, or, indeed, against, the will of her husband; the utmost that has ever been done in these cases is to call upon the husband to show cause. The motion must be rejected."

In *Taylor v. Diplock*, (2 Phill. 261,) a husband appointed his wife executrix and residuary legatee; both he and his wife were drowned at the same time; and it being assumed, that both had perished at the same time, administration with the will annexed was granted to the next of kin of the husband. In the goods of *Davies (J.)*, (2 Curt. 628,) the court granted administration to a son in preference to a widow divorced for adultery.

Notwithstanding Stat. 21 Hen. 8, c. 5, administrations have been granted to the principal creditor from the next of kin, by

the opinion of both civil and common lawyers, where it is visible that the next of kin cannot have any advantage or benefit of the estate, and this hath been always taken to be out of the statute. *Per* Lord Chancellor King, 11 Viner's Abr. *Executors* (K), 24.

But this, as it seemeth, should be understood only in cases where the kindred refuse to accept the administration. And the practice is usually for the ordinary first to issue a citation for the next of kin in special, and all others in general, to accept or refuse letters of administration, or show cause why the same should not be granted to a creditor. And such creditor must make an affidavit of his debt, and therein set forth how much it is, and how due. And in case there are several creditors, the court generally obliges them to enter into articles and bond of average. For this kind of administration being out of this statute, the same falls back upon the original power which the ordinary had at common law; whereby he may grant administration to whom he pleases, and consequently may insist upon such terms as he thinks reasonable.

Nevertheless, observes Dr. Phillimore, (4 Burn's E. L. by Phillimore, 367,) later cases seem to show, that the law is more correctly laid down by Lord Chancellor King, than by Dr. Burn; that is to say, that even if the next of kin do not "refuse to accept the administration," he may be excluded therefrom by the ordinary, on the ground of want of interest, (*West v. Willby*, 3 Phill. 381; *Furlonger v. Cox*, cited by Sir John Nicholl, *Ibid.* 381; *Mayhew v. Neustead*, 1 Curt. 593; *Warwick (Earl of) v. Greville*, 1 Phill. 123,) and certainly the obligation of the statute extends only to such persons as are next of kin at the time of the testator's death. 2 Hagg. App. 157. *Rev v. Hay*, 4 Burr. 2295.

The practice is most correctly stated by Dr. Burn, for it has become an unfailing maxim of the courts of Probate, that where a party, whether executor, residuary legatee, or next of kin, has a prior title to a grant of administration, he or they must be cited before it is granted to any other person. 3 Bac. Abr. *Executors and Administrators* (E8), 465. In the goods of *Barker (T.W.)*, 1 Curt. 592. *Le Briton v. Le Quesne*, 2 Lee, 261.

And where there are two persons equally entitled, *e. g.* two universal legatees, the court will grant administration to one, after a decree with intimation has issued to the other. *Pickering v. Pickering*, 1 Hagg. 480. *Law v. Campbell*, *Ibid.* 55.

Where the court is not bound by Stat. 21 Hen. 8, c. 5, it always grants the administration to those who have the interest. Administration *de bonis non* will be granted to a person entitled under a deed of gift from the first administratrix to the whole beneficial interest, in preference to one who

STAT. 21 HEN.
8, c. 5.

To whom admin-
istration shall
be granted.

divers persons be in equality of kindred, as is aforesaid, that in every such case the ordinary to be at his election and liberty to accept any one or mo making request, where divers do require the administration.

was not next of kin at the time of the death, and who consequently had no statutable right. *Almes v. Almes*, 2 Hagg. App. 155.

Administration is only granted to a creditor failing any other representative. *Webb v. Needham*, 1 Add. 497. "His right is only this: he cannot be paid his debt till a representative to the deceased is made; he can then call on all who have a right to administer. Before an administration is granted, if a will be produced, the creditor has no right to contradict or deny it; for if there is a will, or a next of kin claims the administration, then a person offers to make himself a representative, and the creditor gets all that he has a right to. But when a creditor has obtained the administration, the case is different; he has a right to maintain it against the executor or the next of kin; it is not to be revoked on a mere suggestion." *Per* Sir William Wynne, in *Elme v. Da Costa*, 1 Phill. 177. *Skeffington v. White*, 1 Hagg. 702.

The court, before granting administration to a creditor, requires an affidavit of the amount of the effects, and of the debt, and that he has no other security. *Aitkin v. Ford*, 3 Ibid. 193. But the court will allow one creditor to be substituted for another, who originally applied for the grant. *Maidman v. All persons in general*, 1 Phill. 53. *Talbot v. Andrews*, 1 Hagg. 697.

The affidavit of the amount of the property to be administered, is only absolutely necessary, where there has been no *personal service* of the usual citation on the parties entitled to the administration in the first instance. *Martineau v. Rede*, 2 Add. 455.

Respecting *Administration cum testamento annexo*; *Administration de bonis non*; *Administration durante minore ætate*; *Administration pendente lite*; *Administration durante absentia*; vide Stephens' Law of Nisi Prius, tit. EXECUTORS and ADMINISTRATORS, 1872-1882; Williams' Law of Executors; Toller's Law of Executors by Whitmarsh; 4 Burn's E. L. by Phillimore, 369-404.

If the ordinary refuse to grant administration, he may be compelled by *mandamus*; thus in *Smith's case*, (Str. 892,) a *mandamus* was moved for against Dr. Bettesworth, commanding him to grant administration to Smith of the goods of his deceased son, during the minority of his grandson. Against this, it was insisted, that a father hath not an equal right with the son, and that the spiritual court hath always considered these administrators only as trustees for the infant, and have never kept to any rule in granting them, but according to the circumstances of the family; where there are several in equal degree, as children, they have always chosen whom they pleased. *Per curiam*: "When we grant a *mandamus*, it is to oblige the judge to do right to the party who sues the writ; but as there is no

law which says, to whom these administrations during minority shall be granted, there is no law to be put in execution. In case of the next of kin, he is entitled *de jure*, and therefore we grant a *mandamus*, of course. But we will grant no *mandamus* in this case."

In *Rex v. Bettesworth*, (Ibid. 956,) John Knyaston, Esq. made his will, and appointed two persons executors, and left the residue of his personal estate to his youngest son Edward. The executors renounced, and the residuary legatee moved for a *mandamus* to be admitted to prove the will, and have administration with the will annexed. And a rule was made to show cause. On showing cause it was insisted, that this case differed from Lord Londonderry's, where the commission of appraisement was set up, against the immediate grant of the probate, which Stat. 21 Hen. 8, c. 5, requires shall be without any frustratory delay, and the ordinary hath no election there; whereas, in the present case, he is not bound to grant the administration to the residuary legatee, none of the statutes mentioning him; on the contrary, Stat. 21 Hen. 8, c. 5, which takes notice of the renunciation of executors, leaves the matter to the election of the ordinary. And of this opinion was the court, who said, if the commission of appraisement was a grievance, it would be proper matter of appeal, but they could not break into the practice of the court below. And Lord Hardwicke mentioned a case in chancery before Lord Mansfield, between *Wheeler & The Archbishop of Canterbury*, where it was held, that these sorts of administrations are not within the Statute of Distribution, which brings it to *Smith's case*, (Str. 892,) where a *mandamus* to grant administration during the minority of an executor, to the father of the executor, was refused, because there was no law obliging the spiritual court so to do. And the rule for a *mandamus* was discharged.

Where a *widow* applied for a *mandamus* to commit administration to her, it was refused in that form, because the ordinary might choose between her and the next of kin, but the writ issued generally to grant administration of the goods of the intestate. *Anon.* Ibid. 552. *Rex v. Horsley (Inhabitants of)*, 8 East, 408. *Dew v. Clark*, 1 Hagg. 311.

Generally, it is a good return to a *mandamus*, that it is disputed in the court of Probate, whether the deceased made a will. *Anon.* 5 Mod. 375. *Rex v. Hay (Dr.)*, 1 Black. (Sir W.), 640. Vide Stephens on Nisi Prius, tit. MANDAMUS, 2290-2333.

By Stat. 21 Hen. 8, c. 5, s. 4, no provision is made, where the goods exceed the value of 40*l.*, which seemeth to have been an omission not intended. And, (*Sheffield's case*, 2 Roll. 333; *Smythe's case*, Palm. 318,) where a person was indicted, because he took 10*s.* for letters of administration,

"IV. Or where but one or more of them, and not all being in equality of degree, do make request, then the ordinary to admit the widow, and him or them only making request, or any one of them at his pleasure, taking nothing for the same, unless the goods of the persons so deceased amount to above the value or sum of c. s., and in case the goods of the person so deceased amount to above the value of c. s. and not above the value or sum of xl. li., then the said bishop, ordinary, or other person or persons so having authority to take probate of testaments, as is aforesaid, their ministers and officers shall take only ii. s. vi. d. sterling, and not above; and that the executor and executors named by the testator, or person so

STAT. 21 HEN.
8, c. 5.

How much the
ordinary shall
take.

3 Inst. 148.

against the form of the statute; it was holden, that as the statute made no provision in case the goods were above 40l., (which was *casus omissus*), and that as the indictment did not set forth, that they were under 40l., that the taking more than 2s. 6d. was extortion within the statute; therefore it was adjudged to be ill, inasmuch as, without that, it could not appear to the court, whether he was punishable or not. Gibson's Codex, 485.

Notwithstanding the decisions of the court of King's Bench, (in *Hinton v. Parker*, 8 Mod. 168; *Catchside v. Ovington*, 3 Burr. 1922; *Henderson v. French*, 5 M. & S. 406; *Griffiths v. Anthony*, 5 A. & E. 623,) it has always been, and still continues, the practice of the Prerogative Court of Canterbury to entertain objections to inventories. *Butler v. Butler*, 2 Phill. 37. *Barclay v. Marshall*, Ibid. 188. *Telford v. Morison*, 2 Add. 329. *Hunter v. Byrn*, Ibid. 311. *Brogden v. Brown*, Ibid. 336. Vide etiam, *Winchlow v. Smith*, 1 Lee, 416. *Plunket v. Sharpe*, Ibid. 623. *Watson v. Milward*, 2 Ibid. 332. Thus, the case of *Shackleton v. Barrymore*, (cited, *per curiam*, in *Telford v. Morison*, 2 Add. 329,) was a suit in that court, in Hilary Term, 1798, by Shackleton, a creditor, against Lord Barrymore, as administrator of his brother, the late lord, for an inventory. Lord Barrymore exhibited an inventory. The creditor then gave in an allegation, pleading *omissa*. The counsel for Lord Barrymore cited the case of *Catchside v. Ovington*, (3 Burr. 1922,) in objection. But Sir William Wynne, upon mature deliberation, ordered a fuller inventory; as with reference to assets, the omission of which was deducible from Lord Barrymore's answers to the allegations. Again, in the case of *Telford v. Morison*, (2 Add. 319,) which was decided after the case of *Henderson v. French*, (5 M. & S. 406,) Sir John Nicholl laid down, that a creditor or legatee may object to an inventory given in by an executor or administrator, and may file an allegation pleading *omissa*, in order to take the answers of the executors or administrator. The learned judge observed, that the court of King's Bench seems to have considered the subject, as if both the obligation of exhibiting inventories, and the jurisdiction of the spiritual courts over them, rested solely upon the statute of Hen. 8, whereas in truth, neither inventories themselves, nor the jurisdiction of those courts over them, is at all to be traced up, or ascribed, to that statute: Lyndwood, who wrote long before the statute, shows them to have been, in his

time, under the cognizance of the spiritual courts. The learned judge then proceeds to show, that the statute was in no way intended to abridge the jurisdiction of the ecclesiastical courts: its principal, if not sole, object, being the restriction of fees; (Hallam's Constitutional History, c. 2;) that the mention in the statute of the penalty on the ordinary, for refusing to receive the inventory, has reference to his exaction of additional fees; that the penalty of 10l. referred to by the court of King's Bench, in *Henderson v. French*, is not a special penalty imposed on the ordinary in the matter of inventories, but a general penalty imposed by a subsequent general section, enacting that every bishop, &c., that shall do or attempt, &c., against the act in anything, shall forfeit, &c., to the party grieved, "so much money as he shall take contrary to the present act," and 10l. over and above, and that the conclusion of the statute, "Provided always, that this present act be not prejudicial to any ordinary or any other person which now have, or hereafter shall have, authority for probate of testaments, but that every of them shall and may convent before them, all and every person or persons made and named executor or executors of any testament, to the intent to prove or refuse the testament or testaments of their testator or testators, and to bring in inventories, and to do every other thing concerning the same, as they might do before the making of this act," puts it beyond all doubt, that the statute reserved to the spiritual court all the powers in the matter of inventories, which it had before the act; of which power, that of examining alleged omissions indisputably was one.

But although the ecclesiastical court will allow an allegation to be given in objection to an inventory, and answers to be taken upon that allegation; yet it will not permit *witnesses* to be examined upon that allegation, in order to falsify the inventory. *Telford v. Morison*, 2 Add. 331. The foundation for this distinction is, that if the answers confess more assets than were inserted in the inventory, the court may order the inventory to be amended by the insertion of these; but if further assets might be established by witnesses in opposition to the answers, the court could not order them to be inserted in the inventory, which is required by the statute to be upon oath; nor could it compel the executor or administrator to swear to assets, the possession of which, he has twice already upon oath denied. Williams on Executors, 787-789.

STAT. 21 HEN.
8. c. 5.

Inventory, by
whom it shall
be made, &c.
1 Roll. 358.
See 3 Bur.
1923.

Profits of lands
to be sold shall
not be ac-
counted the
testator's
goods.
Dyer, 264,
310.
Fitz. Exec. 1,
37, 51.
The testator's
seal shall be
defaced.
Fee for search
and copies.

Custom to
take less money
for probate
than is afore-
said.

Forfeiture of
the ordinary,
&c.

Co. pl. f. 166.
Rast. pl. f. 603.

deceased, or such other person or persons to whom such administration shall be committed where any person dieth intestate, or by way of intestate, calling or taking to him or them such person or persons, two at the least, to whom the said person so dying was indebted, or made any legacy, and upon their refusal or absence, two other honest persons, being next of kin to the person so dying, and in their default and absence two other honest persons, and in their presence, and by their discretions, shall make, or cause to be made, a true and perfect inventory of all the goods, chattels, wares, merchandises, as well moveable as not moveable whatsoever, that were of the said person so deceased, and the same shall cause to be indented, whereof the one part shall be by the said executor or executors, administrator or administrators, upon his or their oath or oaths, to be taken before the said bishops, or ordinaries, their officials, or commissaries, or other persons having power to take probate of testaments, upon the holy evangelists, to be good and true, and the same one part indented shall present and deliver into the keeping of the said bishop, ordinary, or ordinaries, or other person having power to take probate of testaments, and the other part thereof to remain with the said executor or executors, administrator or administrators; and that no bishop, ordinary, or other whatsoever person, having authority to take probate of testament or testaments, as is abovesaid, upon the pain in this estatute hereafter contained, refuse to take any such inventory or inventories to him or them presented or tendered to be delivered as is aforesaid.

“V. Provided always, that if the person so deceased will by his testament, or last will, any lands, tenements, or hereditaments, to be sold, that the money thereof coming, nor the profits of the said lands, for any time to be taken, shall not be accounted as any of the goods or chattels of the said person so deceased; and that the same bishop, ordinary, or other person or persons, having authority to take probate of testament or testaments, as is aforesaid, upon the delivery of the seal and sign of the testator, do cause the same seal to be defaced, and thereupon incontinent redeliver the same seal unto the said executor or executors, without claim or challenge thereunto to be made. And in case any person or persons, at any time hereafter, require a copy or copies of the said testament so proved, or of the said inventories so made, that then the said ordinary or ordinaries, and the other persons having authority to take probate of testaments, or their ministers, shall from time to time with convenient speed, without any frustratory delay, deliver, or cause to be delivered, a true copy or copies of the same, to the said person or persons so demanding them, or any of them, taking for the search, and for the making of the copy of either of the said testament or inventory, but only such fee as is before rehearsed for the registering of the said testament; or else the scribe or register to be at his election and liberty to demand, have, and take for every ten lines thereof, being of the proportion before rehearsed, *i. d.*

“VI. Provided alway, that where any person or persons having power or authority to take probate of testaments, have used to take less sums of money than is above said, for the probate of testaments, or commissions of administrations, or other cause concerning the same, shall take and receive such sum or sums of money for the probate of testaments and commissions of the administrations, and other causes concerning the same, as they before the making of this act have used to take, and not above.

“VII. And it is enacted, that every bishop, ordinary, archdeacon, chancellor, commissary, official, and other person or persons having, or which hereafter shall have, authority to take probate of testaments, their registers, scribes, praisers, summoners, apparators, and all other their ministers, whatsoever they be, that shall do or attempt, or cause to be done or attempted, against this act or ordinance in any thing, shall forfeit and lose for every time so offending, to the party grieved in that behalf, so much money as any such person abovesaid shall take contrary to this present act; and over that shall lose and forfeit *x. li.* sterling; whereof the one moiety shall be to the king our sovereign lord, and the other moiety to the party grieved in that behalf, that will sue by action of debt, bill, information, or otherwise, in any of the king's courts, for the recovery of the same; in which

action no essoin, protection, nor wager of law, shall be admitted or allowed. And that every of the same bishops, and other persons, which shall hereafter incur or fall into the dangers of such penalty or forfeiture, shall be charged only by himself, and none of them to be chargeable to that penalty for other's offence.

"VIII. Provided alway, that this present act be not prejudicial to any ordinary, or any other person, which now have, or hereafter shall have, authority for probate of testaments, but that every of them shall and may convent before them all and every person or persons made and named executor or executors of any testament, to the intent to prove or refuse the testament or testaments of their testator or testators, and to bring in inventories, and to do every other thing concerning the same, as they might do before the making of this act; so that always any such ordinary, or other person or persons having such authority, by themselves, their commissaries, scribes, registers, or other ministers aforesaid, shall not in any wise take for the same above the fees limited by this act, ne in any wise attempt any thing contrary to any part of the same act."

Eliz. c. 8; 22 & 23 Car. 2, c. 10; 29 Car. 2, c. 3; 1 Jac. 2, c. 17; and 14 Geo. 2, c. 20; concerning ordinary and administrators.

STAT. 21 HEN. 8, c. 5.

An ordinary may convent executors to prove the testator's will, and to bring in their inventory.

Farther provided for by 26 Hen. 8, c. 15.

And see 43

V. STAT. 21 HENRICI 8, c. 6 (1). A.D. 1529.

"Where Mortuaries (2) ought to be paid, for what Persons, and how much; and in what case none is due."

"Forasmuch as question, ambiguity, and doubt, is chanced and risen upon the order, manner, and form of demanding, receiving, and claiming of *mortuaries* (3), otherwise called *corse presents* (4), as well for the greatness and value of the same, which, as hath lately been taken, is thought over-excessive to the poor people and other persons of this realm, as also for that such mortuaries or corse presents have been demanded and levied, for such as at the time of their death have had no property in any goods or chattels, and many times for travelling and wayfaring men, in the places where they have fortunited to die; to the intent that all doubt, contention, and uncertainty herein may be removed, and as well the generality of the king's people therein remedied, as also of the parsons vicars, parish priests, curates, and other having interest in such mortuaries and corse presents indifferently provided for:

"II. Be it therefore enacted, ordained, and established by the king our sovereign lord, and the lords spiritual and temporal, and the commons, of this parliament assembled, and by authority of the same, that from the first day of April, in the year of our Lord God M.D.XXX. no parson, vicar, curate, nor parish priest, ne any other spiritual person, nor their fermors, bailiffs, nor lessees, shall take, receive, or demand of any person or persons within this realm, for any person or persons dying within the same, any manner mortuary or corse present, ne any sum or sums of money, ne *any other thing* (5) for the same, more than is hereafter men-

STAT. 21 HEN. 8, c. 6.

13 Co. 9.

(1) Amended by Stat. 12 Ann. St. II. c. 6. Stat. 28 Geo. 2, c. 6.

(2) *Vide antè* 25, Stat. 13 Edw. 1, St. IV. c. 1.

(3) *Mortuaries*:—Seem to have been oblations made at the time of a person's death. In the Saxon times there was a funeral duty to be paid, which was called *pecunia sepulchralis*, and *symbolum animæ*, or the "soul shot," which was required by the council of Ænham, and enforced by the laws of King Canutus.

(4) *Corse presents*:—If this be the same as a mortuary, the reason of the name may be seen in Lyndwood's Commentary upon the Constitution of Langham, viz., that it used to be carried to the church, with the dead corse, and Selden, (Hist. 287,) quotes an ancient record, where it is recited, that a "horse" was present at the church the same

day, in the name of a mortuary, &c., and that the parson received him, according to the custom of the land, and of holy church. But Sir William Dugdale, (Warwick. 470,) and after him Bishop Stillingfleet, (1 Eccles. Ca. 173, 174,) have shown and affirmed, that the corse present was properly the voluntary oblations which were usually made at funerals. Gibson's Codex, 709.

(5) *Any other thing*:—This restraint from taking mortuaries in kind, was a very great prejudice to the clergy, in point of profit and advantage. The jurisdiction was not altered by a money payment, instead of the cattle, the statute plainly supposing, that the recovery of the money shall be solely in the spiritual court, as the recovery of the mortuary was, and there being, as it seems, no foundation for what Sir Simon Degge suggests, (p. 559,) that an action of

STAT. 21 HEN.
8, c. 6.

The penalty of
him that con-
venteth any
person to pay
for a mortuary
more than is
due.

No mortuary
where the
goods be under
x. marks.
Cro. Eliz. 151.
Cro. Car. 237.

tioned; ne also shall convent or call any person or persons before any judge spiritual, for the recovery of any such mortuaries or corse presents, or any other thing for the same, more than is hereafter mentioned, upon pain to forfeit for every time so demanding, receiving, taking, or conventing, or calling any such person or persons before any spiritual judge, so much in value as they shall take above the sum limited by this act, and over that, xl. s. to the party grieved contrary to this act; for the which forfeiture the party so grieved contrary to this act, shall have an action of debt, by writ, bill, plaint, or information in any of the king's courts, wherein no wager of law, essoin, nor protection shall be allowed.

"III. First it is ordained, established, and enacted, that no manner of mortuary shall be taken or demanded of any person, whatsoever he be, which at the time of his death hath in moveable goods under the value of x. marks. Also that no mortuary shall be given, asked, or demanded from henceforth of any manner person, but only in such place where heretofore mortuaries *have been used* (1) to be

debt may lie in the temporal courts upon this statute.

(1) *Have been used*.—It hath been held, that if the custom be denied, and the spiritual court will not admit that plea, prohibition will go, and they shall not try the custom there. *White's case*, Cro. Eliz. 151. *Anon.* 2 Keb. 835. *Broad v. Piper*, Carth. 97. But it was said by the court in *Proud v. Piper*, (3 Mod. 268,) that "prohibitions have been granted and denied upon such suggestions," and therefore the defendant was ordered to take a declaration in a prohibition, as to the mortuary, and to try the custom at law. *Hinde v. Chester* (*Bishop of*), Cro. Car. 237. But in *Marke v. Gilbert*, (Siderf. 263; 1 Keb. 919;) where the custom of paying a mortuary was owned, and the only question in the spiritual court was, whether it belonged to the vicar or impropriator; prohibition was denied.

In *Johnson v. Oldham*, (1 Ld. Raym. 609,) it was holden, that a prohibition could not be granted, to stay a suit in the spiritual court for a mortuary, without having denied the custom in the spiritual court.

In *Johnson v. Ryson*, (12 Mod. 416,) a libel was exhibited in the spiritual court for a mortuary alleged due by custom; the suggestion set forth the statute of 21 Hen. 8, c. 6, and that there was no custom in that parish for payment of mortuaries. To which it was observed by the court: "There is no colour for a prohibition, since you have not pleaded; for a mortuary is a thing within their jurisdiction, and if there were any room for a prohibition, it would be for want of a custom, and then that ought to have been pleaded; it may be compared with a *modus decimandi*, for which there is no remedy but in the spiritual court, and the case in Cro. Car. (*Hinde v. Chester* (*Bishop of*), 237,) was not like this, for the statute excepts a mortuary, and a mortuary is a mere ecclesiastical right, for which there is no remedy but in the spiritual court; and though a writ of annuity may lie for a pension by prescription, and so recoverable at common law; yet it may be sued for in the spiritual court, against the opinion of Lord Coke, (2 Inst. 491,) which has been frequently exploded;" and the rule for a prohibition was discharged.

In *Torrent v. Burley*, (Str. 715,) a bill was brought to discover, whether the defendant's husband died worth 40l., so as to be liable to pay the plaintiff a mortuary, and prayed relief. Upon answer, admitting assets, but denying the custom, the plaintiff went into proof of his right; and several witnesses were examined on both sides. At the hearing, the bill was dismissed with costs, as to the relief, because redress ought to have been applied for, either at law, or in the spiritual court; and in a bill against one person only, the right could not be established.

On January 18, 1839, Dr. Spry proceeded against the guardians of the poor of Marylebone, for refusing to pay the burial fees of paupers to the rector of the parish, in the Consistory court of London. The judge said, that "it was clear that the ecclesiastical courts had been permitted to exercise some jurisdiction on the subject, because the courts of common law, where prohibition had been moved for, had not granted it on the general ground, that these courts were wholly incompetent to hold pleas on the subject matter, but on special grounds. *Burdeaux v. Lancaster*, 1 Salk. 332. *Topsall v. Ferrers*, Hob. 175. Prohibition has been granted, because the fee was not accustomed and certain, and the ecclesiastical court would not try the custom where it was denied. The granting prohibition for special reasons establishes the existence of the jurisdiction, which is recognised by the statute *Circumspectè agatis* (antè 24). This court is allowed to enforce fees to clergymen for spiritual duties due by custom, the duty being actually performed. By customary fees are meant, such as have existed so long, that their origin cannot be traced. The foundation of all such is, that they were originally voluntary. Customary burial fees of this nature may be sued for here, at least until the custom has been denied, and prohibition moved for *propter defectum triatonis*. The subject, however, is not without difficulty, for no such suit has been brought for a century, and I can find nothing in the books as to one liable for these fees." In this case the judge dismissed the suit, because the case was governed by particular acts of parliament, and a preliminary remedy by *mandamus* should have been resorted to, in order to

paid and given, and in those places none otherwise but after the rate and form hereafter mentioned. Ne that any person pay mortuaries in more places than one, that is to say, in the places of their most dwelling and habitation, and there but one mortuary. Nor no parson, vicar, curate, parish priest, or other, shall for any person dying or dead, and being at the time of his death of the value in moveable goods of x. marks, or more, clearly above his debts paid, and under the sum of xxx. *li.* take for a mortuary above iii. *s.* iv. *d.* in the whole. And for a person dying or dead, being at the time of his death of the value of xxx. *li.* or above clearly, above his debts paid in moveable goods, and under the value of xl. *li.*, there shall no more be taken or demanded for a mortuary than vi. *s.* viii. *d.* in the whole. And for any person dying or dead, having at the time of his death of the value in moveable goods of xl. *li.* or above, to any sum whatsoever it be, clearly above his debts paid, there shall be no more taken, paid, or demanded for a mortuary than x. *s.* in the whole.

“IV. Provided alway, that for no woman being covert baron, nor child, ne for any person not keeping house, any manner mortuary be paid, ne that any parson, vicar, curate, parish priest, or other, ask, demand, or take for any such woman, child, or for any person not keeping house, dying or dead, any manner thing or money, by way of mortuary; ne also for any wayfaring man, or other, that dwelleth not, ne maketh residence in the place where they shall happen to die, but that the mortuary of such wayfaring persons be answerable in places where mortuaries be accustomed to be paid, and in manner and form, and *after the rate* (1) before mentioned, and none otherwise, in the place or places where such wayfaring persons at the time of their death had *their most* habitation, house, and *dwelling places* (2), and nowhere else.

“V. Provided alway, that it shall be lawful to all manner parsons, vicars, curates, parish priests, and other spiritual persons, to take and receive any manner sum of money, or other thing, which by any person dying shall fortune to be disposed, given, or bequeathed unto them, or any of them, or to the high altar of the church; this act, or any thing therein mentioned, notwithstanding.

“VI. And be it also enacted by the authority aforesaid, that no mortuaries nor corse presents, ne any sum or sums of money, or other thing, for any mortuary or corse present, shall be demanded, taken, received, or had in the parts of Wales, nor in the marches of the same, nor in the towns of Calais or Berwick, nor in the marches of the same, but only in such parts and places of Wales, marches and towns aforesaid, where mortuaries *have been accustomed* (3) (4) to be taken and paid; and in those parts and places no mortuaries nor corse presents, ne any other thing for mortuary or corse present from henceforth shall be demanded, taken, received, or had, but only after the form, order, and manner above specified in this present act, and none otherwise, ne of any other person or persons than is limited by this present act, upon the pain above contained in this present act.

have compelled the vestry-men to fix the rates and fees. 2 Burn's E. L. by Phillimore, 568.

Lord Stowell, acting as chancellor for the diocese of London, adjusted the table of burial fees in St. Andrew's, Holborn. Ibid. Et vide *Gilbert v. Buzzard*, 2 Consist. 338.

In *Manby v. Curtis*, (2 Price, 295,) Chief Baron Thomson observed, “It is a moot question, whether mortuaries may be sued for, even at law, and whether they must not be proceeded for in the spiritual court, under Stat. 21 Hen. 8, c. 6.”

(1) *After the rate*:—It is intimated in *Wood v. Jeffreys*, (2 Keb. 867,) if suggestion be made, that the mortuaries are of less value than that, which is demanded, a prohibition will be granted.

(2) *Their most . . . dwelling places*:—This was the ancient law of the church, as appears from Lyndwood, (de Const. c. Stat.

v. *Ecclesie*,) upon the Constitution of Langham; where he says, “The mortuary shall be paid to the church of which the deceased was a parishioner, though he died in another parish; for, *italia non debentur, nisi ratione juris parochialis*.” To which he adds, “that if he dwelt, and received sacraments, in two parishes, equally, the mortuary shall be divided between the two churches.”

(3) *Have been accustomed*:—In *Hinde v. Chester* (Bishop of), (Cro. Car. 237,) it is said, that by reason of these words, the court conceived, that the archdeaconry of Chester was exempted from this statute.

(4) *Accustomed*:—Where the suggestion was, in a cause begun in the diocese of Landaff, that no mortuary had been used; it is said, the court inclined to the opinion, that no suit could be had in Wales on this statute. *John v. Lloyd*, 3 Keb. 75.

STAT. 21 HEN. 8, c. 6.

No mortuary but where mortuaries have been. But one mortuary for one person. The duty of the parson, &c.

A woman covert, a child, or person keeping no house, shall pay no mortuary. A wayfaring man, or that maketh no residence where he dieth.

A legacy bequeathed to a parson, &c. or to the altar.

No mortuaries in Wales, Calais, or Berwick.

STAT. 21 HEN. 8, c. 6. Mortuaries to be taken by the Bishops of Bangor, St. David, St. Asaph, &c. In part repealed by 12 Ann. St. II. c. 6. Places where mortuaries have been of less value. By 23 Geo. 2, c. 6, mortuaries taken away in Chester.

“VII. Provided also, that it shall be lawful to the Bishops of Bangor, Landaff, St. David’s, and St. Asaph, and likewise to the Archdeacon of Chester, to take such mortuaries of the priests within their dioceses and jurisdictions, as heretofore have been accustomed. Provided also, that in such places where mortuaries have been accustomed to be taken of less value than is aforesaid, that no person shall be compelled to pay in any such place any other mortuary, or more for any mortuary than hath been accustomed, ne that any mortuary in such place shall be demanded, taken, received, or had of any person or persons, exempt by this act, nor in any wise contrary to this act, upon the pain afore limited.”

STAT. 21 HEN. 8, c. 13.

VI. STAT. 21 HENRICI 8, c. 13 (1). A.D. 1529.

“*Spiritual Persons abridged from having Pluralities of Livings, and from taking of Firms, &c.*”

STAT. 22 HEN. 8, c. 14.

VII. STAT. 22 HENRICI 8, c. 14 (2). A.D. 1530.

“*For Abjurations and Sanctuaries.*”

STAT. 23 HEN. 8, c. 1.

VIII. STAT. 23 HENRICI 8, c. 1 (3). A.D. 1531.

“*An Act concerning Convicts in Petit Treason, Murder, &c.*”

STAT. 23 HEN. 8, c. 9.

IX. STAT. 23 HENRICI 8, c. 9 (4). A.D. 1531.

“*An Act that no Person shall be cited out of the Diocese where he or she dwelleth, except in certain cases.*”

Hob. 17, 178, 186.

“Where great number of the king’s subjects, as well men, wives, servants, as other the king’s subjects, dwelling in *divers dioceses*(5) of this realm of England, and of Wales, heretofore have been at many times called by citations, and other processes compulsory, to appear in the *Arches*(6) Audi-

(1) Repealed by Stat. 57 Geo. 3, c. 99, and Stat. 1 & 2 Vict. c. 106.

(2) Repealed by Stat. 1 Jac. 1, c. 25, s. 34. Stat. 21 Jac. 1, c. 28, s. 7. Stat. 6 Geo. 4, c. 50, s. 62.

(3) Repealed by Stat. 7 & 8 Geo. 4, c. 27. (4) *Vide* Stat. 1 & 2 P. & M. c. 8, s. 9. Stat. 3 & 4 Vict. c. 86, s. 19.

(5) *In divers dioceses*:—By the ancient laws of the church, the metropolitan was forbidden to exercise judicial authority in the diocese of a provincial bishop, unless in case of appeal, or vacancy: “Nullus primas, vel metropolitanus, diœcesani ecclesiam, vel parochiam, aut aliquem de ejus parochia præsumat excommunicare, vel judicare, vel aliquid agere absque ejus consilio vel judicio.” Caus. 9, q. 3, c. 7. And in a like case, (Ibid. c. 8,) it is added: “Nisi forte pro causis, quæ apud se terminare non possunt, ad te quasi ad patriarcham suum provocaverint: vel, si episcopus suos decesserit, res ecclesiæ suæ judicio tuo dispensare voluerint.” And therefore, when Archbishop Peccham, (Reg. Pecch. f. 145 (a), 148 (a),) excommunicated the Bishop of Hereford for resisting this concurrent power, and affirming against the archbishop, “non posse in subditos suos, ipso omisso, jurisdictionem aliquam exercere, nec de causis subditorum suorum ullo modo cognoscere per querelam;” the archbishop defended his claim, not upon the common right of a metropolitan, but upon the peculiar privilege of the church of Canterbury,—“Cum ecclesia Cant. tali gaudeat privilegiis in corpore jur’ redacto, quod archiepiscopus

qui pro tempore fuerit, causas subditorum suffraganeorum suorum, etiam per simplicem querelam audire possit et debeat,”—which privilege probably originated from the Archbishops of Canterbury being *legati nati* to the Pope. *Lynche v. Porter*, 2 Brownl. 3.

(6) *The Arches*:—The person who administers justice under this style, is the official principal of the archbishop, who was called *Officialis de arcubus*, and the court itself, *Curia de arcubus*, from its being anciently held in Ecclesia B. Mariæ de Arcubus, or Bow Church; by reason of the archbishop’s having ordinary jurisdiction in that place, as the chief of his peculiars in London, and the church where the dean of those peculiars (commonly called the Dean of the Arches) holds his courts: and because these two courts were held in the same place, and the Dean of the Arches was usually substituted in the absence of the official, while the offices remained in two persons, and the offices themselves have in many instances been united in one and the same person, as they now remain: by these means, a false notion hath obtained, that it is the Dean of the Arches, as such, who hath jurisdiction throughout the province of Canterbury; whereas, the jurisdiction of that office is limited to the thirteen peculiars of the archbishop in the city of London; and the jurisdiction throughout the province, for receiving appeals, &c., belongs to him only as *official principal*.

In like manner, the right of jurisdiction in every diocese of the province, during the

ence(1), and other high courts of the archbishops of this realm, *far from, and out of the diocese*(2) where such men, wives, servants, and other the king's subjects been inhabitant and dwelling, and many times to answer to surmised and feigned causes, and suits of defamation, withholding of tithes, and such other like causes and matters, which have been sued more for malice, and for vexation, than for any just cause of suit.

"II. And where certificate hath been made by the summoner, apparator, or any such light literate person, that the party against whom any such citation hath been awarded, hath been *cited*(3) or summoned, and thereupon the same party, so certified to be cited or summoned, hath not appeared according to the certificate, the same party therefore hath been excommunicated, or at the least suspended from all divine service; and thereupon, before that he or she could be absolved, hath been compelled, not only to pay the fees of the court whereunto he or she was so called by citation, or other process, amounting to the sum of ii. s. or xx. d. at the least; but also to pay to the summoner, apparator, or other light literate person, by whom he or she was so certified to be summoned, for every mile being distant from the place where he or she then dwelled, unto the same court whereunto he or she was so cited or summoned to appear, ii. d. to the great charge and impoverishment of the king's subjects, and to the great occasion of misbehaviour and misliving of wives, women, and servants, and to the great impairment and diminution of their good names and honesties: Be it therefore enacted by the king our sovereign lord, with the assent of the lords spiritual and temporal, and the commons, in this present parliament assembled, and by authority of the same, that no manner person shall be from henceforth cited or summoned, or otherwise *called to appear*(4) by himself, or herself, or by any procurator, before any ordi-

STAT. 23 HEN.
8, c. 9.

2 Bulst. 72.
Carth. 33, 476.
3 Mod. 211.
2 Salk. 548.
Co. pl. f. 364,
448.
Latch, 174.
12 Co. 77.
13 Co. 4.
Hett. 19, 118.
Pal. 488.
Godb. 214,
pl. 306.
Cro. Jac. 321,
483.
Cro. Car. 97,
329.

vacancies of the sees, though vested by patent in the same person, belongs not to him as Dean of the Arches, but as vicar-general of the archbishop.

The court of the official of the Arches, is styled by Archbishop Peccham, (Reg. Pecch. f. 206(a).) "*Consistorium nostrum in Ecclesia B. Mariæ de Arcubus London' existens;*" "*Quòd quâdam peculiari affectione eò magis diligimus, quod comprovinciales Cantuariensis ecclesiæ, potentiis præsidium frequenter oppressi, ad illud tanquam ad fontem justitiæ, undique confugiunt, ut inde hauriant congruam contra suas molestias medicinam.*"

(1) *Audience*.—This court was held, by authority of the archbishop, in the Consistory court within the cathedral of St. Paul, by a judge, whose style was, "*Curie Audientie Cantuariensis causarum et negotiorum Auditor,*" and who had the selfsame jurisdiction with the official of the Arches; but it must be borne in remembrance, that this court was anciently held before the archbishop in person, with auditors, by way of assistants only; as is plainly implied by Archbishop Winchelsea, where he speaks of a certain cause, "*quæ coram nobis, et generalibus causarum curiæ nostræ auditoribus vertebatur.*" Reg. Winch. 244 (a). And, in Archbishop Chicheley's time, a commission was issued "*ad procedend' in causis audientie, absente domino [archiepiscopo] in transmarinis.*" Reg. Chich. 284 (a).

It likewise appears, from ancient records, that in any cause depending before the official, or dean of the Arches, an appeal lay to the archbishop in his court of Audience; (Reg. Winch. 239 (a, b); 2 Arund. 133 (a);) and, that the archbishop might at pleasure

revoke any cause so depending, to be heard before himself in his said court. Winch. 24 (a), 256 (a), 293, 294 (b). Lynd. De Accus. c. Sint in. v. *Vel ejus*, 277. But the court of Arches having the same authority, this of the Audience, or at least the appointment of particular judges or auditors, for the administration of justice therein, hath been long disused. Whitg. 199. For, as to what my Lord Coke says, (4 Inst. 337,) of confirmations of bishops, admissions, institutions, dispensations, and the like, as if these were transacted in the *Audience* of the archbishop; all that seems to be foreign to the purpose, and to have no relation to the court of Audience, as such.

(2) *Far from, and out of the diocese*.—Vide *Gobbett's case*, Cro. Car. 339. *Ford v. Welden*, Raym. (Sir T.), 92; 1 Keb. 651. *Moore v. Cockein*, 1 Roll. 328.

(3) *Cited*.—But if a man be cited out of his diocese, and appears, and sentence be given, or if he submit himself to the suit, he can have no benefit by this statute, nor will a prohibition be granted. *Anon.* Hett. 19. *Ibid.* 1 Vent. 61.

(4) *Called to appear*.—In *Vanacre v. Spleen*, (Carth. 33,) after sentence given in the spiritual court, a prohibition was moved for, upon suggestion, that the person was cited out of his proper diocese. But the prohibition was denied, because, by pleading to the libel, he had admitted the jurisdiction of the court. And the statute does not take away the jurisdiction of all matters arising out of the diocese, but only gives him who lives out of the diocese a new privilege of pleading to the jurisdiction; which benefit of pleading, if neglected, and the party suffers a sentence to be given against him there, will not serve

STAT. 23 HEN.
8, c. 9.

* From the
verb *foreslow*,
to neglect.

Hetl. 49.
1 Roll. 136,
174, 328.

nary, archdeacon, commissary, official, or any other judge spiritual, out of the diocese, or peculiar jurisdiction where the person which shall be cited, summoned, or otherwise (as is aforesaid) called, shall be inhabiting and dwelling, at the time of awarding, or going forth of the same citation or summons; except that it shall be for, in, or upon any of the cases or causes hereafter written; that is to say, for any spiritual offence, or cause committed or done, or omitted, forslewed*, or neglected to be done, contrary to right or duty, by the bishop, archdeacon, commissary, official, or other persons having spiritual jurisdiction, or being a spiritual judge, or by any other person or persons within the diocese or other jurisdiction, whereunto he or she shall be cited, or otherwise lawfully called to appear and answer.

“III. And *except* (1) also it shall be by or upon matter or cause of appeal, or for other lawful cause, wherein any party shall find himself or herself *grieved* (2) or wronged by the ordinary judge or judges of the diocese or jurisdiction, or by any of his substitutes, officers, or ministers, after the matter or cause there first commenced, and begun to be shewed unto the archbishop, or bishop, or any other having *peculiar jurisdiction* (3), within whose province the diocese or place peculiar is; or in case that the bishop, or other immediate judge or ordinary dare not, nor *will not* (4) convent the party to be sued before him; or in case that the bishop of the diocese, or the judge of the place, within whose jurisdiction, or before whom the suit by this act should be commenced and prosecuted, *be party* (5) directly or indirectly to the matter or cause of the same suit; or in case that any bishop, or any inferior judge, having under him jurisdiction in his own right and title, and by commission, *make request* (6), or

him for a prohibition afterwards to that court whose jurisdiction he hath already admitted.

(1) *Except*:—“*Archiepiscopus non est iudex ordinarius totius provincie: archiepiscopus enim omnium episcoporum sue diocesis est ordinarius, sed non subditorum, nisi in casibus, &c.*” Extra. l. 5, t. 31, c. 8, v. *Attentare*.

(2) *Grieved*:—A citation in a cause of office, must describe sufficiently the offence charged against the party, so as to show, that it is a matter of ecclesiastical cognizance, but it need not minutely specify all the particulars of the offence, which are to be charged in the articles. *Office of the Judge promoted by Steward v. Francis*, 3 Curt. 209.

(3) *Peculiar jurisdiction*:—*Viz.* whether they be cited out of such peculiar to the Arches, or before the ordinary, within whose diocese the peculiar doth lie. *Kadwalader v. Bryan*, Cro. Car. 162. And Coke said, (in *Moore v. Cockein*, 1 Roll. 329,) that if a man be sued out of his diocese, yet if he be sued within his own proper peculiar, he is not within this statute.

(4) *Will not*:—In Parker’s Register, (1 Park. 395 (b); 2 Ibid. 74 (a), 98 (b), 105 (b).) it appears, that the archbishop placed benefices in another diocese under sequestration, *propter negligentiam ordinarii*; but this is an act only of voluntary jurisdiction. And before the Reformation, we find the archbishop requiring bishops to proceed against particular irregular persons in their dioceses, or show cause why he himself should not proceed. Staff. 7 (b), 25 (b). Adam Wint. 38 (a, b), 43 (b).

(5) *Be party*:—In the case of the *Bishop of Carlisle*, (cit. Gibson’s Codex, 1007,) it was holden, that if a cause be commenced before the archbishop, and that the bishop

or other judge die while it is depending, and so the occasion ceases upon which it was first brought before the archbishop, yet, from having been brought within his jurisdiction, it could not be removed.

(6) *Make request*:—It must appear on the face of the proceedings, that the parties were competent to sign letters of request; thus, in the case of the office of the judge promoted by *Steward v. Bateman*, (3 Curt. 201,) the Dean of the Arches declined to accept letters of request presented jointly by the Archdeacon and Chancellor of Norwich; it not appearing, that the Archdeacon of Norwich had an exempt jurisdiction.

Stat. 23 Hen. 8, c. 9, devolves upon the Dean of the Arches the power of accepting letters of request in matrimonial suits, without the consent of the party proceeded against: thus, in *Butler v. Dolben*, (2 Lee, 312,) Sir George Lee observed, “I was of opinion, the jurisdiction of the court of Arches was now entirely settled by Stat. 23 Hen. 8, c. 9, that the Arches is by that statute empowered to take original cognizance, by virtue of letters of request, of such causes as the civil and canon law allowed the inferior judge to devolve to the superior, which are those that are called arduous causes, of which matrimonial were always esteemed the chief; that the statute vested the power of devolving in the judge, without mentioning consent either of the bishop or parties; that in fact, the bishop’s consent was never required, and that if the parties’ consent had ever been deemed necessary, there hardly could be a cause commenced here by request, for the defendant almost constantly desires as many opportunities of appealing as possible for delay. As to the discretion of this court, whether it shall accept or refuse letters of request when granted by a proper judge, the

instance to the archbishop, bishop, or other superior ordinary or judge, to take, treat, examine, or determine the matter before him, or his substitutes, STAT. 23 HEN. 8, c. 9.

delegates held in the case of *Pelling (Dr.) v. Whiston*, (1 Com. 199; Gibson's Codex, 1007,) that the Dean of the Arches was bound to receive them *ex debito justitia*; but that it was in the discretion of the inferior judge, whether he would grant them; in this case the party appeared under a protestation against the citation; first, because the request was irregularly made jointly by two judges; and secondly, because the father had no interest to commence the suit. The first point only had been argued; it was clear she must be subject, either to the jurisdiction where she last had a domicile, or to that where she was locally present; for to say she must follow the *forum* of her husband was begging the question, when the point in issue was, whether she had a husband or not; whichever of the two judges had not the jurisdiction, his act in joining in the request was merely void, for he could not devolve a jurisdiction which he had not; and in this case I thought she was subject to the jurisdiction of the Chancellor of London, notwithstanding she was locally present in that diocese by durance; for the statute says, that no person shall be cited out of the diocese or peculiar jurisdiction, where the person cited shall be inhabiting and dwelling at the time of awarding or going forth of the citation or summons, and therefore she *being inhabiting and dwelling* in the Fleet at the time the letters of request were granted, and the citation issued, might have been cited by the Chancellor of London; and I thought, that notwithstanding the durance, she was citable where she was inhabiting pursuant to the statute, and great would be the mischief, if a person by being in custody was privileged against being cited to do justice; persons often continued in prison for debt for many years, and had no other habitation. I therefore pronounced for the jurisdiction of the Arches court, by virtue of the joint letters of request."

In *Hughes v. Herbert*, (2 Lee, 287,) it appeared, that on the 20th of June, 1745, William Herbert brought a suit in the Consistory of St. David's against Margaret Williams, then Hughes, for restitution of conjugal rights; the suit depended there, till the 27th of May, 1746, when sentence was given, that they were husband and wife, and she was decreed to cohabit with him; she had since married one Hughes. On the 7th of February, 1756, she cited William Herbert into this court, to show cause why all the proceedings in said cause should not be declared void, because during all that suit she was a minor, and was not cited to appear by a guardian, and did not appear by one. It was insisted, that the court had not jurisdiction, and the parties had appeared under protest. It was also objected, that this was an original cause of complaint, and not an appeal, and therefore, by Stat. 23 Hen. 8, c. 9, the court was restrained from citing Herbert out of his diocese, unless in some of the five cases excepted in such statute; but

that this case did not fall under any of those exceptions.

Upon which Sir George Lee observed, "I was clearly of opinion, that this was not an appeal, and if it was, it was void, because not interposed within fifteen days after the sentence; that I had no authority to cite originally, except in the cases specified in Stat. 23 Hen. 8, c. 9, of which this is not one; that the case of *Doughty and Newell* (Arches, 4 Sess. Hilary, 1713,) was in point, and in all the cases I knew of, where *querelas* had been brought in this court, the jurisdiction was first founded by an appeal brought in due time; and I believed, there was not one case to the contrary, for whatever the canon may say concerning bringing of *querelas* before the superior judge, this court is now restrained by the statute of Hen. 8. I therefore pronounced, that Herbert was improperly cited, and dismissed him, and said that Hughes might bring a *querela* in the court of St. David's, and if it was rejected there, she might appeal therefrom to this court as a grievance, and so it was held in the Arches, June, 1719, *Collins* against *Addison* (p. 289).

"I cited the following cases, in every one of which the jurisdiction of the Arches was first founded by appeals, and then *querela's nullitatis* were brought.

"June 26, 1724, *Palmer and Jackman* against *Hicks and Lydstone*; Arches, 1726, *Lomax* against *Lomax*; Mich. By-day, 1726, *Warren* against *Culme*; Delegates, December 9, 1734, *Rushworth* against *Mason and others*; Easter Term, May 15, 1739, *Hawkins* and *Sumon* against *May*; Arches, 4 Sess. Hilary, 1713, *Doughty* against *Newell*, in which case this point was expressly determined."

Causes of church rate may be removed by letters of request from the commissary of the bishop to the court of Arches; thus, in *Hawes and Vicar v. Pellatt*, (2 Curt. 473,) which was a suit for subtraction of church-rate, brought by virtue of letters of request from the commissary of the Bishop of Winchester, for the parts of Surrey within that diocese, by the churchwardens of the parish of Christchurch, Surrey, against Mr. Pellatt, a parishioner. The defendant appeared to the citation under protest, and contended, that he had been wrongfully cited; that it was contrary to the statute 23 Hen. 8, c. 9, that he should be called upon to appear in this court by letters of request, and that the reason stated for granting the letters of request, namely, that he might have the benefit of employing advocates and proctors, did not apply to him, as he, being a dissenter, did not intend to employ advocates or proctors, who, being members of the established church, would, he conceived, necessarily have a bias against him, and for whose assistance, although unsuccessful, he would have to pay.

Upon such facts, Sir Herbert Jenner observed, "The question is, whether a suit for subtraction of church-rate, which is undoubtedly of ecclesiastical cognizance, may

STAT. 23 HEN.
8, c. 9.

The forfeit of
an ordinary
offending
against the
purport of
this statute.

and that to be done *in cases only* (1) where the law civil or canon doth affirm execution of such request, or instance of jurisdiction, to be lawful or tolerable: upon pain of forfeiture to every person by any ordinary, commissary, official, or substitute, by virtue of his office, or at the suit of any person to be cited, or otherwise summoned, or called contrary to this act, of double damages and costs for the vexation in that behalf sustained, to be recovered against any such ordinary, commissary, archdeacon, official, or other judge, as shall award or make process, or otherwise attempt or procure to do any thing contrary to this act, by action of debt, or action upon the case, according to the course of the com-

be brought here by letters of request? It is almost of daily occurrence, that questions of ecclesiastical cognizance are so brought, and the practice has been recognised by courts of common law, and I know of no principle of law which distinguishes cases of church rate from others.

"With regard to the reason set forth for issuing the letters of request, it is usual to state that the parties would have the benefit of the assistance of advocates and proctors, which they could not have in the court below. It may be inconvenient to the defendant to be cited out of his diocese or peculiar jurisdiction, and if unsuccessful, to pay the costs of the party taking out the letters of request; but it is the plaintiff who is under the necessity of resorting to legal advice and assistance, since every act he does, must be in accordance with the rules of the court; if he commit an error in drawing up the citation or libel, he may at once fail in his suit; whereas the party cited has less need of assistance, and may conduct his own defence if he chooses to do so, without professional advice.

"I am clearly of opinion that the right of the party to proceed in this court is well founded; this has been decided in the case cited by Dr. Addams, (*Exp. Williams*, 4 B. & C. 315,) in which Lord Chief Justice Abbott said, 'Taking this offence to have been created by 5 & 6 Edw. 6, c. 4, I should think, that the authority thereby given to the ordinary is to be exercised in the same manner, as any other authority given to that officer. Now one mode of exercising his authority is by letters of request to the archbishop or his substitutes. But in *Wenmouth v. Collins*, (2 Ld. Raym. 850,) Lord Holt appears to have been of opinion, that the offence of brawling was not created by the statute which has been referred to, and I think that his opinion was correct. If that be so, all difficulty is removed, and there can be no doubt that the court of Arches may derive jurisdiction from letters of request.' It appears that in that case another objection had been taken, namely, that the letters of request ought to have been addressed to the bishop of the diocese, and not to the court of Arches; that the appeal should have been from the commissary, first to the bishop, and then to the court of Arches; but it was held, that an appeal from the commissary to the bishop, whose judge he was, would be an appeal *ab eodem ad eundem*, and that the appeal was direct to the court of Arches. This is a parallel case, and there can be no doubt of the jurisdiction

of the court. I, therefore, overrule the protest, and with costs."

The Arches court has also original jurisdiction in suits for subtraction of legacy, where the will is proved in the Prerogative court of Canterbury. *Vide Ecclesiastical Commissioners' Report*, February 27, 1832, p. 11.

The Arches court have, however, no jurisdiction to determine the allowance to be made for the maintenance and education of minors. *Fleet v. Holmes*, 2 Lee, 140.

In *Dawe v. Williams*, (2 Add. 130,) an objection to the jurisdiction of the court to entertain a suit for "brawling" by letters of request, was over-ruled, Sir John Nicholl observing, "It has been suggested, upon the authority of some ancient dicta, that under the true construction of the Statute of Citations, a suit for brawling cannot be brought in the court of Arches by letters of request; but it is not denied, that suits so brought have constantly been entertained in this court. Besides, the defendant did not appear under protest; but after having appeared absolutely to the citation, he takes the objection to the jurisdiction at the admission of the articles. Upon the whole, the court feels itself bound to allow the suit to proceed, unless it should be stopped by a prohibition; should such a measure be held to lie against the jurisdiction of this court, under the circumstances of the present case, the court will readily, as it will be its duty, put an end to the proceeding."

(1) *In cases only*.—It was held by the civilians in *Jones v. Jones*, (Hob. 185; 2 Brownl. 27,) that it was absolutely in the power of the ordinary, to send any cause to the archbishop at his will, without assigning any special reason, for which they cited the authority of divers canonists. But Hobart, and as it seems the court, said, "That to expound the statute thus, viz., that the ordinary may, at his will and pleasure, send the subject from one end of the kingdom to another without cause, was both against the letter of the statute, and eludes it utterly. That the purpose of the law, was, to provide for the ease of the subject, more than for the jurisdiction of the ordinary; which appears, in that, there is an action given to the subject, and penalty to the king, for his vexation, but none to the ordinary." That this very clause says, it is to be done *in cases only*, &c., "which were a vain correction if it left it as general as before, *i. e.* if it were lawful or tolerable in all cases, without cause."

The rule intended in the Reformatio Legum, was, "Archiepiscopus potest eligi in judicem a subditis suffraganeorum, licet suffraganei ignorent." Ref. Leg. f. 96 (a).

mon law of this realm in any of the king's high courts, or in any other competent temporal court of record, by original writ of debt, bill, or plaint; in which action, no protection, other than such as shall be made under the king's great seal, and signed with his sign manual, shall be allowed, neither any wager of law, nor essoin shall be admitted; and upon pain of forfeiture for every person so summoned, cited, or otherwise called (as is abovesaid) to answer before any spiritual judge *out of the diocese* (1), or other jurisdiction where the said person so dwelleth, or is resident or abiding, *x. li.* sterling; the one half thereof to be to the king our sovereign lord, and the other half to any person that will sue for the same in any of the king's said courts, or in any other the said temporal courts, by writ, information, bill, or plaint; in which action no protection shall be allowed, nor wager of law or essoin shall be admitted.

"IV. Provided always, that it shall be lawful to *every archbishop* (2) of this realm to call, cite, and summon any person or persons *inhabiting* (3) or dwelling in any bishop's diocese within his province, for causes of heresy, if *the bishop* (4) or

STAT. 23 HEN.
8, c. 9.

3 Inst. 39, 45.
1 Salk. 135.

(1) *Out of the diocese*:—And that, as it seems, whether the see be full or vacant, for, in the *case of Pickover*, (Gibson's Codex, 1006,) it was resolved upon this statute, that if a bishoprick within the province of Canterbury be void, and so the jurisdiction be devolved to the metropolitan, he must hold his court within the inferior diocese; for such causes as were by that law to be holden before the inferior ordinary, and the prothonotaries said, it had been so formerly resolved. *Tey v. Cox*, 2 Brownl. 35.

But, a short period previously, (11 Jac. 1.) the contrary had been resolved, *i. e.* where one was cited out of his diocese before the Archbishop of Canterbury, as guardian of the spiritualities, not only prohibition was denied, but it was further said, that if he had been cited before him as metropolitan, it would have been granted under this statute. Gibson's Codex, 1006.

(2) *Every archbishop*:—The rule laid down in the *Reformatio Legum*, (f. 11 (b).) is as follows: "Is qui vel accusatione, vel inquisitione, vel evangelica denunciatione, reus sit, quod aliquam hæresin aut affirmaverit, aut defenderit, aut prædicaverit, aut docuerit, coram episcopo vel archiepiscopo causam dicet. Qui verò loci privilegium habent, et exempti dicuntur, apud illos vel episcopos, vel archiepiscopos, causam dicent, intra quorum dioceses illorum exempti loci constituent. Appellatio tamen reo conceditur, ab episcopo ad archiepiscopum, et ab archiepiscopo nostram ad regalem personam."

This is agreeable to the doctrine of the canon law. Extra. l. 5, t. 7, c. 9. "Si qui fuerint, qui à lege diocesane jurisdictionis exempti, soli subiaceant sedis apostolicæ potestati; nihilominus in his quæ sunt contra hæreticos instituta, episcoporum subeant iudicium."

(3) *Inhabiting*:—An attorney in the King's Bench was sued in the Arches, for a legacy; but as he inhabited in the diocese of Peterborough, prohibition was prayed and granted; because, though he remained in London during term time, he was properly inhabiting within the jurisdiction of the Bishop of Peterborough. *Anon.* 2 Brownl. 12.

But in *Blackmore's case*, (Hardr. 421,) where one was cited into the Archdeacon of Canterbury's court, for not coming to church

at Biddendon, in the county of Kent, and pleaded, that he was an inhabitant in the diocese of Chichester, the court declared, "that if a man be cited within the diocese, though he be not an inhabitant there, but only comes there to trade, or otherwise, that this is not within the stat. of 23 Hen. 8; and that, if it were otherwise, there might be offences committed against the ecclesiastical law, which would not be punished at all: for men would offend in one county, and then remove into another, and so escape with impunity."

When the suit was for tithes in the diocese of Sarum, where they lay, and prohibition was obtained upon this statute, because the defendant inhabited in London; the court, upon notice that the suit was for tithes, granted a consultation, and declared that such case was not within the statute. Gibson's Codex, 1006. Sed vide *Jones v. Boyer*, 2 Brownl. 27.

In *Machin v. Maultin*, (2 Salk. 549; 1 Ld. Raym. 534,) it was holden under this statute, that if the cause of action be local, as for the subtraction of tithes, it must be prosecuted before the ordinary of the place where the wrong was done, but that it was otherwise in cases transitory, *ubi forum sequitur reum*. Vide etiam *Close v. Waterston*, Skinn. 233.

(4) *The bishop*:—The right of the archbishop to cite, punish, and deprive bishops for spiritual offences, was settled by the court of King's Bench and the House of Lords, in *St. David's (Bishop of) v. Lucy*. 1 Salk. 134. But it may not be improper to take notice, that according to the sense of the canon law, it is not regular to subject suffragans to the censure of the officers of an archbishop. "Officiales autem remensis archiepiscopi (quandiu in sua provincia, vel circa illam extiterit) in suffraganeos interdicti, suspensionis, vel excommunicationis proferre sententias non attentent. Et hoc idem ab officialibus aliorum metropolitanorum, circa ipsorum suffraganeos (quibus ob reverentiam pontificalis officii deferri volumus in hac parte) præcipimus observari." 6 Decret. l. i., t. 16, c. 1. And accordingly, Nix, bishop of Norwich, protested against the proceedings of the archbishop's commissary in his metropolitanical visitation, because it

STAT. 23 HEN.
8, c. 9.

Proviso for the
probate of
testaments in
the province of
Canterbury.

The fees for
the seal of a
citation.

Proviso for the
probate of
testaments in
the province of
York.

Repealed by
1 & 2 P. & M.
c. 8.

Revived by
1 Eliz. c. 1.

other ordinary immediate thereunto consent, or if that the same bishop, or other immediate ordinary or judge, do not his duty in punishment of the same.

“V. Provided also, that this act shall not extend in any wise to the prerogative of the most reverend father in God the Archbishop of Canterbury, or any of his successors, of or for calling any person or persons out of the diocese where he or they be inhabiting, dwelling, or resident, *for probate* (1) of any testament or testaments; any thing in this act contained to the contrary notwithstanding.

“VI. And be it further enacted by authority aforesaid, that no archbishop, nor bishop, ordinary, official, commissary, or any other substitute or minister of any of the said archbishops, bishops, archdeacons, or other having any spiritual jurisdiction, at any time from the feast of Easter next coming, shall ask, demand, take, or receive of any of the king's subjects, any sum or sums of money for the seal of any citation, after the said feast to be awarded or obtained, than only *iii. d. sterling*, upon the pains and penalties before limited, contained, and expressed in this present act, to be in like form recovered, as is aforesaid.

“VII. Provided always, that this act be not in any wise hurtful or prejudicial to the Archbishop of York, nor to his successors, of, for, or concerning probate of testaments within his province and jurisdiction, by reason of any prerogative; any thing in this act to the contrary thereof notwithstanding.”

STAT. 23 HEN.
8, c. 10.

X. STAT. 23 HENRICI 8, c. 10 (2). A.D. 1531.

“An Act for Feoffments and Assurances of Lands and Tenements made to the use of any Parish Church, Chapel, or such like (3).”

“Where by reason of feoffments, fines, recoveries, and other estates, and assurances, made of trusts, of manors, lands, tenements, and hereditaments, to the use

was against the dignity of a bishop to be judged or proceeded against by a commissary. *Cranm.* 138, 139.

(1) *For probate*:—In *Hughe's case*, (*Godb.* 214,) where one who dwelt in Somersetshire had made his will, and his executors were libelled against in the Arches; it was said by Mr. Justice Warburton, to have been agreed by all the justices, “that the exception in Stat. 23 Hen. 8, c. 9, doth extend only to probate of wills,” and prohibition was awarded. But in *Anon.* (1 Vent. 233,) where one was cited out of the diocese, to answer a suit for a legacy, into the Prerogative court, where the will had been proved, prohibition was denied, because it was there, that the executors must give account and be discharged, &c.

(2) *Vide* Stat. 1 Edw. 6, c. 14. *De Garcin v. Lawson*, 4 Ves. 433. *De Costa v. De Pas*, Amb. 228. *Cary v. Abbott*, 7 Ves. 490. *Att.-Gen. v. Fishmongers' Comp.* 2 Beav. 151.

(3) The policy of this statute is not deducible from religious views or principles; but it is to be drawn solely and exclusively from feudal institutions. The act was never intended to root out religious opinions, nor to aim a blow at religious practices, of whatever kind, as such; it was, like many of its predecessors, directed to the preservation of those incidents of feudal tenure, which were fast falling under the sickle of cunning invention. It was, in fact, a mortmain act, and had no more to do with the Reformation, as is sometimes contended, than *Magna Charta*, the statute *De religiosis*, of Westminster, the second, and the succeeding statutes of this description passed in the reign of Edward the First, or any other of those acts which,

long before the voice of Martin Luther was heard in protest against the church of Rome, were from time to time framed by the English legislature for the purpose of preventing that feudal dissolution, as it were, which took place, when land became aliened in mortmain. *Boyle on Charities*, 245.

As respects all dispositions of land or other real estate, (not being situate within any of the cities or towns protected by the general saving of local customs,) which are made to any of the uses within the act, and to endure for a longer period than twenty years, such land or estate will at law either revert to the feoffor or not, as determined by the presence or absence of consideration, or, should the gift be testamentary, will remain with the devisee as trustee for the heir-at-law, to the exclusion in any case of the crown, whose title would be prevented from arising by the act itself. It seems almost superfluous to add, that if the feoffee should be legally entitled by reason of a nominal consideration, he would of course be considered in equity merely as a trustee.

And with regard to all such assurances of land as would have been comprised within the proviso of exemption, or the subsequent general exception, it should seem, that they are now governed by the principles of the common law; and, being so governed, the land will go to the king to be by him applied to other uses.

It is to be observed, that the statute is confined to real estate, and from this circumstance another argument may be drawn, that the act was not aimed at religious practices or opinions; for although it must be conceded, that personal estate was at that time

of parish churches, chapels, churchwardens, guilds, fraternities, commonalties, companies, or brotherheads, erected and made of devotion, or by common assent of the people without any corporation, and also by reason of feoffments, fines, recoveries, wills, and other acts made to any uses aforesaid, or to the uses and intents to have obites perpetual, or a continual service of a priest for ever, or for three-score or fourscore years, founden of the issues and profits of the manors, lands, tenements, and hereditaments, whereof such feoffments, fines, recoveries, wills, and other acts been made, or that the feoffees, conisees, recoverers, or other persons, and their heirs thereof seised, shall take, levy, receive, and perceive, or cause or suffer to be taken, levied, and perceived the issues, revenues, and profits thereof, and the same to dispose, pay, convert, or otherwise imploy or suffer, or cause to be disposed, paid, converted, or imployed to any such uses, intents, or purposes, as been above specified, or to any *other like uses* (1) and intents; there groweth and issueth to the king our sovereign lord, and to other lords and subjects of the realm, the same like losses and inconveniences, and is as much prejudicial to them, as doth, and is, in case where lands be aliened into mortmain:

“II. Be it therefore enacted by the king our sovereign lord, the lords spiritual and temporal, and the commons, in this present parliament assembled, and by authority of the same, that all and every such uses, intents, and purposes, of what name, nature, or quality they shall be called, that shall be devised, covenanted, made, declared, or in any wise ordained, after the first day of March, in the three-and-twentieth year of the reign of our sovereign lord King Henry the Eighth, by any feoffee, recoverer, or conisee, or by any other person or persons to whose use any such feoffee, recoverer, or conisee shall be seised, of any manors, lands, tenements, or hereditaments, or of the issues, revenues, and profits of them, or any of them, shall be utterly void, and of no strength, virtue, nor effect, in the law.

Assurances of lands to churches, chapels, &c. shall be void. Cro. Eliz. 288. 11 Co. 71.

“III. Provided alway, that it shall be lawful to every person, being seised of any manors, lands, tenements, or hereditaments, to his own proper use, or having feoffees, recoverers, or conisees to his use, to make, ordain, or devise, or cause to be made, ordained, or devised, any of the uses, intents, or purposes above specified, in such manner as they might have done before the making of this act, and as if this act had never been had ne made; so that no such uses, intents, or purposes to be so made, ordained, or devised, after the said first day of March, be not in any wise made, ordained, devised, or appointed, to endure, continue, or abide by any craft, colour, terms, sentences, clauses, words, or other means, above the term of twenty years next after the first making and beginning of any such uses, intents, or purposes.

Proviso for assurances of lands to churches, &c. for xx. years.

“IV. And it is further enacted, that if any person or persons, in defraud of this statute, bind or ordain any their heirs or successors, or any other person or persons,

Collateral assurances in

of comparatively little consideration, yet if those practices had been esteemed noxious to society, it is improbable that their continuance should have been allowed, even through the medium of personal property. Ibid. 258.

It may be here observed, that from Stat. 23 Hen. 8, c. 10, it appears, in conformity with the ancient common law, that aggregate bodies did, and could take in perpetual succession, without being incorporated; that doctrine being impliedly asserted, by lands being assumed to be held in mortmain, when granted by common assent of the people, without any corporation. Merewether & Stephens' Hist. of Boroughs, 1098.

(1) *Other like uses*:—Notwithstanding this clause, it was resolved in *Porter's case*, (1 Co. f. 16 (b).) that whereas lands and tenements were given “to build divers houses convenient for a free school, and the master of the same, with certain beadmen and beadwomen,” the statute did not extend to take

away these good and charitable uses. To which my Lord Coke adds, (Ibid. f. 26 (a).) “That any man at this day may give lands, tenements, or hereditaments, to any person or persons, and their heirs, for the finding of a preacher, maintenance of a school, relief and comfort of maimed soldiers, sustenance of poor people, reparation of churches, highways, bridges, or cawsies, discharging of poor inhabitants of towns from common charges, for making of a stock for poor labourers in husbandry, and poor apprentices, and for the marriage of poor virgins, or for any other charitable uses. And it is good policy, upon every such feoffment or estate, to reserve a small rent to the feoffor and his heirs, or to express some such consideration of some small sum, that so the feoffors may be seised to their own use, and not to the use of the feoffor; by which it is out of doubt, that this statute cannot make void the use.”

STAT. 23 HEN.
8, c. 10.

defrauding of
the statute
shall be void.

that they shall suffer such uses, intents, and purposes, to endure and continue, contrary to this act, upon pains or penalties of losses of any other lands, tenements, or hereditaments, or of any other thing or things; or do attempt or devise by any colour, craft, or means, any thing or things, to make any such uses, intents, or purposes to be declared, contrary to the true meaning of this act, to continue or abide for any longer time or season than is above limited for the same; that then every such pain, penalty, craft, colour, and every other thing and things, of what kind, nature, or quality soever it be that shall be so made, ordained, or devised in fraud of this act, shall be utterly void in the law to all intents; and that this statute shall be always interpreted and expounded, as beneficially as may be, to the destruction and utter avoiding of such uses, intents, and purposes therein above remembered, and of all other like uses and intents, otherwise than only after such manner as is afore by this present act provided.

Customs of
cities and
towns to devise
lands, saved.

“V. Provided alway, that in such cities, and towns corporate, where by their ancient customs they have good and lawful authorities to devise into mortmain the lands, tenements, and hereditaments, within the same cities or towns corporate, that this act shall not be in any wise prejudicial or hurtful to any such custom.

Proviso for the
devises of the
executors of
Jannis and
Terry, of the
city of
Norwich.

“VI. Provided alway, that this act, ne any thing therein contained, shall extend, or be in any wise prejudicial, to hinder or impair any such ordinances, devises, or declarations of uses, as shall hereafter be made and declared in writing, by the executors of the testaments and last wills of Robert Jannis and John Terry, late aldermen of the city of Norwich, now deceased, or by the executors or the survivor of the executors of either of them, of any lands, tenements, or hereditaments, not amounting in the whole above the clear yearly value of forty pounds, to be employed and converted to and for the discharge of tolls and customs within the said city, and at the gates of the same, for the discharge of the poor people within the same city, of taxes and tallages hereafter to be assessed and levied, and for the cleansing of the streets of the same city, or for any of the said good purposes, according to the true intents and meanings of the said last wills and testaments, and either of them; so that the same ordinances, devices, and declarations be had, made, and certified in writing into the king's court of Chancery, within two years next ensuing the feast of Easter next coming.”

STAT. 23 HEN.
8, c. 11.

XI. STAT. 23 HENRICI 8, c. 11 (1). A.D. 1531.

“An Act for Clerks convict breaking Prison.”

STAT. 23 HEN.
8, c. 19.

XII. STAT. 23 HENRICI 8, c. 19 (2). A.D. 1531.

“The King's Pardon to all his Spiritual Subjects within the Province of York, and of all Offences and Penalties not herein excepted.”

STAT. 23 HEN.
8, c. 20.

XIII. STAT. 23 HENRICI 8, c. 20. A.D. 1531.

“An Act concerning Restraint of Payment of Annates to the See of Rome.”

“Forasmuch as it is well perceived, by long approved experience, that great and inestimable sums of money have been daily conveyed out of this realm, to the impoverishment of the same; and especially such sums of money as the Pope's holiness, his predecessors, and the court of Rome, by long time have heretofore taken of all and singular those spiritual persons which have been named, elected, presented, or postulated to be archbishops or bishops within this realm of England, under the title of Annates, otherwise called First-fruits. Which annates, or first-fruits, have been taken of every archbishoprick, or bishoprick, within this realm, by restraint of the Pope's bulls (3), for confirmations, elections, admissions, postu-

(1) Repealed by Stat. 7 & 8 Geo. 4, c. 27.

(2) Expired.

(3) *Pope's bulls*:—In the Register of Archbishop Warham, (f. 1,) the immediate predecessor of Cranmer, the bulls from Rome,

and the other instruments used, before and after his consecration, pursuant thereunto, stand in this order, and under these titles: “1 Bulla Translationis. 2 Bulla Absolutionis (ab Ecclesia London. &c.) 3 Bulla Suffra-

lations(1), provisions, collations, dispositions, institutions, installations, investitures, orders, holy benedictions, palls, or other things requisite and necessary to the attaining of those their promotions; and have been compelled to pay, before they could attain the same, *great sums of money*(2), before they might receive any part of the fruits of the said archbishoprick, or bishoprick, whereunto they were named, elected, presented, or postulated; by occasion whereof, not only the treasure of this realm hath been greatly conveyed out of the same, but also it hath happened many times, by occasion of death, unto such archbishops, and bishops, so newly promoted, within two or three years after his or their consecration, that his or their friends, by whom he or they have been holpen to advance and make payment of the said annates, or first-fruits, have been thereby utterly undone and impoverished. And for because the said annates have risen, grown, and increased, by an uncharitable custom, grounded upon no just or good title, and the payments thereof obtained by restraint of bulls, until the same annates, or first-fruits, have been paid, or surety made for the same; which declareth the said payments to be exacted, and taken by constraint, against all equity and justice. The noble men therefore of the realm, and the wise, sage, politick commons of the same, assembled in this present parliament, considering that the court of Rome ceaseth not to tax, take, and exact the said great sums of money, under the title of annates, or first-fruits, as is aforesaid, to the great damage of the said prelates, and this realm; which annates, or first-fruits, were first suffered to be taken within the same realm, for the only defence of Christian people against the infidels, and now they be claimed and demanded as mere duty, only for lucre, against all right and conscience. Insomuch that it is evidently known, that there hath passed out of this realm unto the court of Rome, sithen the second year of the reign of the most noble prince, of famous memory, King Henry the Seventh, unto this present time, under the name of annates, or first-fruits, paid for the expedition of bulls of archbishopricks and bishopricks, the sum of eight hundred thousand ducats, amounting in sterling money, at the least, to eight score thousand pounds, *besides other great*(3) and intolerable sums which have yearly been conveyed to the said court of Rome, by many other ways and means, to the great impoverishment of this realm. And albeit, that our said sovereign the king, and all his natural subjects, as well spiritual as temporal, being as obedient, devout, catholick and humble children of God, and holy church, as any people be within any realm christened; yet the said exactions of annates, or first-fruits, be so intolerable and

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ganeis Cant. 4 Bulla Clero Civitatis et Dioceseos Cant. 5 Bulla Vassallis Ecclesiæ Cant. 6 Bulla Populo Civitatis, et Dioceseos Cant. [These last four bulls, were to oblige the suffragans, clergy, vassals, and people, to receive and obey him.] 7 Commissio ad recipiendum Juramentum Papæ præstand'. 8 Bulla destinationis Pallii. 9 Commissio ad tradendum Pallium. 10 Certificatorium super Juramento præstito. 11 Certificatorium super traditione Pallii.—Pallium est ornamentum Patriarcharum, Archiepiscoporum, Metropolitanorum, et quandoque etiam Episcoporum, de Corpore B. Petri sumptum, Pontificalis officii plenitudinem conferens, humeros pectusque more Sacerdotalis stolæ ambiens, ante pectus pendens, cruces nigras in textas habens, alia ornamenta supertegens."

The importance of obtaining the pall in those days, cannot be better described than in the words of the pontifical. "Quia pontificalis officii plenitudo confertur per pallium; antequam obtinuerit quis pallium, licet sit consecratus, non sortitur nomen archiepiscopi, vel primatis, aut Patriarchæ; nec poterit episcopos consecrare, nec convocare ad concilium, nec chrisma conficere,

nec ecclesias dedicare, nec clericos ordinare, &c." So in the body of the canon law, (Dist. 100, c. 6.), "Pallium tibi transmissimus, quo fraternitas tua intra ecclesiam ad sola missarum solennia utatur." It appears from a note in Courtney's Register, (3 a.) that, at a consecration, "Willelmo Courtney Cantuar', Electo et Confirmato, ibidem præsentem, sed minimè consecrante, eo quòd protunc Pallium non recepit."

(1) *Postulations*.—"Postulatio est concors capituli petitio, ut in prælatum promoveatur, sive adsumatur, qui non propter animi vel corporis vitium, sed ob alium defectum, propter quem non est inhabilis ad prospiciendum ecclesiæ (veluti, quia est minor triginta annis, aut laicus, in minoribus ordinibus, aut illegitimus) eligi nequit."

(2) *Great sums of money*.—"Tho. Cranmerus—Papæ pro obsoletis illis putidisque jam bullis 900 aureos ducatos solvit." Ant. Brit. 327.

(3) *Besides other great*.—Of which see an historical deduction in Mason, (b. 4, c. 14.), entitled, "Quàm miserâ conditione fuerit Anglia, quando episcopatus et beneficia per papales provisiones concedebantur."

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importable to this realm, that it is considered and declared, by the whole body of this realm now represented by all the estates of the same assembled in this present parliament, that the king's highness, before Almighty God, is bound, as by the duty of a good Christian prince, for the conservation and preservation of the good estate and common wealth of this his realm, to do all that in him is to obviate, repress, and redress the said abusions and exactions of annates, or first-fruits. And because that divers prelates of this realm, being now in extream age, and in other debilities of their bodies, so that of likelihood, bodily death in short time shall or may succeed unto them; by reason whereof great sums of money shall shortly after their deaths be conveyed unto the court of Rome, for the unreasonable and uncharitable causes abovesaid, to the universal damage, prejudice, and impoverishment of this realm, if speedy remedy be not in due time provided:

"II. It is therefore ordained, established, and enacted, by authority of this present parliament, that the unlawful payment of annates, or first-fruits, and all manner contributions for the same, for any archbishoprick or bishoprick, or for any bulls hereafter to be obtained from the court of Rome, to or for the aforesaid purpose and intent, shall from henceforth utterly cease, and no such hereafter to be payed for any archbishoprick, or bishoprick, within this realm, other or otherwise than hereafter in this present act is declared: and that no manner person, nor persons hereafter to be named, elected, presented, or postulated to any archbishoprick, or bishoprick, within this realm, shall pay the said annates, or first-fruits, for the said archbishoprick, or bishoprick, nor any other manner of sum or sums of money, pensions or annates for the same, or for any other like exaction, or cause, upon pain to forfeit to our said sovereign lord the king, his heirs and successors, all manner his goods and chattels for ever, and all the temporal lands and possessions of the same archbishoprick, or bishoprick, during the time that he or they which shall offend, contrary to this present act, shall have, possess, or enjoy, the archbishoprick, or bishoprick, wherefore he shall so offend contrary to the form aforesaid. And furthermore it is enacted, by authority of this present parliament, that if any person hereafter named and presented to the court of Rome by the king, or any of his heirs or successors, to be bishop of any see or diocess within this realm hereafter, shall be letted, deferred, or delayed at the court of Rome from any such bishoprick, whereunto he shall be so represented, by means of restraint of bulls apostolick, and other things requisite to the same; or shall be denied, at the court of Rome, upon convenient suit made, any manner bulls requisite for any of the causes aforesaid, any such person or persons so presented, may be, and shall be, consecrated here in England by the archbishop, in whose province the said bishoprick shall be, so alway that the same person shall be named and presented by the king for the time being to the same archbishop: and if any persons being named and presented, as aforesaid, to any archbishoprick of this realm, making convenient suit, as is aforesaid, shall happen to be letted, deferred, delayed, or otherwise disturbed from the same archbishoprick, for lack of pall, bulls, or other to him requisite, to be obtained in the court of Rome in that behalf, that then every such person named and presented to be archbishop, may be, and shall be, consecrated and invested, after presentation made, as is aforesaid, by any other two bishops within this realm, whom the king's highness, or any of his heirs or successors, kings of England for the time being, will assign and appoint for the same, according and in like manner as divers other archbishops and bishops have been heretofore, in ancient time, by sundry the king's most noble progenitors, made, consecrated, and invested within this realm; and that every archbishop and bishop hereafter, being named and presented by the king's highness, his heirs or successors, kings of England, and being consecrated and invested, as is aforesaid, shall be installed accordingly, and shall be accepted, taken, reputed, used, and obeyed, as an archbishop or bishop of the dignity, see, or place whereunto he so shall be named, presented, and consecrated, requireth; and as other like prelates of that province, see, or diocess have been used, accepted, taken, and obeyed, which have had, and obtained compleatly, their bulls, and other things requisite in that behalf from the court of Rome. And also shall fully and entirely have

and enjoy all the spiritualities and temporalities of the said archbishoprick, or bishoprick, in as large, ample, and beneficial manner, as any of his or their predecessors had, or enjoyed in the said archbishoprick, or bishoprick, satisfying and yielding unto the king our sovereign lord, and to his heirs and successors, kings of England, all such duties, rights, and interests, as before this time had been accustomed to be paid for any such archbishoprick, or bishoprick, according to the ancient laws and customs of this realm, and the king's prerogative royal. STAT. 23 HEN.
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“III. And to the intent our said holy father the Pope, and the court of Rome, shall not think that the pains and labours taken, and hereafter to be taken, about the writing, sealing, obtaining, and other businesses sustained, and hereafter to be sustained, by the offices of the said court of Rome, for and about the expedition of any bulls hereafter to be obtained or had for any such archbishoprick, or bishoprick, shall be irremunerated, or shall not be sufficiently and condignly recompensed in that behalf; and for their more ready expedition to be had therein. It is therefore enacted by the authority aforesaid, that every spiritual person of this realm, hereafter to be named, presented, or postulated, to any archbishoprick or bishoprick of this realm, shall and may lawfully pay for the writing and obtaining of his or their said bulls, at the court of Rome, and ensealing the same with lead, to be had without payment of any annates, or first-fruits, or other charge or exaction by him or them to be made, yielded, or paid for the same, five pounds sterling, for and after the rate of the clear and whole yearly value of every hundred pounds sterling, above all charges of any such archbishoprick, or bishoprick, or other money, to the value of the said five pounds, for the clear yearly value of every hundredth pounds of every such archbishoprick, or bishoprick, and not above, nor in any otherwise, anything in this present act before written notwithstanding. And forasmuch as the king's highness, and this his high court of parliament, neither have, nor do intend to use in this, or any other like cause, any manner of extremity or violence, before gentle courtesie or friendship, ways and means first approved and attempted, and without a very great urgent cause and occasion given to the contrary, but principally coveting to disburden this realm of the said great exactions and intolerable charges of annates, and first-fruits, have therefore thought convenient to commit the final order and determination of the premisses, in all things, unto the king's highness. So that if it may seem to his high wisdom, and most prudent discretion, meet to move the Pope's holiness, and the court of Rome, amicably, charitably, and reasonably, to compound, other to extinct and make frustrate the payments of the said annates, or first-fruits, or else by some friendly, loving, and tolerable composition, to moderate the same in such wise as may be by this realm easily borne and sustained; that then those ways and compositions once taken, concluded, and agreed between the Pope's holiness and the King's highness, shall stand in strength, force, and effect of law, inviolably to be observed. And it is also further ordained, and enacted by the authority of this present parliament, that the king's highness at any time, or times, on this side the feast of Easter, which shall be in the year of our Lord God, a thousand five hundred and three and thirty, or at any time on this side the beginning of the next parliament, by his letters patents under his great seal, to be made, and to be entered of record in the roll of this present parliament, may and shall have full power and liberty to declare, by the said letters patents, whether that the premisses, or any part, clause, or matter thereof, shall be observed, obeyed, executed, and take place and effect, as an act and statute of this present parliament, or not. So that if his highness, by his said letters patents, before the expiration of the times above limited, thereby do declare his pleasure to be, that the premisses, or any part, clause, or matter thereof, shall not be put in execution, observed, continued, nor obeyed, in that case all the said premisses, or such part, clause, or matter, as the king's highness so shall refuse, disaffirm, or not ratifie, shall stand and be from henceforth utterly void and of none effect. And in case that the king's highness, before the expiration of the times afore prefixed, do declare, by his said letters patents, his pleasure and determination to be, that the said premisses, or every clause, sentence, and part thereof, that is to say, the whole, or such part

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8, c. 20.

thereof as the king's highness so shall affirm, accept, and ratifie, shall in all points stand, remain, abide, and be put in due and effectual execution, according to the purport, tenour, effect, and true meaning of the same; and to stand and be from henceforth for ever after, as firm, stedfast, and available in the law, as the same had been fully and perfectly established, enacted, and confirmed, to be in every part thereof, immediately, wholly, and entirely executed, in like manner, form, and effect, as other acts and laws; the which being fully and determinately made, ordained, and enacted in this present parliament; and if that upon the aforesaid reasonable, amicable, and charitable ways and means, by the king's highness to be experimented, moved, or compounded, or otherwise approved, it shall and may appear, or be seen unto his grace, that this realm shall be continually burdened and charged with this, and such other intolerable exactions and demands, as heretofore it hath been. And that thereupon, for continuance of the same, our said holy father the Pope, or any of his successors, or the court of Rome, will, or do, or cause to be done at any time hereafter, so as is above rehearsed, unjustly, uncharitably, and unreasonably vex, inquiet, molest, trouble, or grieve our said sovereign lord, his heirs or successors, kings of England, or any of his or their spiritual or lay subjects, or this his realm, by excommunication, excommungement, interdiction; or by any other process, censures, compulsories, ways or means; be it enacted by the authority aforesaid, that the king's highness, his heirs and successors, kings of England, and all his spiritual and lay subjects of the same, without any scruples of conscience, shall and may lawfully, to the honour of Almighty God, the encrease and continuance of virtuous and good example within this realm, the said censures, excommunications, interdictions, compulsories, or any of them notwithstanding, minister, or cause to be ministered, throughout this realm, and all other the dominions or territories belonging or appertaining thereunto: all and all manner of sacraments, sacramentals, ceremonies, or other divine services of the holy church, or any other thing or things necessary for the health of the soul of mankind, as they heretofore at any time or times have been virtuously used or accustomed to do within the same; and that no manner such censures, excommunications, interdictions, or any other process or compulsories, shall be by any of the prelates, or other spiritual fathers of this religion, nor by any of their ministers or substitutes, be at any time or times hereafter published, executed, nor divulged, nor suffered to be published, executed, or divulged in any manner of ways."

STAT. 24 HEN.
8, c. 4.

XIV. STAT. 24 HENRICI 8, c. 4 (1). A.D. 1532.

[*An Act concerning the sowing of Flax and Hemp.*]

[Spiritual persons may sell flax and hemp, growing upon lands of their own occupation.]

STAT. 24 HEN.
8, c. 12.

XV. STAT. 24 HENRICI 8, c. 12 (2). A.D. 1532.

[*For the Restraint of Appeals.*"]

The power,
preeminence,
and authority
of the King of
England.

"Where by divers sundry old authentick histories and chronicles, it is manifestly declared and expressed, that this realm of England is an empire, and so hath been accepted in the world, governed by one supreme head and king, having the dignity and royal estate of the imperial crown of the same; unto whom a body politick, compact of all sorts and degrees of people, divided in terms, and by names of spirituality and temporality, been bounden and owen to bear, next to God, a natural and humble obedience; he being also institute and furnished, by the goodness and sufferance of Almighty God, with plenary, whole, and entire power, preeminence, authority, prerogative, and jurisdiction, to render and yield justice, and final determination to all manner of folk, resiants, or subjects within this his realm, in all causes, matters, debates, and contentions, happening to occur, insurgue, or begin within the limits thereof, without restraint, or provocation to

(1) Repealed by Stat. 35 Eliz. c. 7, s. 21.

(2) *Vide* Stat. 1 & 2 P. & M. c. 8. Stat. 1 Eliz. c. 1. Stat. 8 Eliz. c. 1.

any foreign princes or potentates of the world; the body spiritual whereof having power, when any cause of the law divine happened to come in question, or of spiritual learning, then it was declared, interpreted, and shewed by that part of the said body politick, called the spirituality, now being usually called the English Church, which always hath been reputed, and also found of that sort, that both for knowledge, integrity, and sufficiency of number, it hath been always thought, and is also at this hour, *sufficient and meet of itself* (1), without the intermeddling of any exterior person or persons, to declare and determine all such doubts, and to administer all such offices and duties, as to their rooms spiritual doth appertain, for the due administration whereof, and to keep them from corruption and sinister affection, the king's most noble progenitors, and the antecessors of the nobles of this realm, have sufficiently endowed the said church, both with honour and possessions; and the laws temporal, for trial of property of lands and goods, and for the conservation of the people of this realm in unity and peace, without rapine or spoil, was and yet is administred, adjudged, and executed by sundry judges and ministers of the other part of the said body politick, called the temporality; and both their authorities and jurisdictions do *conjoin* together in the due administration of justice, *the one to help the other* (2).

“II. And whereas the king, his most noble progenitors, and the nobility and commons of this said realm, at divers and sundry parliaments, as well in the time of King Edward the First, Edward the Third, Richard the Second, Henry the Fourth, and other noble kings of this realm, made sundry ordinances, laws, statutes, and provisions, for the entire and sure conservation of the prerogatives, liberties, and preeminences of the said imperial crown of this realm, and of the jurisdiction spiritual and temporal of the same, to keep it from the annoyance, as well of the see of Rome, as from the authority of other foreign potentates, attempting the diminution or violation thereof, as often, and from time to time, as any such annoyance or attempt might be known or espied: and notwithstanding the said good statutes and ordinances made in the time of the king's most noble progenitors, in preservation of the authority and prerogative of the said imperial crown, as is aforesaid; yet nevertheless, sithen the making of the said

STAT. 24 HEN.
8, c. 12.

The power,
learning, and
wisdom of the
body spiritual.

(1) *Sufficient and meet of itself*.—There were no appeals to the Pope, out of England, before the reign of King Stephen; when they were introduced, by Henry de Blois, bishop of Winchester, the Pope's legate: “In Anglia namque appellationes non erant, donec eas Henricus Wintoniensis, dum legatus esset, malo suo crudeliter intrusit.” Hunt, l. 8, p. 395. Not but that attempts had been made before such time, to carry appeals to Rome, which were vigorously withstood by the nation, as appears by the complaint of the Pope, in the reign of Henry I, (Eadmer, 113, 115,) that the king would suffer no appeals to be made to him; and previously, in the reign of William Rufus, the bishops and barons had told Anselm, (who was attempting it,) that it was a thing unheard of, for any one to go to Rome, (*i. e.* by way of appeal,) without the king's leave. And although this point was yielded in the reign of King Stephen, yet his successor, Henry 2, resumed and maintained it, as appears by the Constitutions of Clarendon, (Spel. Conc. v. 2, p. 63,) which provide for the course of appeals within the realm, “ita quod non debeat ultra procedi, absque assensu domini regis.” It is true, that the same prince, (Ibid. 99,) in his purgation for the death of Archbishop à Becket, was constrained to swear, among other things, “Quod neque appellationes impediret, neque impediri permitteret, quin liberè fierent in

regno suo ad Romanum pontificem, in ecclesiasticis causis;” but even then it was added, “Ita tamen, ut si ei suspecti fuerint aliqui. Securitatem faciant, quod malum suum vel regni sui non quærant.” Pursuant to which, two writs are to be found in the Register, f. 89 (b), f. 90 (a).

(2) *Conjoin . . . the one to help the other*.—“Sunt enim causæ spirituales, in quibus iudex secularis non habet cognitionem nec executionem, cum non habeat coercionem. In hiis enim causis pertinet cognitio ad iudices ecclesiasticos, qui regunt et defendunt sacerdotium. Sunt autem causæ sæculares, quarum cognitio pertinet ad reges et principes, qui defendunt regnum, et de quibus iudices ecclesiastici se intromittere non debent, cum eorum jura sive jurisdictiones limitatæ sint et separatæ; nisi ita sit, quod gladius juvare debeat gladium.” Bract. f. 107(a).

Which last clause, with regard to the assistance given by the spiritual court to the temporal, is thus expressed by Lord Coke: (*Caudrie's case*, 5 Co. 11(b):) “In all the reign of Henry 3, and his progenitors, kings of England, and ever sithence, if any issue were joined in the temporal courts upon the loyalty of marriage, general bastardy, or such like, the king did ever write to the bishop of that diocese, as mediate officer and minister to his court, to certify the loyalty of marriage, bastardy, or such like.”

STAT. 24 HEN.
8, c. 12.

The several
inconveniences
in suing of ap-
peals to Rome.

All causes de-
terminable by
any spiritual
jurisdiction,
shall be ad-
judged within
the king's
authority.

The prelates of
this realm may
execute all
sacraments and

good statutes and ordinances, divers and sundry inconveniences and dangers, not provided for plainly by the said former acts, statutes, and ordinances, have arisen and sprung by reason of appeals sued out of this realm to the see of Rome, in causes testamentary, causes of matrimony and divorces, right of tithes, oblations and obventions, not only to the great inquietation, vexation, trouble, costs and charges of the king's highness, and many of his subjects and resiants of this his realm, but also to the great delay and let to the true and speedy determination of the said causes, for so much as the parties appealing to the said court of Rome most commonly do the same for the delay of justice. And forasmuch as the great distance of way is so far out of this realm, so that the necessary proofs, nor the true knowledge of the cause, can neither there be so well known, ne the witnesses there so well examined, as within this realm, so that the parties grieved by means of the said appeals be most times without remedy. In consideration whereof, the king's highness, his nobles and commons, considering the great enormities, dangers, long delays, and hurts, that as well to his highness, as to his said nobles, subjects, commons, and resiants of this his realm, in the said causes testamentary, causes of matrimony and divorces, tithes, oblations, and obventions, do daily ensue, doth therefore by his royal assent, and by the assent of the lords spiritual and temporal, and the commons, in this present parliament assembled, and by authority of the same, enact, establish, and ordain, that all causes testamentary, causes of matrimony and divorces, rights of tithes, oblations and obventions, (the knowledge whereof by the goodness of princes of this realm, and by the laws and customs of the same, appertaineth to the spiritual jurisdiction of this realm,) already commenced, moving, depending, being, happening, or hereafter coming in contention, debate, or question within this realm, or within any the king's dominions, or marches of the same, or elsewhere, whether they concern the king our sovereign lord, his heirs and successors, or any other subjects or resiants within the same, of what degree soever they be, shall be from henceforth heard, examined, discussed, clearly, finally, and definitively adjudged and determined within the king's jurisdiction and authority, and not elsewhere, in such courts spiritual and temporal of the same, as the natures, conditions, and qualities of the cases and matters aforesaid in contention, or hereafter happening in contention, shall require, without having any respect to any custom, use, or sufferance, in hindrance, let, or prejudice of the same, or to any other thing used or suffered to the contrary thereof by any other manner of person or persons in any manner or wise; any foreign inhibitions, appeals, sentences, summons, citations, suspensions, interdictions, excommunications, restraints, judgments, or any other process or impediments, of what natures, names, qualities, or conditions soever they be, from the see of Rome, or any other foreign courts or potentates of the world, or from and out of this realm, or any other the king's dominions, or marches of the same, to the see of Rome, or to any other foreign courts or potentates, to the let or impediment thereof in any wise notwithstanding. And that it shall be lawful to the king our sovereign lord, and to his heirs and successors, and to all other subjects or resiants within this realm, or within any of the king's dominions, or marches of the same, notwithstanding that hereafter it should happen any excommungement, excommunications, interdictions, citations, or any other censures or foreign process out of any outward parts, to be fulminate, promulged, declared, or put in execution within this said realm, or in any other place or places, for any of the causes before rehearsed, in prejudice, derogation, or contempt of this said act, and the very true meaning and execution thereof, may and shall nevertheless as well pursue, execute, have, and enjoy the effects, profits, benefits and commodities of all such processes, sentences, judgments and determinations done, or hereafter to be done, in any of the said courts, spiritual or temporal, as the cases shall require, within the limits, power, and authority of this the king's said realm, and dominions and marches of the same, and those only, and none other to take place, and to be firmly observed and obeyed within the same. As also, that all the spiritual prelates, pastors, ministers, and curates within this realm, and the dominions of the same, shall and may use, minister, execute, and do, or cause to be used, executed, ministered, and done, all sacraments, sacra-

mentals, divine services, and all other things within the said realm and dominions, unto all the subjects of the same, as Catholick and Christian men owen to do; any former citations, processes, inhibitions, suspensions, interdictions, excommunications, or appeals, for or touching the causes aforesaid, from or to the see of Rome, or any other foreign prince or foreign courts, to the let or contrary thereof in any wise notwithstanding.

“III. And if any of the said spiritual persons, by the occasion of the said fulminations of any of the same interdictions, censures, inhibitions, excommunications, appeals, suspensions, summons, or other foreign citations for the causes before said, or for any of them, do at any time hereafter refuse to minister, or cause to be ministered, the said sacraments and sacramentals, and other divine services, in form as is aforesaid, shall for every such time or times that they or any of them do refuse so to do, or cause to be done, have one year’s imprisonment, and to make fine and ransom at the king’s pleasure.

“IV. And it is further enacted by the authority aforesaid, that if any person or persons inhabiting or resiant within this realm, or within any of the king’s said dominions, or marches of the same, or any other person or persons, of what estate, condition, or degree soever he or they be, at any time hereafter, for or in any the causes aforesaid, do attempt, move, purchase, or procure, from or to the see of Rome, or from or to any other foreign court or courts out of this realm, any manner foreign process, inhibitions, appeals, sentences, summons, citations, suspensions, interdictions, excommunications, restraints, or judgments, of what nature, kind, or quality soever they may be, or execute any of the same process, or do any act or acts to the let, impediment, hindrance, or derogation of any process, sentence, judgment, or determination had, made, done, or hereafter to be had, done, or made, in any courts of this realm, or the king’s said dominions, or marches of the same, for any of the causes aforesaid, contrary to the true meaning of this present act, and the execution of the same, that then every such person or persons so doing, and their fautors, comforters, abettors, procurers, executors, and counsellors, and every of them, being convict of the same, for every such default shall incur and run in the same pains, penalties, and forfeitures, ordained and provided by the Statute of Provision and *Præmunire*, made in the sixteenth year of the reign of the right noble prince King Richard the Second, against such as attempt, procure, or make provision to the see of Rome, or elsewhere, for any thing or things, to the derogation, or contrary to the prerogative or jurisdiction of the crown and dignity of this realm.

“V. And furthermore, in eschewing the said great enormities, inquietations, delays, charges, and expenses hereafter to be sustained in pursuing of such *appeals* (1),

(1) *Appeals*.—The end and design of appeals is thus stated in the Reformatio Legum, f. 144 (b): “Appellationes non ad deprimentam cuiusquam iustitiam sunt inventæ, sed ut gravamen impositum reparetur, et ad corrigendam iniquitatem et imperitiam iudicis et nonnunquam ad ipsius afflictis succurrendum inscitie Etenim, quæ in prima instantia sunt ommissa, frequenter in secunda locum habent.” And therefore my Lord Dyer makes it essential to every legal constitution: “Forasmuch,” saith he, “as an appeal is a natural defence, it cannot be taken away by any prince or power.” 4 Inst. 340.

But, on the other hand, “many successive appeals are attended with long and unavoidable delays; and these are least to be borne in such cases as immediately concern the honour of God, and do therefore call for speedy justice;” for which reason the council of Trent ordained, (Conc. Trid. Sess. 13, c. 1; Stryp. Ref. 283,) that in cases of correction, no appeal should be from an inter-

locutory decree; and in 1562 it was thought reasonable that recourse should be had to parliament for the enactment of a law, that in cases of correction, no appeal from the bishop of the diocese should be admitted, nor any inhibitions granted to hinder such bishop from proceeding in these cases. Stryp. Ref. App. 2, p. 1. But because a total prohibition of appeals, in any case, might be liable to exception, another proposition was, that in cases of correction, the penalty of appealing be forty shillings, and double costs, if the appeal be found unjust. Which (however favourable to virtue and religion) fell short of the general rule mentioned in the body of the canon law. “Quoties injusta appellatio pronunciatur, sumptus quos, dum sequeretur, adversarius impendit, reddere cogatur, non simplos, sed quadruplos.”

To these may be added, the prayer of the prelates and clergy in convocation to the archbishop, (ann. 1399,) where, among other things needing reformation in his court, they mention, that when a suffragan proceeds

STAT. 24 HEN. 8, c. 12.

divine service to the subjects of this realm.

The penalty of them who omit to do their duty.

Whosoever procureth from the see of Rome, &c. any appeals, process, sentences, &c. shall incur the forfeiture of *præmunire*.

16 Rich. 2, c. 5.

STAT. 24 HEN.
8, c. 12.

and foreign process, for and concerning the *causes aforesaid* (1), or any of them, do therefore, by authority aforesaid, ordain and enact, that in such cases where heretofore any of the king's subjects or residents have used to pursue, provoke, or procure any appeal to the see of Rome, and in all other cases of appeals, in or for any of the causes aforesaid, they may and shall from henceforth *take* (2), have, and use their appeals within this realm, and not elsewhere, in manner and form as hereafter ensueth, and not otherwise; that is to say, first from the archdeacon, or his official, if the matter or cause be there begun, to the bishop diocesan of the said see, if in case any of the parties be grieved.

Before whom
and in what

“VI. And in like wise if it be *commenced* (3) before *the bishop diocesan* (4), or

against any, “*ex officio ad correctionem animæ, ubi inhibito non deberet quovismodo concedi;*” the party proceeded against, suggesting it to be “*ad instantiam partis,*” obtained inhibition. To the like purpose, is Archbishop Grindal's direction to his court, (Reg. Grind. f. 149,) that, in matters of correction, they temper their inhibitions; which had been also regulated by Archbishop Parker, with a particular eye to cases of correction, and reformation of evil lives and manners. Reg. Park. f. 225(a).

(1) *Causæ aforesaid*.—Namely, causes testamentary, causes of matrimony and divorce, right of tithes, oblations and obventions, as they are enumerated in the former part of this act, which prohibits appeals to Rome.

(2) *Take*.—Which is to be done by taking letters dimissory, (Caus. 2, q. 6, c. 24,) called Apostoli, from the judge *à quo*: “*Ab eo, à quo appellatum est, ad eum, qui de appellatione cogniturus est, dimissoriæ literæ dirigantur, quæ vulgò apostoli appellantur, quarum postulatio, et acceptio intra quinque dies ex officio finienda est.*”

“*Qui intra statuta tempora dimissorias non postulaverit, vel acceperit, vel reddiderit; præscriptione ab agendo submovetur, et pœnam appellationis ferre cogitur.*”

“*Post appellationem interpositam literæ dandæ sunt ab eo, à quo appellatum est, ad eum, qui de appellatione cogniturus est, sive principem, sive quem alium: quas literas dimissorias, sive apostolos, appellant. Sensus autem literarum talis est; appellasse, putà, Lucium Titium à sententia illius, quæ inter illos dicta est. Sufficit autem petisse intra tempus dimissorias instanter, et sæpius: ut et si non accipiat, ad ipsum contestetur. Nam instantiam repetentis dimissorias, constitutiones desiderant. Æquum est igitur, si per eum steterit, qui debeat dare literas, quo minus det, ne hoc accipienti noceat.*” Ibid. c. 31.

(3) *Commenced*.—The archbishop was forbidden by the ancient canons to take original cognizance of causes arising within the dioceses of his suffragan bishops: “*Edictum per remensem provinciam publicatum, ut à subditis episcoporum ipsius provincie, pro audiendis, et terminandis eorum causis liberè ad remensem curiam accedatur, penitus revocamus. Quia etiamsi tenerentur iidem episcopi pro suis culpis vinculo excommunicationis stricti; non tamen ex culpis ipsis (cùm id non inveniatur à jure concessum) ad remensem archiepiscopum jurisdictio devolveretur eorum. Sed alia forte pro illis pœna*

ipsis canonica posset infligi.” 6 Decret. 1. i., t. 8, c. 1.

“*Prohibemus, ne remensis archiepiscopus in diocesisbus suffraganeorum suorum, foraneos officiales constituat: quia cum metropolitans, ne suorum suffraganeorum ingrediantur dioceses, ut in eis auctoritate propria judicent, disponant, aliquidve aliud agant, canonica prohibeant instituta; nequaquam hoc possunt in illis per alios exercere.*” Ibid. t. 16, c. 1.

“*Nec pro eo, quod causas per appellationem delatas ad ipsos, possunt in suffraganeorum suorum diocesisbus delegare, similiter licet eis tales officiales instituere in eisdem; quo eorum vice (cùm appellatur ad ipsos) citationes, vel inhibitiones faciant, seu compescant in hac parte rebelles. Quia in causis per appellationem devolutis ad ipsos, jam jurisdictionem obtinere noscuntur; propter quod licet possunt super illis committere vices suas. Non sic autem in aliis, in quibus nondum extitit appellatum: et ideo non debent aliquos constituere pro citationibus in futuris causis appellationum, et inhibitionibus faciendis: nisi aliud remensis ecclesia circa talium officialium institutionem de consuetudine obtineat speciali. A quibus etiamsi de consuetudine hujusmodi possint in remensi provincia constitui: inhibitiones tamen, ne procedatur in causis, priusquam ad remensem curiam appellatur, fieri penitus inhibemus.*” Ibid.

(4) *The bishop diocesan*.—This is to be extended to all who have episcopal jurisdiction; thus, in *Johnson v. Ley*, (Skin. 589,) where the Dean of Salisbury, in one of his peculiars, made letters of request to the Dean of the Arches: it was objected, in order to obtain a prohibition, that this was *per saltum*, and that he ought to have made request to the Bishop of Salisbury, his immediate ordinary; but the plea was not allowed, because this was not (as in the case of an archidiaconal peculiar,) subject to the jurisdiction of the ordinary, but immediately to the archbishop. Gibson's Codex, 1035.

In *Robinson v. Godsalve*, (1 Ld. Raym. 123,) it was resolved by the court, that “*where an archdeacon has a peculiar jurisdiction, he is totally exempt from the power of the bishop, and the bishop cannot enter there and hold court. And in such case, if the party who lives within the peculiar be sued in the bishop's court, a prohibition shall be granted, for Stat. 23 Hen. 8, c. 9, s. 2, intends, that no suit shall be per saltum; but if the archdeacon has not a peculiar, then the bishop and he have concurrent jurisdiction, and the party may commence*

his commissary, from the bishop diocesan, or his commissary, within *fifteen days* (1) next ensuing the judgment or sentence thereof there given, *to the archbishop* (2) of the province of Canterbury, if it be within his province; and if it be within

STAT. 24 HEN.
8, c. 12.
courts appeals
shall be sued

his suit either in the archdeacon's court or the bishop's, and he has election to choose which he pleases; and if he commence in the bishop's court, no prohibition shall be granted; for if it should, it would confine the bishop's court to determine nothing but appeals, and render it incapable of having any causes originally commenced there."

Respecting jurisdiction, vide etiam, *St. John's, Margate, (Churchwardens of) v. Parishioners, Vicar of, &c.*, 1 Consist. 198; *Adey v. Theobald*, 1 Curt. 447.

The question of appeals from inferior to superior ecclesiastical courts, underwent an elaborate discussion in the case of *Parham v. Templer*, (3 Phill. 242, 243,) in the course of which Sir John Nicholl said, "The statute regulating appeals from archdeacons does not appear to me to regulate any appeals from deans and chapters; for a dean and chapter are of higher rank than an archdeacon." "The dean and chapter has, in some instances, a controul over the bishop; while the archdeacon is only an officer of the bishop, and is sometimes called *oculus episcopi*, subordinate to him, and supervising for him." "Even archdeacons themselves may, I apprehend, have their peculiarities; and, in that case, they would not be bound by the statute of Henry 8." The same learned judge, in *Prankard v. Deacle*, (1 Hagg. 189,) says, "The general jurisdiction of the diocese is in the bishop, and archdeacons only have that which the bishop chooses to grant out to them;" and he seemed to be of opinion, that where the archidiaconal and episcopal courts were concurrent in jurisdiction, there was no irregularity, even in form, in invoking, on the death of the archdeacon, the causes in his court into the episcopal court. Generally speaking, then, the appeal from the archdeacon's court is to that of the bishop of the diocese; but when the former has a peculiar, it lies, as it does in the case of a dean and chapter, to the court of the archbishop. Sir John Nicholl's opinion, that the jurisdiction of a dean and chapter is superior to that of the archdeacon, appears to be at variance with the declaration of Ayliffe, who states, (p. 99,) that "An archdeacon is by custom a *greater* person in his district than the dean of a cathedral church, and particularly in those things, which do of common right or by custom belong to his office: *for an archdeacon is greater than a dean in a point of jurisdiction out of the cathedral church*; because in all such matters, a dean ought to be subject to him; but in the cathedral church, and in the celebration of divine service, an archdeacon ought to be subject to the dean; but in all these things, the custom of churches ought to be regarded; according to which a dean, *simply speaking, is inferior* to an archdeacon."

By Stat. 3 & 4 Vict. c. 86, s. 3, the archdeacon is enumerated among those who may be the assessors of the bishop in hearing accusations against a clergyman; but it is

not imperative on the bishop to appoint him.

(1) *Fifteen days*.—Ten days were assigned by the *Reformatio Legum*, (f. 145 (a),) according to the rule of the ancient canon law, and the same is the rule in *Lyndwood*. Comment, in Const. Meph. Of the time of prosecuting the appeal, the canon law has determined as follows: "Ei, qui appellat, impertitur, annus, intra quem, secundum se, communiterve cum adversario litem exequatur, aut, si justa causa intercesserit, alius annus indulgeatur: quo transacto, lite non completa, rata manet sententia. Appellatione cessante, cum unus mensis superest ex biennio, licet victori ingredi, ut reus quaeratur: quo sive invento, sive non, suas afferat allegationes, et vel confirmetur, vel rescindatur sententia, omni casu absente expensis condemnando secundum tempora fatalium dierum. Neutro verò concurrente post secundum fatalem permaneat sententia rata." Caus. 2, q. 6, c. 41.

"Fraternitati tuæ duximus respondendum, quòd si ante sententiam vel postea, fuerit appellatum, hujusmodi appellantis annus indulgetur, aut, ex necessariâ aut evidenti causa, biennium: nisi fortè iudex à quo appellatum fuerit, secundum locorum distantiam et personarum, et negotii qualitatem, recisius tempus fuerit moderatus. Infra quod si is, qui appellaverit, causam appellationis non fuerit prosecutus, tenebit sententia; si post sententiam appellaverit, et à causâ suâ cecidisse videtur; nec amplius super eodem negotio audietur appellans." Extra. l. 2, t. 28, c. 5.

(2) *To the archbishop*.—Not from the bishop's official, or commissary, to the bishop himself, for the reason given in the canon law. "Non putamus illam consuetudinem, quancunque tempore de facto servatam, consonam rationi, quòd ab officiali episcopi ad eundem episcopum valeat appellari; ne ab eodem ad seipsum (cum sit idem auditorium utriusque) appellatio interposita videatur." Sext. Decret. l. i., t. 4, c. 2. "Cum suffraganeorum remensis ecclesiæ, suorumque officialium (qui generaliter de causis ad ipsorum forum pertinentibus, eorum vices supplendo cognoscunt) unum, et idem consistorium, sive auditorium sit censendum ab ipsis officialibus non ad dictos suffraganeos (ne ab eisdem ad seipsos interponi appellatio videatur) sed de jure ad remen. est curiam appellandum." Ibid. l. 2, t. 15, c. 3.

But *Lyndwood*, (Gibson's Codex, 1036,) makes a distinction in this matter between officials general, and those whom he calls *officiales foranei*. Of the first, he says, the foregoing doctrine holds good; but of the second, he says, "Sæcùs tamen æstimo in officialibus foraneis. . . . Nec obstat, si dicatur forsan, quòd tales sunt dati ad universitatem causarum, quia non generaliter ubicunque episcopus habet jurisdictionem sunt dati, sed particulariter in certâ plagâ, vel certo loco, pertinenti ad jurisdictionem ipsius episcopi. Et tales non habent idem

STAT. 24 HEN.
8, c. 12.

within this
realm.

4 Mod. 116,
117.

Dyer, 209.

Appeals ought
to be within
fifteen days.

Suits com-
menced before
an archbishop
shall be deter-
mined by him
without any
further appeal.

The preroga-
tive of the
Archbishop of
Canterbury
saved.

Before whom
an appeal shall
be sued in any
case touching
the king.

the province of York, then to the Archbishop of York; and so likewise to all other archbishops in other the king's dominions, as the case by order of justice shall require; and there to be definitively and finally ordered, decreed, and adjudged, according to justice, without any other appellation or provocation to any other person or persons, court or courts.

"VII. And if the matter or contention for any of the causes aforesaid be or shall be commenced, by any of the king's subjects or resiants, before the archdeacon of any archbishop, or his commissary, then the party grieved shall or may take his appeal within fifteen days next after judgment or sentence there given, to the court of the Arches or Audience, of the same archbishop or archbishops; and from the said court of the Arches or Audience, within fifteen days then next ensuing after judgment or sentence there given, to the archbishop of the same province, there to be definitively and finally determined, without any other or further process or appeal thereupon to be had or sued.

"VIII. And it is further enacted by the authority aforesaid, that all and every matter, cause, and contention now depending, or that hereafter shall be commenced by any of the king's subjects or resiants, for any of the causes aforesaid, before any of the said archbishops, that then the same matter or matters, contention or contentions, shall be before the same archbishop where the said matter, cause, or process shall be so commenced, definitively determined, decreed, or adjudged, without any other appeal, provocation, or any other foreign process out of this realm, to be sued to the let or derogation of the said judgment, sentence, or decree, otherwise than is by this act limited and appointed; saving always the prerogative of the archbishop and church of Canterbury, in all the foresaid causes of appeals, to him and to his successors, to be sued within this realm, in such and like wise as they have been accustomed and used to have heretofore.

"IX. And in case any cause, matter, or contention, now depending for the causes before rehearsed, or any of them, or that hereafter shall come in contention for any of the same causes, in any of the foresaid courts, which hath, doth, shall or may touch the king, his heirs or successors, kings of this realm; that in all and every such case or cases the party grieved, as before is said, shall or may appeal from *any of the said courts* (1) of this realm, where the said matter, now being in contention, or hereafter shall come in contention, touching the king, his heirs, or successors (as aforesaid), shall happen to be ventilate, commenced, or begun, to the spiritual prelates and other abbots and priors of the upper house, assembled and convocate by the king's writ in the convocation being, or next ensuing within the province or provinces where the same matter of contention is or shall be begun; so that every such appeal be taken by the party grieved within fifteen days next after the judgment or sentence thereupon given or to be given; and that whatsoever be done, or shall be done and affirmed, determined, decreed, and adjudged by

consistorium cum episcopo; sed ab eis ad episcopum est appellandum." So stood the law before this statute; but the direction here given for an appeal from the bishop's commissary, (the ordinary appellation of the *officialis foraneus*.) seems to have altered it.

Nor can appeals be made from the archdeacon's court to the archbishop's, according to the rule of the canon law: "Ab archidiaconis verò, aliisque inferioribus praelatis, suffraganeis subjectis eisdem, et eorum officialibus, ad suffraganeos ipsos debet, et non ad curiam archiepiscopalem (omissis dictis suffraganeis) appellari; nisi aliud remensi [*i. e.* metropolitice] ecclesiæ, de consuetudine, competat in hac parte." 6 Decret. l. 2, t. 15, c. 3, s. 2. And it was a question which Archbishop Peckham (145(b),) relinquished; granting, "quòd officialis ad appellationes à subditis fratrum et suffraganeorum nostrorum directè ad curiam Cant. omisso medio inter-

positas, de cœtero non rescribat."

As to the place of hearing the appeal the archbishop is restrained, as follows: "Ut litigantes releventur à laboribus, et expensis, statuimus, ne archiepiscopus causas, quæ per appellationem, vel aliàs jure metropolitico deferuntur ad ipsum, alibi quàm in sua propria civitate, vel diocesi, aut in eis, in quibus appellatum extitit, vel causæ ipsæ consistere dignoscuntur, audiat, vel etiam audiendas committat: nisi sibi aliud de consuetudine competat in hac partè." 6 Decret. l. i., t. 16, c. 5, *et vide post.* note (1), 152.

(1) *Any of the said courts*:—That is, the court of Arches, or the court of Audience, of any archbishop; the determination whereof, in all causes between subject and subject, was final by this statute, and the further appeal to the delegates was not provided, until Stat. 25 Hen. 8, c. 19, s. 4. *Sed vide post.* note (1), 152.

the foresaid prelates, abbots, and priors of the upper house of the said convocation, as is aforesaid, appertaining, concerning, or belonging to the king, his heirs and successors, in any of these foresaid causes of appeals, shall stand and be taken for a final decree, sentence, judgment, definition, and determination, and the same matter, so determined, never after to come in question and debate, to be examined in any other court or courts. STAT. 24 HEN. 8, c. 12.

“X. And if it shall happen any person or persons hereafter to pursue or provoke any appeal contrary to the effect of this act, or refuse to obey, execute, and observe all things comprised within the same, concerning the said appeals, provocations, and other foreign processes to be sued out of this realm, for any the causes aforesaid, that then every such person or persons so doing, refusing, or offending contrary to the true meaning of this act, their procurers, fautors, advocates, counsellors, and abettors, and every of them, shall incur into the pains, forfeitures and penalties ordained and provided in the said statute made in the said sixteenth year of King Richard the Second, and with like process to be made against the said offenders, as in the same statute made in the said sixteenth year more plainly appeareth.” 16 Rich. 2, c. 5. 28 Hen. 8, c. 10. Repealed 1 & 2 P. & M. c. 8, and revived by 1 Eliz. c. 1. And see farther, 23 Eliz. c. 1.

XVI. STAT. 24 HENRICI 8, c. 13 (1). A.D. 1532.

[*A Repeal of all former Statutes made against Excess of Apparel.*]

STAT. 24 HEN. 8, c. 13.

XVII. STAT. 25 HENRICI 8, c. 2. [IRELAND.] A.D. 1534.

“*An Act for the Uniting and Appropriation of the Parsonage of Galtrime to the Priory of St. Peter's by Trymme.*”

STAT. 25 HEN. 8, c. 2. [Ir.]

XVIII. STAT. 25 HENRICI 8, c. 14 (2). A.D. 1533.

“*A Repeal of the Statute of 2 Hen. 4, c. 15, and a Confirmation of the Statutes of 5 Rich. 2, St. II. c. 5, and 2 Hen. 5, St. I. c. 7, touching the Punishment of Hereticks. Sheriffs in their Turns, and Stewards in their Leets, Rapes, and Wapentakes, shall have Authority to inquire of Hereticks; and every such Presentment made in any Turn, Leet, &c. concerning Hereticks, shall be certified to the Ordinary. Every Person presented or indicted of any Heresy, or duly accused by two lawful Witnesses, may be cited, arrested, or taken by an Ordinary, or other of the King's Subjects, and committed to the Ordinary, to answer in open Court, and being convict, shall abjure his Heresies, and refusing so to do, or falling into Relapse, shall be burned in an open Place for Example of others.*”

STAT. 25 HEN. 8, c. 14.

XIX. STAT. 25 HENRICI 8, c. 16 (3). A.D. 1533.

“*An Act that every Judge of the High Courts may have one Chaplain beneficed with Cure.*”

STAT. 25 HEN. 8, c. 16

“Where in the parliament holden at Westminster in the xxi. year of the reign of our sovereign lord King Henry the Eighth, it was among other things ordained and provided, that certain honourable persons, as well spiritual as temporal, shall have chaplains beneficed with cure, to serve them in their honourable houses, which chaplains shall not incur the danger of any penalty or forfeiture made or declared in the same parliament for nonresidence upon their said benefices, or for obtaining licences for dispensations of pluralities: in the which act no provision

21 Hen. 8, c. 13.

(1) Repealed by Stat. 1 Jac. 1, c. 25, s. 45.

(2) Repealed by Stat. 1 Edw. 6, c. 12, s. 3.

Attempts were made to introduce the inquisitorial process into the general exercise of ecclesiastical jurisdiction, but it was restrained, as repugnant to the principles of the law of England, and the preamble of the statute passed in 1534, (25 Hen. 8, c. 14,) against heresy, recites, that “It standeth not

with the right order of justice or equity, that any person should be convicted, and put to the loss of his life, good name, or goods, unless it were by due accusation and witnesses, or by presentment, verdict, confession, or process of outlawry.” Ecclesiastical Commissioners' Report, Feb. 15, 1832, p. 55.

(3) *Vide post.* Stat. 1 & 2 Vict. c. 106.

STAT. 25 HEN. 8, c. 16. was made for any of the king's judges of his high courts, commonly called the King's Bench and the Common Pleas, except only for the chief judge of the King's Bench, nor for the chancellor nor the chief baron of the King's Exchequer, nor for any other inferior persons being of the king's most honourable council, as by the said act may appear.

"II. Wherefore it is ordained and enacted by authority of this present parliament, that as well every judge of the said high courts, and every of the chancellor and chief baron of the said exchequer, the king's general attorney and general solicitor, which for the time is, be, or shall be, shall and may from henceforth, at his liberty, retain and have singularly to every of them in his house, or attendant to his person, one chaplain having one benefice with cure of souls, which may be absent from his said benefice, and not resident upon the same; the said statute made in the said one and twentieth year, or any other statute, act, or ordinance, made to the contrary in any wise notwithstanding."

STAT. 25 HEN. 8, c. 19.

XX. STAT. 25 HENRICI 8, c. 19. A.D. 1533.

"*The Submission of the Clergy, and Restraint of Appeals* (1)."

"Where the king's humble and obedient subjects, the clergy of this realm of England, have not only knowledged according to the truth, that the convocation of the same clergy is, always hath been, and ought to be assembled only by the king's writ, but also submitting themselves to the king's majesty, have promised *in verbo sacerdotii*, that they will never from henceforth presume to attempt, alledge, claim, or put in ure, or enact, promulge, or execute any new canons, *constitutions* (2), ordinance provincial, or other, or by whatsoever other name they shall be called, in the convocation, unless the king's most royal assent and licence may to them be had, to make, promulge, and execute the same; and that his majesty do give his most royal assent and authority in that behalf: and where divers constitutions, ordinances, and canons *provincial or synodal* (3), which heretofore have been enacted, and be thought not only to be much prejudicial to the king's prerogative royal, and repugnant to the laws and statutes of this realm, but also overmuch onerous to his highness and his subjects; the said clergy hath most humbly besought the king's highness, that the said constitutions and canons may be committed to the examination and judgment of his highness, and of two and thirty persons of the king's subjects, whereof sixteen to be of the upper and nether house of the parliament of the temporality, and the other sixteen to be of the clergy of this realm; and all the said two and thirty persons to be chosen and appointed by the king's majesty; and that such of the said constitutions and canons, as shall be thought and determined by the said two and thirty persons, or the more part of them, worthy to be abrogated and adnulled, shall be abolite and made of no value accordingly; and such other of the same constitutions and canons, as by the said two and thirty, or the more part of them, shall be approved to stand with the laws of God, and consonant to the laws of this realm, shall stand in their full strength and power, the king's most royal assent first had and obtained to the same: Be it therefore now enacted by authority of this present parliament, according to the said submission and petition of the said clergy, that they ne any of them from henceforth shall presume to attempt, alledge, claim, or put in ure

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✓
Cro. Eliz. 571, 601.
The clergy shall not enact any constitu-

(1) *Vide* Stat. 1 & 2 P. & M. c. 8. Stat. 1 Eliz. c. 1. Stat. 2 & 3 Gul. 4, c. 92. Stat. 3 & 4 Gul. 4, c. 41. Stat. 6 & 7 Vict. c. 38.

(2) *Constitutions*.—The powers of archbishops and bishops in their provincial synods before the making of this statute, are thus set forth by Lyndwood: "Possunt archiepiscopi et episcopi constitutiones facere juris communis declaratorias et revocatorias; et ubi poena deferret in jure, possunt poenas opponere, et veterem poenam augere. Possunt etiam constitutionibus Papalibus addere, et eas supplere; et ad correctionem morum

statuta facere præceptorialia, prohibitoria, et poenalia; dum tamen jus commune non subvertant. Possunt etiam in his quæ ad ipsorum jurisdictionem pertinent, statuta facere, dum tamen legibus generalibus non obstant." De Mag. c. Presb. v. *Juramento*, p. 70.

(3) *Provincial or synodal*.—"Si constitutio synodalis liget subditos statuents, ita quod non liceat contravenire determinatis in synodo episcopali, multo fortius hoc erit dicendum quoad decisa et determinata in synodo provinciali." Lyndw. de Hær. c. Nullus, v. *Synodalibus*, 297.

any constitutions or ordinances provincial or synodal, or any other canons; nor shall enact, promulge, or execute any such canons, constitutions, or ordinances provincial, by whatsoever name or names they may be called, in their convocations in time coming, (which alway shall be assembled by authority of the king's writ,) unless the same clergy may have the king's most royal assent and licence to make, promulge, and execute such canons, constitutions, and ordinances provincial or synodal, upon pain of every one of the said clergy doing contrary to this act, and being thereof convict, to suffer imprisonment, and make fine at the king's will.

"II. And forasmuch as such canons, constitutions, and ordinances, as heretofore have been made by the clergy of this realm, cannot now at the session of this present parliament, by reason of shortness of time, be viewed, examined, and determined by the king's highness, and thirty-two persons to be chosen and appointed according to the petition of the said clergy in form above rehearsed: be it therefore enacted by authority aforesaid, that the king's highness shall have power and authority to nominate and assign, at his pleasure, the said two and thirty persons of his subjects, whereof sixteen to be of the clergy, and sixteen to be of the temporality of the upper and nether house of the parliament; and if any of the said two and thirty persons so chosen shall happen to die before their full determination, then his highness to nominate other from time to time of the said two houses of the parliament, to supply the number of the said two and thirty; and that the same two and thirty, by his highness so to be named, shall have power and authority to view, search, and examine the said canons, constitutions, and ordinances provincial and synodal heretofore made, and such of them as the king's highness and the said two and thirty, or the more part of them, shall deem and adjudge worthy to be continued, kept, and obeyed, shall be from thenceforth kept, obeyed, and executed within this realm, so that the king's most royal assent under his great seal be first had to the same; and the residue of the said canons, constitutions, and ordinances provincial, which the king's highness, and the said two and thirty persons, or the more part of them, shall not approve, or deem and judge worthy to be abolite, abrogate, and made frustrate, shall from thenceforth be void and of none effect, and never be put in execution within this realm. Provided alway, that no canons, constitutions, or ordinances, shall be made or put in execution within this realm by authority of the convocation of the clergy, which shall be contrariant or repugnant to the king's prerogative royal, or the customs, laws, or statutes of this realm; any thing contained in this act to the contrary hereof notwithstanding.

"III. And be it further enacted by authority aforesaid, that from the feast of Easter, which shall be in the year of our Lord God 1534, no manner of appeals shall be had, provoked, or made out of this realm, or out of any of the king's dominions, to the Bishop of Rome, nor to the see of Rome, in any causes or matters happening to be in contention, and having their commencement and beginning in any of the courts within this realm, or within any the king's dominions, of what nature, condition, or quality soever they be of; but that all manner of appeals, of what nature or condition soever they be of, or what cause or matter soever they concern, shall be made and had by the parties aggrieved, or having cause of appeal, after such manner, form, and condition, as is limited for appeals to be had and prosecuted within this realm in causes of matrimony, tithes, oblations, and obventions, by a statute thereof made and established sithen the beginning of this present parliament, and according to the form and effect of the said estatute; any usage, custom, prescription, or any thing or things to the contrary hereof notwithstanding.

"IV. And for lack of justice at or in any the courts of the archbishops of this realm, or in any the king's dominions, it shall be lawful to the parties grieved to *appeal* (1) to the king's majesty in the king's court of Chancery; and that upon

STAT. 25 HEN. 8, c. 19.
tions or ordinances without, &c.

The king may assign thirty-two persons to examine the canons, &c.

[Expired.]
35 Hen. 8, c. 16.
3 & 4 Edw. 6, c. 11.
3 Inst. 39.
Hob. 148.
13 Co. 47.
2 Roll. 481.
2 Lev. 222.

No canons shall be executed which be contrary, &c.

3 Inst. 178.
There shall be no appeals to Rome, but appeals shall be according to the statute made 24 Hen. 8, c. 12.

Appeals from the archbishop's court

(1) *To appeal*.—Such appeal lies not from a local visitor, nor in any cause of a temporal nature, nor did it lie from the high

commission court, when in being, (Dyer, 209 (a),) because they themselves were the king's delegates, (4 Inst. 340,) as acting by imme-

STAT. 25 HEN.
8, c. 19.

into the chan-
cery.

4 Mod. 117.
Dyer, f. 209.

Premunire for
suing of appeal
to Rome, or
executing any
process from
thence.
16 Rich. 2, c. 5.

Appeals from
places exempt,
which were to
the see of
Rome, shall
now be into
the chancery.

What canons,
&c. are still in
force.
27 Hen. 8,
c. 20.
27 Hen. 8,
c. 17, s. 2.
Repealed by
1 & 2 P. & M.
c. 8, and

every such appeal, a commission shall be directed under the great seal to *such persons* (1) as shall be named by the king's highness, his heirs or successors, like as in case of appeal from the Admiral's court, to hear and *definitively* (2) determine such appeals, and the causes concerning the same. Which commissioners, so by the king's highness, his heirs or successors, to be named or appointed, shall have full power and authority to hear and definitively determine every such appeal, with the causes and all circumstances concerning the same; and that such judgment and sentence, as the said commissioners shall make and decree, in and upon any such appeal, shall be good and effectual, and also *definitive* (3); and no further appeals to be had or made from the said commissioners for the same.

"V. And if any person or persons, at any time after the said feast of Easter, provoke or sue any manner of appeals, of what nature or condition soever they be of, to the said Bishop of Rome, or to the see of Rome, or do procure or execute any manner of process from the see of Rome, or by authority thereof, to the derogation or let of the due execution of this act, or contrary to the same, that then every such person or persons so doing, their aiders, counsellors, and abettors, shall incur and run into the dangers, pains, and penalties contained and limited in the Act of Provision and *Premunire* made in the sixteenth year of the king's most noble progenitor, King Richard the Second, against such as sue to the court of Rome against the king's crown and prerogative royal.

"VI. Provided always, that all manner of provocations and appeals hereafter to be had, made, or taken from the jurisdiction of any abbots, priors, or other heads and governors of monasteries, abbeys, priories, and other houses and places exempt, in such cases as they were wont or might afore the making of this act, by reason of grants or liberties of such places exempt, to have or make immediately any appeal or provocation to the Bishop of Rome, otherwise called Pope, or to the see of Rome, that in all these cases every person and persons, having cause of appeal or provocation, shall and may take and make their appeals and provocations immediately to the king's majesty of this realm, into the court of Chancery, in like manner and form as they used afore to do to the see of Rome; which appeals and provocations so made, shall be definitively determined by authority of the king's commission, in such manner and form as in this act is abovementioned; so that no archbishop or bishop of this realm shall intermit or meddle with any such appeals, otherwise or in any other manner than they might have done afore the making of this act; any thing in this act to the contrary thereof notwithstanding.

"VII. Provided also, that such canons, constitutions, ordinances, and synodals provincial, being already made, which be not contrariant or repugnant to the laws, statutes, and customs of this realm, nor to the damage or hurt of the king's prero-

gative, shall remain in full force and effect, without any diminution or alteration, until such time as the king shall by letters under the great seal, direct and command to the contrary. And there was no remedy against their sentences, but a new commission to others, grantable in virtue of the royal prerogative, and independent from this statute. And it was also said, that this must be under the sign manual of the prince, before the lord chancellor or keeper could issue a commission of delegates.

(1) *To such persons*.—The *Reformatio Legum*, speaking of the appeal to the king, adds as follows: "*Quòd cum fuerit causa devoluta, eam vel concilio provinciali definiri volumus, si gravis sit causa, vel à tribus quatuorve episcopis à nobis ad id constituendis.*" By Stat. 2 & 3 Gul. 4, c. 92; Stat. 3 & 4 Gul. 4, c. 41; and Stat. 6 & 7 Vict. c. 38; the powers of the court of Delegates are transferred to the judicial committee of the privy council.

(2) *Definitively*.—In *Saul v. Wilson*, (2 Vern. 118,) the court observed, "that there

lies no appeal to the house of lords from a sentence in the Delegates, nor from a decree on the Statute of Charitable Uses, for they cannot have any original jurisdiction, because these matters are grounded upon acts of parliament, and the acts give them none."

(3) *Definitive*.—Yet the crown, after such definitive sentence, was not precluded from granting a commission of review; first, because it was not restrained by the statute; secondly, that, after a definitive sentence, the Pope, as supreme head by the canon law, used to grant a commission *ad revidendum*; and such authority as the Pope had, claiming as supreme head, doth of right belong to the crown, and is annexed thereunto by Stat. 26 Hen. 8, c. 1, and Stat. 1 Eliz. c. 1. *Goodman's case*, Dyer, 273. *Haver v. Thorol*, Lit. 232.

gative royal, shall now *still be used and executed*(1) *as they were*(2) afore the making of this act, till such time as they be viewed, searched, or otherwise ordered and determined by the said two and thirty persons, or the more part of them, according to the tenor, form, and effect of this present act."

STAT. 25 HEN.
8, c. 19.
revived by 1
Eliz. c. 1, s. 10.

XXI. STAT. 25 HENRICI 8, c. 20(3). A.D. 1533.

"An Act for the Non-payment of First-fruits to the Bishop of Rome."

"Where sithen the beginning of this present parliament, for repress of the exaction of *annates*(4) and first-fruits of archbishopricks and bishopricks of this realm, wrongfully taken by the Bishop of Rome, otherwise called the Pope, and the see of Rome, it is ordained and established by an act, among other things, that the payments of the annates or first-fruits, and all manner contributions for the same, for any such archbishoprick or bishoprick, or for any bulls to be obtained from the see of Rome, to or for the said purpose or intent, should utterly *cease*(5), and no such to be paid for any archbishoprick or bishoprick within this realm, otherwise than in the same act is expressed; and that no manner of person or persons to be named, elected, presented, or postulated to any archbishoprick or bishoprick within this realm, should pay the said annates or first-fruits, nor any other manner of sum or sums of money, pensions, or annuities for the same, or for any other like exaction or cause, upon pain to forfeit to our sovereign lord the king, his heirs and successors, all manner his goods and chattles for ever, and all the temporal lands and possessions of the said archbishoprick or bishoprick during the time that he or they that should offend contrary to the said act, should have, possess, and enjoy the said archbishoprick or bishoprick. And it is further enacted, that if any person named or presented to the see of Rome by the king's highness, or his heirs or successors, to be bishop of any see or diocese within this realm, should happen to be letted, delayed, or deferred, at the see of Rome from any such bishoprick whereunto he should be so presented, by mean of restraint or bulls of the said Bishop of Rome, otherwise called the Pope, and other things requisite to the same, or should be denied at the see of Rome, upon convenient suit made, for any bulls requisite for any such cause, that then every person so presented might or should be consecrated here in England by the archbishop in whose province the said bishoprick shall be; so always, that the same person should be named and presented by the king for the time being to the said arch-

STAT. 25 HEN.
8, c. 20.

Stat. 23 Hen.
8.

(1) *Still be used and executed*:—The clause of Stat. 21 Hen. 8, c. 21, s. 1, was a recognition of the authority of the foreign canon law in this nation, upon the basis of usage and custom, to which this clause adds a parliamentary authority or enactment to all our own canons and constitutions, which are not repugnant to the laws, statutes, and customs of this realm, nor to the damage or hurt of the king's prerogative royal.

(2) *As they were*:—This shows of what consequence it is, to preserve and examine our ecclesiastical records, for the support of ecclesiastical authority, since from these, and these alone, it can be made to appear, on all occasions, that it is entitled to the additional strength, not only of common, but likewise of statute law; both which, as is clearly seen, do ultimately resolve into practice, and the proof of practice rests upon ecclesiastical records.

(3) *Vide Stat.* 26 Hen. 8, c. 14. Stat. 1 Edw. 6, c. 2. Stat. 1 & 2 P. & M. c. 8. Stat. 1 Eliz. c. 1. Stat. 8 Eliz. c. 1.

(4) *Annates*:—Of *annates*, Platina states, in the Life of Boniface the Ninth, as follows: "Tum vero, (i. e. circa A.D. 1400,) Bonifacius, vice-comitum potentiam veritus, sive

augendæ ditionis ecclesiasticæ cupidus, annatarum usum beneficiis ecclesiasticis primus imposuit; hac conditione, ut qui beneficium consequeretur, dimidium annui proventus fisco apostolico persolveret. Sunt tamen qui hoc inventum Johanni XXII. ascribant. Hanc autem consuetudinem omnes admiserunt præter Anglos, qui id de solis episcopatibus concessere; in cæteris beneficiis non adeo." And Polydore Virgil: (l. 8, c. 2, de Invent.): "Onus illud annatarum ab initio omnes generatim populi subire minus recusarunt; extra Anglos, qui suis minoribus sacerdotiis, quando ea pontifex dabat, id servituti imponendum non censuerunt. Nam Romanus pontifex minorum quoque sacerdotiorum aliarum gentium, quæ ipse confert, dimidium capit vectigalium unius anni partem, si pluris viginti quatuor aureis aestimentur."

(5) *Cease*:—This was, on condition that the Pope complied not with the scheme proposed in that act of parliament; which he not doing, all grants and instruments from Rome, for the consecrations of archbishops and bishops, (and, by consequence, the *annates*, or first-fruits, which were paid in consideration of them,) did utterly cease, upon the king's confirming such statute.

STAT. 25 HEN.
8, c. 20.

bishop. And if any person being named and presented (as is aforesaid) to any archbishoprick of this realm, making convenient suit, as is aforesaid, should happen to be letted, delayed, deferred, or otherwise disturbed from the said archbishoprick, for lack of pall, bulls, or other things to him requisite to be obtained at the see of Rome, that then every such person so named and presented to the archbishop, might and should be consecrated and invested, after presentation made, as is aforesaid, by any other two bishops within this realm, whom the king's highness or any his heirs or successors, kings of England, would appoint and assign for the same, according and after like manner as divers archbishops and bishops have been heretofore in ancient time by sundry the king's most noble progenitors made, consecrated, and invested within this realm. And it is further enacted by the said act, that every archbishop and bishop, being named and presented by the king's highness, his heirs and successors, kings of England, and being consecrated and invested, as is aforesaid, should be installed accordingly, and should be accepted, taken and reputed, used and obeyed, as an archbishop or bishop of the dignity, see, or place whereunto he shall be so named, presented, and consecrated, and as other like prelates of that province, see, or diocese, have been used, accepted, taken, and obeyed, which have had and obtained compleatly their bulls and other things requisite in that behalf from the see of Rome, and also should fully and entirely have and enjoy all the spiritualities and temporalities of the said archbishoprick or bishoprick, in as large, ample, and beneficial manner, as any of his or their predecessors had or enjoyed in the said archbishoprick or bishoprick, satisfying and yielding unto the king's highness, and to his heirs and successors, all such duties, rights and invests as before time hath been accustomed to be paid for any such archbishoprick or bishoprick, according to the ancient laws and customs of this realm and the king's prerogative royal, as in the said act amongst other things is more at large mentioned.

"II. And albeit the said Bishop of Rome, otherwise called the Pope, hath been informed and certified of the effectual contents of the said act, to the intent that by some gentle ways the said exactions might have been redressed and reformed, yet nevertheless the said Bishop of Rome hitherto hath made none answer of his mind therein to the king's highness, nor devised nor required any reasonable ways to and with our said sovereign lord for the same: wherefore his most royal majesty, of his most excellent goodness, for the wealth and profit of this his realm and subjects of the same, hath not only put his most gracious and royal assent to the foresaid act, but also hath ratified and confirmed the same, and every clause and article therein contained, as by his letters patents, under his great seal inrolled in the Parliament Roll of this present parliament, more at large is contained.

"III. And forasmuch as in the said act it is not plainly and certainly expressed, in what manner and fashion archbishops and bishops shall be elected, presented, invested, and consecrated within this realm, and in all other the king's dominions, be it now therefore enacted by the king our sovereign lord, by the assent of the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, that the said act and everything therein contained shall be and stand in strength, virtue, and effect; except only, that no person or persons hereafter shall be presented, nominated, or commended to the said Bishop of Rome, otherwise called the Pope, or to the see of Rome, to or for the dignity or office of any archbishop or bishop within this realm, or in any other the king's dominions, nor shall send nor procure there for any manner of bulls, breeves, palls, or other things requisite for an archbishop or bishop, nor shall pay any sums of money for annates, first-fruits, nor otherwise for expedition of any such bulls, breeves, or palls; but that by the authority of this act, such presenting, nominating, or commending to the said Bishop of Rome, or to the see of Rome, that such bulls, breeves, palls, annates, first-fruits, and every other sums of money heretofore limited, accustomed, or used to be paid at the said see of Rome, for procuration or expedition of any such bulls, breeves, or palls, or other things concerning the same, shall utterly cease and no longer be used within this

No man shall be presented to the see of Rome for the dignity of an archbishop or bishop, nor annates or first-fruits shall be paid to the same see.

realm, or within any the king's dominions; anything contained in the said act aforementioned, or any use, custom, or prescription to the contrary thereof notwithstanding.

STAT. 25 HEN.
8. c. 20.

"IV. And furthermore, be it ordained and established, by the authority aforesaid, that at every avoidance of every archbishoprick or bishoprick within this realm, or in any other the king's dominions, the king our sovereign lord, his heirs and successors, *may grant* (1) to the prior and convent, or the dean and chapter of the cathedral churches or monasteries where the see of such archbishoprick or bishoprick shall happen to be void, *a licence* (2) under the great seal, *as of old time hath been accustomed* (3), to proceed to election of an archbishop or bishop of the see so being void, with *a letter missive* (4), containing the name of the person which they shall elect and choose: by virtue of which licence the said dean and chapter, or prior and convent, to whom any such licence and letters missive shall be directed, shall with all speed and celerity *in due form* (5) *elect* (6) and choose the same person named in the said letters missive, to the dignity and office of the archbishoprick or bishoprick so being void, and none other. And if they do defer or delay their election above *twelve days* (7) next after such licence or letters

The manner of electing an archbishop or bishop.

For default of election by the

(1) *May grant*:—In order to which, the dean and chapter, signifying to the crown the death of the former bishop, are to pray leave to elect another, as appears by the tenour of the *congé d'eslire*: "Ex parte vestra nobis est humiliter supplicatum, ut cum ecclesia prædicta per mortem ultimi episcopi ejusdem jam vacet, et pastoris solatio sit destituta, alium vobis eligendi in episcopum et pastorem licentiam nostram vobis concedere dignemur."

(2) *A licence*:—Called *licentia nostra fundatoria*, and which imposed no restraints or limitations upon the electors, excepting this general one: "Rogantes, ac in fide et dilectione quibus nobis tenemini præcipientes quòd talem vobis eligatis in episcopum et pastorem, qui Deo devotus, nobisque et regno nostro utilis et fidelis existat."

(3) *As of old time hath been accustomed*:—So saith the Statute of Provisors, 25 Edw. 3; *anté* 58. The election was first granted by the king's progenitors, upon a certain form and condition, as by demanding a licence from the king to choose, which refers to the charter, granted by King John, for the free election of prelates; for it was with this express limitation, "Petitâ tamen prius à nobis et hæredibus nostris licentiâ eligendi, quam non denegabimus, nec differemus; et si fortè (quod absit) denegaremus, vel differemus, procedant nihilominus electores ad electionem canonicam faciendam;" consequently, though a licence from the king was necessary, in acknowledgment of foundation and ancient patronage; yet it was at the same time a matter of strict right, and could not be denied.

(4) *A letter missive*:—This is wholly new, and the language of it being thus, "We have been pleased by these our letters patents, to *name*, and recommend *him* unto you, to be elected and chosen," the only choice the electors have, under this restraint, is, whether they will obey the king or incur a *præmunire*.

(5) *In due form*:—The election from beginning to end, proceeds, seemingly, upon the *congé d'eslire*, without any appearance of restraint from the letters missive, and in the same manner, as if there were no such re-

straint, and the only circumstance remarkable in it, is, the solemn declaring of the person elected, to the clergy and people assembled in the church, wherein is to be seen, the traces of the more ancient way of electing, and of the part which they had in the election.

(6) *Elect*:—Concerning the expenses of the election it is thus determined in the body of the canon law: "Ut præteritæ: et infra. Præsentium auctoritate statuimus, ut expensæ necessariae quas capitulum Constantinopolitanum, vel ejus nuncii, vacante sede, pro electionis negotio fecerint, de bonis patriarchatus fiant totaliter, vel reddantur. Dum modo ipsi bona decedentis patriarchæ non occupent vel usurpent." Extra. l. i., t. 6, c. 45.

(7) *Twelve days*:—The rule of the canon law was three months: "Statuimus, ut ultra tres menses, cathedralis vel regularis ecclesia prælato non vacet. Infra quos (justo impedimento cessante) si electio celebrata non fuerit, qui eligere debuerant, eligendi potestate careant eâ vice." Ibid. c. 41.

And, before that, the rule had been thus laid down: "Quoniam quidam metropolitānorum, sicut ad nos perlatum est, negligunt creditis sibi greges, et differunt ordinationes facere episcoporum, placuit sanctæ synodo intra tres menses fieri ordinationes episcoporum, nisi fortè inexcusabilis necessitas coegerit tempus ordinationis amplius protelari. Si autem quis episcoporum hæc non observaverit, ipsum debere ecclesiasticæ condemnationi subjacere: redivisum verò ejusdem viduatæ ecclesiæ integros refervari apud oeconomum ejusdem ecclesiæ placuit." Dist. 75, c. 2.

"Si verò consecrandi episcopi negligentia provenierit, ut ultra tres menses ecclesia viduata consistat, communione privetur, quousque aut loco cedat, aut se consecrandum offerre non differat. Quòd si ultra quinque menses per suam negligentiam retinuerit viduatam ecclesiam, neque ibi, neque alibi consecrationis donum percipiat; imo metropolitani sui judicio cedat." Ibid. 100, c. 1.

But it should be remembered, that the law of the church absolutely forbade the election

STAT. 25 HEN.
8, c. 20.

dean and chap-
ter, the king
shall nominate
a bishop by his
letters patents.

missive to them delivered, that then for every such default the king's highness, his heirs and successors, at their liberty and pleasure, shall nominate and present, by their letters patents under their great seal, such a person to the said office and dignity so being void, as they shall think able and convenient for the same; and that every such nomination and presentment to be made by the king's highness, his heirs and successors, if it be to the office and dignity of a bishop, shall be made to the archbishop and metropolitan of the province where the see of the same bishoprick is void, if the see of the said archbishoprick be then full, and not void; and if it be void, then to be made to such archbishop or metropolitan within this realm, or in any of the king's dominions, as shall please the king's highness, his heirs or successors: and if any such nomination or presentment, shall happen to be made for default of such election to the dignity or office of any archbishop, then the king's highness, his heirs and successors, by his letters patents under his great seal, shall nominate and present such person as they will dispose to have the said office and dignity of archbishoprick being void, to one such archbishop and two such bishops, or else to four such bishops within this realm, or in any of the king's dominions, as shall be assigned by our said sovereign lord, his heirs or successors.

Consecration
of a bishop.

"V. And be it enacted, by the authority aforesaid, that whensoever any such presentment or nomination shall be made by the king's highness, his heirs or successors, by virtue and authority of this act, and according to the tenor of the same: that then every archbishop and bishop, to whose hands any such presentment and nomination shall be directed, shall with all speed and celerity invest and consecrate the person nominate and presented by the king's highness, his heirs and successors, to the office and dignity that such person shall be so presented unto, and give and use to him *pall*, and *all other benedictions*(1), ceremonies and things requisite for the same, without suing, procuring, or obtaining hereafter any bulls or other things at the see of Rome, for any such office or dignity in any behalf. And if the said dean and chapter, or prior and convent, after such licence and letters missive to them directed, within the said twelve days do elect and choose the said person mentioned in the said letters missive, according to the request of the king's highness, his heirs or successors, thereof to be made by the said letters missive in that behalf, then their election shall stand good and effectual to all intents: and that the person so elected, *after certification made*(2) of the same election, under the common and convent seal of the electors, to the king's highness, his heirs or successors, shall be reputed and taken by the name of lord elected of the said dignity and office that he shall be elected unto; and then *making such oath*(3) and fealty only to the king's majesty, his heirs and successors, as shall be appointed for the same, the king's highness, *by his letters patents*(4) under his great seal, shall signify the said election, if it be to the

The name of a
bishop newly
chosen, viz. a
lord elect.
The king's
signification of
a bishop or
archbishop
elect.

to be made, or even any consultation about it to be had, till the deceased bishop was buried; and therefore an election was voided for this, among other reasons, "Quia corpore episcopi nondum tradito sepulturæ, habuerunt de ipsâ electione tractatum, contra canonicas sanctiones." Extra. l. i., t. 6, c. 36.

(1) *Pall, and all other benedictions*:—So that the form of consecrating, according to the Roman Pontifical, (though without bulls from Rome,) seems to have continued after the making of this act, viz., until the establishment of the new form in the 3rd year of Edward the Sixth.

(2) *After certification made*:—Before this, there must be the consent of the person elected, to acquire which, the proctor, constituted by the dean and chapter, exhibits to him the instrument of election, and prays, "quatenus eidem consensum, et assensum suos præbere dignetur," which assent must

be given by a formal instrument, in the presence of a notary public; and, after that, the king is certified of the election having been made. This is consistent with the rule of the canon law: "Si quando fuerit electio in aliquâ ecclesiâ celebrata, electores electionem ipsam, quàm citius commodè poterunt, electo præsentare, ac petere consensum ipsius procurrent;" (6 Decret. l. i., t. 6, c. 6;) and which accordingly, at this day, is the first article in the proxy, and the first thing the proctor represents (at the time of the confirmation) as done by him pursuant to the election.

(3) *Making such oath*:—"Faciæ electus homagium et fidelitatem regi, sicut ligio domino suo, de vita sua, et de membris, et de honore terreno, salvo ordine suo, priusquam consecratur." Conc. Clarend. 2 Spel. 64.

(4) *By his letters patents*:—These recite the election of the person, as signified by the

dignity of a bishop, *to the archbishop* (1) and metropolitan of the province where the see of the said bishoprick was void, if the see of the said archbishop be full and not void; and if it be void, then to any other archbishop within this realm, or in any other the king's dominions; requiring and commanding such archbishop, to whom any such signification shall be made, *to confirm* (2) the said election,

STAT. 25 HEN.
8, c. 20.

dean and chapter to the crown, and then add: "Nos electionem illam acceptantes, eidem electioni regium assensum nostrum adhibuimus pariter et favorem." Which is agreeable to the tenour of King John's Charter: "Similiter, post celebratam electionem noster requiritur assensus, quem non denegabimus, nisi aliquid rationabile proposuerimus et legitime probaverimus, propter quod non debeamus consentire." Ibid. 136.

(1) *To the archbishop*:—To whom the confirmation and consecration of the bishops within his province doth of right belong: "confirmatio spectat ad archiepiscopum jure communi," saith J. de Athon. And the rule of the canon law is: "Potestas sanè vel confirmatio, pertinebit per singulas provincias ad metropolitanum episcopum." "Extra conscientiam metropolitani episcopi, nullus audeat ordinare episcopum;" "Iilud generaliter est clarum, quòd siquis, præter sententiam metropolitani, fuerit factus episcopus, hunc magna synodus [Nicaen. 1.] diffinivit episcopum esse non oportere." Othob. de Confirm. v. *Confirmatio*. Gloss. Dist. 64, cc. 1, 5, & 8.

(2) *To confirm*:—The method and order of which confirmation, will be best understood, by a brief account of the several instruments exhibited and applied in its course.

i. *Literæ patentes regie*; by which the royal assent to the election is signified, and the archbishop required to proceed to confirmation.

ii. *Citatio contra oppositores*; which (the time of the confirmation being first fixed,) is published and set up, by order and in the name of the archbishop, at the church where it is to be held; as well to notify the day of confirmation, as to cite "omnes et singulos oppositores (si qui sint) in specie, alioquin in genere, qui contra dictam electionem, formam ejusdem, personamve in hac parte electam, dicere, objicere, excipere, vel opponere voluerint," to appear on that day. According to the direction of the ancient canon law, where it makes all confirmations void, that are performed, "nullis vocatis, et non discussio negotio;" and then adds, "vocationem autem hujusmodi nominatim, ubi est coëlectus, vel apparet oppositor, aliàs generaliter in ecclesiâ in qua [This is now altered for the church in which the confirmation is to be, but anciently it was in the place of the election, as appears by special commissions issued for that object. Reg. Winch. 26(a), 27(a).] Electio facta est, ut si qui sint, qui se velint opponere, compareant assignato peremptorio termino competenti, faciendam esse censemus. Quæ, etiamsi electio in concordia celebrata fuerit, volumus observari." Sext. Decret. l. i., t. 6, c. 47. Lynd. De Jure Pat. c. Per nostram. v. *Non tenere*. Gloss.

iii. *Certificatorium super executione dictæ citationi*; the return made by the proper officer, to the archbishop, of the due execution of the citation previously alluded to.

iv. *Commissio ad confirmandum*; this duty is usually performed by the archbishop's vicar-general.

v. *Procuratorium decani et capituli*; by which one or more persons are delegated by the dean and chapter electing, not only to present (in their names) the instrument of election to the bishop elected, to obtain his consent, and to present the letters certificatory of election to the crown, and to pray the royal assent, in order to confirmation; but also, at the time of confirmation, (the said letters patents, and commission to exhibit such his proxy, being first read,) in virtue thereof, to present the bishop elected to the archbishop, vicar-general, or surrogate, and in the course of the confirmation, to do whatever else is necessary to be done on the part of the dean and chapter.

vi. *Schedula prima*; the said proctor, in the name of the dean and chapter, exhibiting the citation and return previously mentioned, prays that the opposers, (if any be,) not appearing, may be pronounced contumacious, and precluded from further opposition, and that the confirmation may be proceeded in; which is accordingly done by this schedule.

vii. *Summaria petitio*; is the petition of the said proctor, that the bishop elect may be confirmed, upon his alleging and proving the regularity of the election, and the merits of the person elected, which he does in nine articles; setting forth, 1. That the see was vacant, and had been vacant for some time. 2. That the dean and chapter, having first desired and obtained the royal licence, appointed a day for election, and duly summoned all persons concerned. 3. That on that day they unanimously chose the person now to be confirmed. 4. That the election was duly published and declared to the clergy and people there assembled. 5. That, at the request of the dean and chapter, the person so elected gave his consent to the election. 6. That the person elected, "fuit et est vir providus et discretus, ac sacrarum literarum doctrina et scientia sufficienter imbutus, necnon vita et moribus meritò commendatus, liberæ conditionis, et de legitimo matrimonio procreatus, atque in ætate legitimâ, et in ordine [presbyterali or episcopali] constitutus, necnon Deo devotus, et ecclesiæ memoratæ apprime necessarius, ac domino nostro regi, ejusque regno et reipublicæ fidelis et utilis." 7. That the dean and chapter, under their seal, intimated the election, and the name of the person elected to the crown. 8. That the crown had given its royal assent. 9. That the crown had, by letters patents, required the person elected

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and to invest and *consecrate* (1) the said person so elected to the office and dignity that he is elected unto, and to give and use to him all such benedictions, ceremonies, and other things requisite for the same, without any suing, procuring, or obtaining any bulls, letters, or other things from the see of Rome for the same in any behalf. And if the person be elected to the office and dignity of an archbishop according to the tenor of this act, then after such election certified to the king's highness in form aforesaid, the same person so elected to the office and dignity of an archbishop, shall be reputed and taken lord elect to the said office and dignity of an archbishop, whereunto he shall be so elected; and then after he hath made such oath and fealty only to the king's majesty, his heirs and successors, as shall be limited for the same, the king's highness, by his letters patent under his great seal, shall signify the said election to one archbishop and two other bishops, or else to *four bishops* (2) within this realm, or within any other the king's dominions, to be assigned by the king's highness, his heirs or successors, requiring and commanding the said archbishop and bishops, with all speed and celerity, to confirm the said election, and to *invest* (3) and *consecrate* (4) the said person so elected to the office and dignity that he is elected

to be confirmed. All which articles conclude (10thly) with a petition, that in pursuance of the premises, confirmation, &c., may be decreed. Then the "*summaria petitio*" is admitted, and the court decrees to proceed "*summariè et de plano*," and assign him a term "*ad statim*," to prove the particular matters contained in the petition; for proof of which, he exhibits the process of the election made by the dean and chapter, the consent of the archbishop, and the royal assent, and then prays a time, "*ad audiend' sententiam sive finale decretum*," which is assigned "*ad statim*."

viii. *Schedula secunda*; before sentence, a second præconization of the oppositores (if any be) is made, "*ad fores exteriores ecclesiæ*," and (none appearing) they are declared contumacious, by a second schedule.

ix. *Juramenta*; these are four in number; two, (namely, the oaths of allegiance and supremacy,) in conformity to the statutes of the realm; (1 Eliz. c. 1, s. 22; 3 Jac. 1, c. 4; 1 Gul. & Mar. c. 8, ss. 5, 13;) and two others, (viz., the oath of simony, and of obedience to the archbishop,) in conformity to the rules and canons of the church. See the oath of obedience, in the Form of Consecration.

x. *Sententia*; the definitive sentence, or the act of confirmation, by which the judge commits to the bishop elected, "*curam, regimen, et administrationem spiritualium dicti episcopatus*;" and then decrees him to be installed and enthronized.

(1) *Consecrate*:—The Dean and Chapter of Canterbury claim it as an ancient right of that church, that every bishop of the province is to be consecrated in it, or the archbishop to receive from them a licence to consecrate elsewhere. And it is stated, that a long succession of licences to that purpose are regularly entered in the registry of the church. Whart. Observ. upon Strype's Cranm. App. 257. And though between the years 1235 and 1300, that point was controverted with the chapter, it ended in their favours, and in the further confirmation of the privilege which was first granted by

Thomas à Becket, and afterwards confirmed by St. Edmund. Peck. 170(a).

There are to be found in the registry of the see of Canterbury, the entries of two bulls; one to empower the archbishop to consecrate out of the church of Canterbury, without such licence; the other to do it in case of necessity. But it seems by the subsequent practice, that these bulls were either revoked or neglected; especially since subsequent entries are to be found in the registry of the same archbishop, in which these two entries are made, of three licences to consecrate elsewhere. Arund. 10(a), 12, 13. 2 Ibid. 93(b).

In Cranmer's Register, 80(a), among the fees due to the archbishop and his officers for confirmation and consecration, the following entry is to be found: "*Memorandum*. That no bishop may be consecrated without the church of Canterbury, but by the special licence of the Dean and Chapter of Canterbury under their chapter-seal, the fee whereof is 26s. 8d."

(2) *Four bishops*:—That is, four at least; for the commission is usually not only directed to more, but there are more also, who join and proceed in the act of confirming.

(3) *To invest*:—In case of translation, no more is required, than confirmation, but that, and all that precedes it, is required and observed in case of translations, as much as in creations; concerning which, the rule of the canon law is "*mutationes episcoporum scitote communi utilitate atque necessitate fieri licere* Non ergo bene intelligent ecclesiasticas regulas, qui hoc negant, causâ necessitatis, vel utilitatis, fieri posse, quoties communis utilitas, aut necessitas persuaserit." Caus. 7, 1, cc. 34, 35.

(4) *And consecrate*:—In case a bishop is presented for consecration to an archbishop, this statute makes no provision for the number of bishops consecrating, nor do the forms established in succeeding reigns, where they speak of laying on of hands, say any more, than that it shall be done by the — bishops present. This therefore is left to the ancient laws and canons of the church, which admit

unto, and to give and use to him such pall, benedictions, ceremonies, and all other things requisite for the same, without suing, procuring, or obtaining any bulls, briefs, or other things at the said see of Rome, or by the authority thereof in any behalf.

“VI. And be it further enacted by authority aforesaid, that every person and persons being hereafter chosen, elected, nominate, presented, invested, and consecrated to the dignity or office of any archbishop or bishop within this realm, or within any other the king’s dominions, according to the form, tenor, and effect of this present act, and suing their temporalities *out of the king’s hands* (1), his heirs, or successors, as hath been accustomed, and making a corporal oath to the king’s highness, and to none other, in form as is afore rehearsed, shall and may from henceforth be *thrononised, or installed* (2), as the case shall require, and shall have and take their only restitution out of the king’s hands, of all the possessions and profits, *spiritual* and temporal, belonging to the said archbishoprick or bishoprick whereunto they shall be so elected or presented, and shall be obeyed in all manner of things, according to the name, title, degree, and dignity that they shall be so chosen or presented unto, and do and execute in every thing and things touching the same, as any archbishop or bishop of this realm, without offending the prerogative royal of the crown, and the laws and customs of this realm, might at any time heretofore do.

“VII. And be it further enacted by the authority aforesaid, that if the prior and convent of any monastery, or dean and chapter of any cathedral church, where the see of an archbishop or bishop is within any the king’s dominions, after such licence as is afore rehearsed, shall be delivered to them, proceed not to election, and signify the same according to the tenor of this act, within the space of twenty days next after such licence shall come to their hands; or else, if any archbishop or bishop within any of the king’s dominions, after any such election, nomination, or presentation shall be signified unto them by the king’s letters patents, shall refuse, and do not confirm, invest, and consecrate with all due circumstance as is aforesaid, every such person as shall be so elected, nominate, or presented, and to them signified as is above mentioned, within twenty days next after the king’s letters patents of such signification or presentation shall come to their hands; or else, if any of them, or any other person or persons, admit, maintain, allow, obey, do, or execute any censures, excommunications, interdictions, inhibitions, or any other process or act, of what nature, name, or quality soever it be, to the contrary, or let of due execution of this act; that then every prior and particular person of his convent, and every dean and particular person of the chapter, and every archbishop and bishop, and all other persons, so offending and doing contrary to this act, or any part thereof, and their aiders, counsellors, and abettors, shall run into the dangers, pains, and penalties of the Estatute

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This election of a bishop shall be lawful.

The penalty for not electing or not consecrating a bishop named.

25 Edw. 3,
St. V. c. 22.
16 Rich. 2, c. 5.
26 Hen. 8,
c. 14.
31 Hen. 8, c. 9.
8 Eliz. c. 1.
Repealed 1 & 2
P. & M. c. 8,
and revived by
1 Eliz. c. 1.
And see farther,
23 Eliz.
c. 1.

of no consecration by a less number of bishops than three, the necessity of which number is also supposed by our own constitution, requiring that the elected bishop be presented to the archbishop by two bishops. But it is to be observed, that the consecration could not be canonical, unless there were three bishops, and that all the laws of the church, upon this head, do at the same time, intend the personal presence of as many bishops of the province, as can conveniently come; according to the rule in Gratian: “Episcopi ab omnibus, qui sunt in provincâ suâ, debent ordinari. Si verò hoc difficile fuerit, vel aliquâ urgente necessitate, vel itineris longitudine; certè tres episcopi debent in unum congregari, ita ut etiam cæterorum, qui absentes sunt, consensum in literis teneant.” Dist. 64, cc. 1, 4, & 7. Ibid. 65, cc. 1, 2, 3, & 5. Traces of which law, (as practised here in England,) are to be

discovered, as well in formal citations of the bishops of the province to the consecration of a bishop, as in the formal excuses sent by the bishops, with signification of their consent. Peck. 86. Winch. 27, 133, 207, 295. Reyn. 153. Chich. 11, 13. Wint. Strat. 22, 37. Adam. 62.

(1) *Out of the king’s hands*:—“*Archiepiscopi, episcopi, et universæ personæ regni, qui de rege tenent in capite, habeant possessiones suas de rege, sicut baroniam, et inde respondeant iusticiariis et ministris regis, et sequantur et faciant omnes consuetudines regias.*” Const. Clar. 11.

(2) *Thrononised, or installed*:—This is performed, in the province of Canterbury, by mandate from the archbishop to the archdeacon of Canterbury; to whom the right of installing, or inthronizing, the bishops of the province anciently belonged, and does still belong. Gibson’s Codex, 118.

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XXII. STAT. 25 HENRICI 8, c. 21 (1). A.D. 1533.

"*The Act concerning Peter-pence and Dispensations.*"

Hob. 146.
1 Roll. 468,
469, 471.

"Most humbly beseeching your most royal majesty, your obedient and faithful subjects, the commons of this your present parliament assembled, by your most dread commandment, that where your subjects of this your realm, and of other countries and dominions, being under your obeysance, by many years past have been, and yet be, greatly decayed and impoverished, by such intolerable *exactions of great sums* (2) of money as have been claimed and taken, and yet continually be claimed to be taken out of this your realm, and other your said countries and dominions, by the Bishop of Rome called the Pope, and see of Rome, as well in *pensions* (3), censes, *Peter-pence* (4), *procurations* (5), fruits, suits for provisions, and expeditions of bulls for archbishopricks and bishopricks, and for delegacies, and rescripts in causes of contentions and appeals, jurisdictions, legantine, and also for dispensations, licences, faculties, grants, relaxations, writs called *perinde valere* (6), rehabilitations, abolitions, and other infinite sorts of bulls, breeves, and instruments of sundry natures, names, and kinds, in great numbers heretofore practised and obtained, otherwise than by the laws, laudable uses, and customs of this realm should be permitted, the specialties whereof been over long, large in number, and tedious here particularly to be inserted; wherein the Bishop of Rome aforesaid hath not been only to be blamed for his usurpation in the premisses, but also for his abusing and beguiling your subjects, pretending and persuading them that he hath power to dispense with all human laws, uses and customs of all realms, in all causes which be called spiritual, which matter hath been usurped and practised by him and his predecessors for many years, in great derogation of your imperial crown and authority royal, contrary to right and conscience; for where this your grace's realm, recognising no superiority under God, but only your grace, hath been and is free from subjection to any man's laws, but only to such as have been devised, made, and obtained within this realm, for the wealth of the same, or to such other (7), as by sufferance of your grace and your progenitors, the people of this your realm have taken at their free liberty, by their own consent to be used amongst them, and have bound them-

(1) Repealed by Stat. 1 & 2 P. & M. c. 8. Revived by Stat. 1 Eliz. c. 1. Extended to Ireland by Stat. 28 Hen. 8, c. 19. [Ir.]

(2) *Exactions of great sums*:—"Annua pontificis ex Angliâ præda (ut narrat Bonnerus) parùm abfuit quin ipsius coronæ reditus adæquaret." Præfat. in Gard. de vera obed. Vide Mason, (de Ministerio Anglicano,) l. 1, c. 1. Ibid. l. 4, c. 14.

(3) *Pensions*:—"In the Records of Canterbury, are to be found several grants of pensions from the archbishop to persons in the court of Rome, and also an account of standing pensions to solicitors and advocates there. Reg. Reyn. 87(b), 88(a), 102(a), 158(b).

(4) *Peter-pence*:—"Census annuus unius denarii è qualibet familiâ Romæ persolutus ad festum S. Petri." Spel. Gloss.

(5) *Procurations*:—"Paid to the Pope's nuncios, for their support, of which, and the collecting of them, frequent mention is made in our ecclesiastical records.

(6) *Perinde valere*:—"A dispensation granted to a clerk admitted to a benefice, though incapable; taking that name from the words of the dispensation, which make it as effectual to the party, as if he were capable.

(7) *To such other*:—"The whole foreign canon law was not received here in England, as appears by the case of legitimation of children born before marriage: respecting which, the lords in parliament declared, "Nolumus leges Angliæ mutari," notwithstanding Alexander the Third had published an express canon to that purpose; for as Glanville (l. 7, c. 15,) wrote, it was "contra jure et consuetudinem regni." Vide etiam Stat. 20 Hen. 3, c. 9; ante 3.

Under the same head is comprehended, the allowance of four months only to a lay patron; the clergy not being taxable but by consent of the Pope; the total exemption of the clergy from the secular power; the denial of clergy to bigamists; the authority of papal provisions, and the like: some of which were never allowed in practice; and others, when attempted, were withstood and declared against, or, though in practice they might prevail by the over-ruling power of the court of Rome, which was the case of papal provisions, yet they were always against the laws of the land, and on that account were never properly received in England.

selves by *long use and custom*(1) to the observance of the same, not as to the observance of laws of any foreign prince, potentate, or prelate, but as to the customs and ancient laws of this realm, originally established as laws of the same, by the said sufferance, consents, and custom, and none otherwise: it standeth therefore with natural equity and good reason, that in all and every such laws human made within this realm, or induced into this realm by the said sufferance, consents, and custom, your royal majesty, and your lords spiritual and temporal, and commons, representing the whole state of your realm, in this your most high court of parliament, have full power and authority, not only to dispense, but also to authorize some elect person or persons to dispense with those, and all other human laws of this your realm, and with every one of them, as the quality of the persons and matter shall require; and also the said laws, and every of them, to abrogate, annul, amplify, or diminish, as it shall be seen unto your majesty, and the nobles and commons of your realm present in your parliament, meet and con-

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(1) *Long use and custom*:—From the request made by the bishops in parliament, in 20 Hen. 3, concerning the admission of Alexander the Third's canon for the legitimation of children born before marriage, my Lord Coke's inference is, that any foreign canon or constitution made by authority of the Pope, bindeth not, until it be allowed by act of parliament. But here exists a parliamentary declaration, that long use and custom, without the authority of parliament, is sufficient to graft foreign laws into the English constitution, i. e. to make them part of the common law of the land. Whereupon, Bishop Stillington, (1 Eccl. Cas. 244,) making general practice and allowance the main foundation of our ecclesiastical legal constitution, adds, "when things, of themselves, do not oblige by the authority of those that made them; yet being generally received and allowed, they thereby become law to us." Which is no more in effect than what the court declared in *Evans v. Ascutie*, (Palm. 469,) that they bind not, otherwise than as they are received and allowed; but when they are allowed, they then become part of our law; and in *Stavely v. Ullithorn*, (Hardr. 101,) the judges stated, "the council of Lateran is as forcible as an act of parliament, which concludes all parties."

In *Edes v. Oxford* (*Bishop of*), (Vaugh. 21,) it is stated, that "if canon law be made part of the law of this land, then it is as much the law of the land, and as well, and by the same authority, as any other part of the law of the land." *Vide etiam* Ecclesiastical Commissioners' Report, Feb. 27, 1832, p. 10.

Lord Hale observes, "that neither the canon laws nor the civil laws have any obligation as laws within this realm, upon any account that the popes or emperors made those laws, canons, rescripts, or determinations; or because Justinian compiled their *corpus juris civilis*, and by his edicts confirmed and published the same as authentical; or because this or that council or pope made those or these canons or decrees; or because Gratian, or Gregory, or Boniface, or Clement, did, (as much as in them lay,) authenticate this or that body of canons or constitutions: for the King of England does not recognise any foreign authority as superior or equal to him in this kingdom, neither do any laws of the Pope or Emperor, as they

are such, bind here; but all the strength that either the papal or imperial laws have obtained in this kingdom, is only because they have been received and admitted, either by the consent of parliament, and so are part of the statute laws of the kingdom, or else by immemorial usage and custom in some particular cases and courts, and no otherwise; and therefore, so far as such laws are received and allowed of here, so far they obtain and no farther; and the authority and force they have here is not founded on, or derived from themselves, for so they bind no more with us, than our laws bind in Rome or Italy. But their authority is founded merely on their being admitted and received by us, which alone gives them their authoritative essence, and qualifies their obligation.

And hence it is, that even in those courts where those laws are indulged, according to that reception which has been allowed them; if they exceed the bounds of that reception by extending themselves to other matters than has been allowed them, or if those courts proceed according to that law, when it is controlled by the common law of the kingdom; the common law does and may prohibit and punish them: and it will not be a sufficient answer, for them to tell the king's courts, that Justinian or Pope Gregory has decreed otherwise; for we are not bound by their decrees further, or otherwise, than as the kingdom here has, as it were, transposed the same into the common and municipal laws of the realm, either by admission of, or by enacting the same, which is that alone which can make them of any force in England." Hale's Hist. of the Com. Law, 26, 27.

But notwithstanding such opinions, it is well known, that this nation under the Romans was governed wholly by the civil law, for the space of upwards of three hundred years, and this long before the Norman, Danish, or Saxon revolutions; consequently, it may be as justly observed, that some parts of the civil law which are still in use within this realm, are the remains of the ancient Roman law, as that other parts of it have been admitted (or rather readmitted) from time to time by the sovereigns of this realm, as the study of the civil law prevailed, or as the equity and justice of that law in certain cases merited its adoption by the legislature.

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venient for the wealth of your realm, as by divers good and wholesome acts of parliaments, made and established as well in your time, as in the time of your most noble progenitors, it may plainly and evidently appear; and because that it is now in these days present seen, that the state, dignity, superiority, reputation, and authority of the said imperial crown of this realm, by the long sufferance of the said unreasonable and uncharitable usurpations and exactions practised in the times of your most noble progenitors, is much and sore decayed and diminished, and the people of this realm thereby impoverished, and so or worse be like to continue, if remedy be not therefore shortly provided:

“II. It may therefore please your most noble majesty, for the honour of Almighty God, and for the tender love, zeal, and affection that ye bear, and always have borne to the wealth of this your realm and subjects of the same, forasmuch as your majesty is supreme head of the church of England, as the prelates and clergy of your realm, representing the said church, in their synods and convocations have recognized, in whom consisteth full power and authority, upon all such laws as have been made and used within this realm, to ordain and enact, by the assent of your lords spiritual and temporal, and the commons, in this your present parliament assembled, and by authority of the same, that no person or persons of this your realm, or of any other your dominions, shall from henceforth pay any pensions, censes, portions, Peter-pence, or any other impositions, to the use of the said bishop, or of the see of Rome, like as heretofore they have used, by usurpation of the said Bishop of Rome and his predecessors, and sufferance of your highness, and your most noble progenitors, to do; but that all such pensions, censes, portions, and Peter-pence, which the said Bishop of Rome, otherwise called the Pope, hath heretofore taken and perceived, or caused to be taken and perceived to his use, and his chambers, which he calleth apostolick by usurpation and sufferance, as is abovesaid, within this your realm, or any other your dominions, shall from henceforth clearly surcease, and never more be levied, taken, perceived, nor paid to any person or persons in any manner of wise; any constitution, use, prescription, or custom to the contrary thereof notwithstanding.

“III. And be it further enacted by the authority aforesaid, that neither your highness, your heirs nor successors, kings of this realm, nor any your subjects of this realm, nor of any other your dominions, shall from henceforth sue to the said Bishop of Rome, called the Pope, or to the see of Rome, or to any person or persons having or pretending any authority by the same, for licences, dispensations, compositions, faculties, grants, rescripts, delegacies, or any other instruments or writings, of what kind, name, nature, or quality soever they be of, for any cause or matter, for the which any licence, dispensation, composition, faculty, grant, rescript, delegacy, instrument, or other writing, heretofore hath been used and accustomed to be had and obtained at the see of Rome, or by authority thereof, or of any prelates of this realm; nor for any manner of other licences, dispensations, compositions, faculties, grants, rescripts, delegacies, or any other instruments or writings that in causes of necessity may lawfully be granted *without offending of the Holy Scriptures and laws of God*(1); but that from thenceforth every such licence, dispensation, composition, faculty, grant, rescript, delegacy, instrument, and other writing afore named and mentioned, necessary for your highness, your heirs and successors, and your and their people and subjects, upon the due examinations of the causes and qualities of the persons procuring such dispensations, licences, compositions, faculties, grants, rescripts, delegacies, instruments, or other writings, shall be granted, had or obtained, from time to time, within this your realm, and other dominions, and not elsewhere, in manner and form following, *and none otherwise*(2); that is to say, the Archbishop of Canter-

No imposition.
shall be paid
to the bishop
or see of Rome.

No person
shall sue for
any dispensa-
tion or licence
to the Bishop
of Rome.
1 Roll. 460.
Co. pl. f. 204.
Moor, 434,
pl. 600.
Goldesb. 192.

(1) *Without offending of the Holy Scriptures and laws of God*:—By this clause the archbishop was restrained from granting dispensations of several kinds, which the popes usually granted, and, in other countries, do still grant; as, for marriages within the degrees prohibited, for an alien who under-

standeth not our mother tongue to have a benefice, and (before the Statute of Dissolution) for an appropriation of a benefice, with cure, to a nunnery. Gibson's Codex, 89. *Colt & Glover v. Coventry & Lichfield* (Bishop of), Hob. 148.

(2) *And none otherwise*:—The kings of

bury for the time being, and his successors, shall have power and authority, from time to time, by their discretions, to give, grant, and dispose, by an instrument under the seal of the said archbishop, unto your majesty, and to your heirs and successors, kings of this realm, as well all manner such licences, dispensations, compositions, faculties, grants, rescripts, delegacies, instruments, and all other writings, for causes not being contrary or repugnant to the Holy Scriptures and laws of God, as heretofore hath been used and accustomed to be had and obtained by your highness, or any your most noble progenitors, or any of your or their subjects, at the see of Rome, or any person or persons by authority of the same; and all other licences, dispensations, faculties, compositions, grants, rescripts, delegacies, instruments, and other writings, in, for, and upon all such causes and matters as shall be convenient and necessary to be had, for the honour and surety of your highness, your heirs and successors, and the wealth and profit of this your realm; so that the said archbishop or any of his successors, in no manner wise shall grant any dispensation, licence, rescript, or any other writing afore rehearsed, for any cause or matter repugnant to the law of Almighty God.

“IV. Be it also enacted by authority aforesaid, that the said archbishop and his successors, *after good and due examination* (1), by them had, of the causes and qualities of the persons procuring for licences, dispensations, compositions, faculties, delegacies, rescripts, instruments, or other writings, shall have full power and authority by themselves, or by their sufficient and substantial *commissary* (2) or deputy, by their discretions, from time to time, to grant and dispose, by an instrument under the name and seal of the said archbishop, as well to any of your subjects, as to the subjects of your heirs and successors, all manner licences, dispensations, faculties, compositions, delegacies, rescripts, instruments, or other writings, for any such cause or matter, whereof heretofore such licences, dispensations, compositions, faculties, delegacies, rescripts, instruments, or writings, have been accustomed to be had at the see of Rome, or by the authority thereof, or of any prelate of this realm.

“V. And that the said archbishop and his commissary shall not grant any other licence, dispensation, composition, faculty, writing, or instrument, in cases unwont, and not accustomed to be had or obtained at the court of Rome, nor by authority thereof, nor by any prelate of this realm, until your grace, your heirs and successors, or your or their council, shall first be advertised thereof, and determine whether such licences, dispensations, compositions, faculties, or other

STAT. 25 HEN. 8, c. 21.

The Archbishop of Canterbury may grant dispensations to the king.

Vaughan, 18, 19, 20, 27. Mod. Cases in Law, 364.

The Archbishop of Canterbury may grant licences of things wonted to be licensed. Co. pl. f. 512. Hob. 147, 156, & 159.

Dispensations to causes unwonted to be licensed shall not be granted without the approbation of

England, previous to the reign of Henry 8, were accustomed to grant dispensations in causes ecclesiastical. 2 Burn's E. L. by Philimore, 163. Notwithstanding this negative clause, it hath been held and allowed, that the crown is not thereby restrained from granting dispensations, (*Colt & Glover v. Coventry & Lichfield (Bishop of)*, Hob. 146,) but that its authority remains full and perfect as before, and that the crown may still grant them as all acts of justice and grace flow from it. Before which time, the like had been declared in *Armiger v. Holland*, (Cro. Eliz. 542, 601,) that the queen, by the prerogative which she had at common law, might grant such a dispensation as was then under debate, viz., to hold a benefice in *commendam*, without the archbishop, this statute only transferring the authority of the Bishop of Rome to the archbishop, but not intending to take away from the queen, who is not named in the statute, the ancient prerogative of the crown. Which resolution is more distinctly reported by Moore (Sir F.), 542, that in cases where the archbishop had not authority given him by this statute, the queen might grant dispensations, as the Pope had done, because the papal authority was transferred to the crown;

but that all dispensations which the statute enables the archbishop to grant, are necessarily to be passed in the form directed by the statute. Since both which cases, it hath been decided in *Evans v. Ascutie*, (Palm. 457,) that this statute gives the archbishop a power concurrent with the power which the king had, and still hath, at common law; and that a dispensation granted by the king, or by the archbishop, is good; and although this judgment (as the other two) is delivered in the case of a *commendam*, yet this declaration of a power in the king, notwithstanding the negative clause in the statute, seems to be general, as to all other dispensations.

(1) *After good and due examination*.—After which, if the archbishop affirm the cause *just*, there shall be no exception or averment by the court or by the party against it. But in case he deny to dispense with any person, who, upon a good, just, and reasonable cause, ought to have a dispensation, a remedy is provided by Stat. 25 Hen. 8, c. 21, s. 17. *Colt & Glover v. Coventry & Lichfield (Bishop of)*, Hob. 158.

(2) *Commissary*.—Who is usually called Master of the Faculties, and is a standing officer appointed by the archbishop.

STAT. 25 HEN.
8, c. 21.

the king or his
council.

Moor, 543.

Pl. 719, 561.

Pl. 763.

writings in such cases unwont and not accustomed to be dispensed withal, or obtained, shall commonly pass as other dispensations, faculties, or other writings, shall or no, upon pain that the grantors of every such licence, dispensation, or writing, in such cases unwont, contrary to this act, shall make fine at the will and pleasure of your grace, your heirs and successors; and if it be thought and determined by your grace, your heirs or successors, or your or their council, that dispensations, faculties, licences, or other writings, in any such case unwont, shall pass, then the said archbishop or his commissary, having licence of your highness, your heirs or successors, for the same, by your or their bill assigned, shall dispense with them accordingly.

Licence of
things whereof
the tax extends
to 4*l*. shall be
confirmed by
the king's
great seal.

Cro. Eliz. 540.

"VI. Provided always, that no manner of dispensations, licences, faculties, or other rescripts or writings hereafter to be granted to any person or persons, by virtue or authority of this act, by the said archbishop or his commissary, being of such importance, that the tax of the expedition thereof at Rome, extended to the sum of four pounds or above, shall in any wise be put in execution, till the same licence, dispensation, faculty, rescript, or other writing, of what name or nature soever it be of, be first confirmed by your highness, your heirs or successors, kings of this realm, under the great seal, and enrolled in your chancery(1) in a roll, by a clerk to be appointed for the same; and that this act shall be a sufficient warrant to the chancellor of England, for the time being, or to him whom your grace, your heirs or successors, shall depute to be keeper of the great seal, to confirm in your name, your heirs or successors, the foresaid writings passed under the said archbishop's seal, by letters patents, in due form thereof to be made under your great seal, remitting as well the said writing under the archbishop's seal, as the said confirmation under the great seal, to the parties from time to time procuring for the same; and that all such licences, dispensations, faculties, and other rescripts and writings for the expedition of the which the said taxes to be paid at Rome, was under iv. *li*. which be matters of no great importance, shall pass only by the archbishop's seal, and shall not of any necessity be confirmed by the great seal, unless the procurers of such licence, faculty, or dispensation, desire to have them so confirmed; in which case they shall pay for the said great seal, to the use of your highness, your heirs and successors, v. s. sterling, and not above, over and beside such taxes as shall be hereafter limited for the making, writing, registering, confirming, and inrolling of such licences, confirmations, and writings under the said tax of iv. *li*.

What dispen-
sations may be
granted by the
archbishop
without the
king's con-
firmation.

All acts done
by virtue of
any of the
aforesaid
licences shall
be good and of
force in law.

"VII. And that every such licence, dispensation, composition, faculty, rescript, and writing, of what name or nature soever it be, for such causes as the tax was wont to be iv. *li*. or above, so granted by the archbishop, and confirmed under the great seal, and all other licences, dispensations, faculties, rescripts, and writings hereafter to be granted by the archbishop, by virtue and authority of this act, whereunto the great seal is not limited of necessity to be put to, by reason that the tax of them is under iv. *li*., shall be accepted, approved, allowed, and admitted good and effectual in the law, in all places, courts, and jurisdictions, as well spiritual as temporal, within this realm, and elsewhere within your dominions, and as beneficial to the persons obtaining the same, as they should have been if they had been obtained, with all things requisite, of the see of Rome, or of any other person by authority thereof, without any revocation or repeal hereafter to be had of any such licences, dispensations, faculties, rescripts, or writings, of what nature soever they be.

Licences to
marry, and
children born

"VIII. And that all children procreated after solemnization of any marriages to be had or done by virtue of such licences or dispensations(2), shall be admitted,

(1) *Enrolled in your chancery*:—Which enrolment is not a necessary condition, so as to render the dispensation null without it; but the neglect is a contempt in the clerk, who also ought to enter it at length in a roll, and not in a paper book, or by way of memorandum. *Robins v. Gerrard*, Moore (Sir F.), 447. Dyer, 233.

(2) *After solemnization of any marriages to be had or done by virtue of such licences or dispensations*:—And by the Marriage Acts of 26 Geo. 2, c. 33, s. 6, and 4 Geo. 4, c. 76, s. 20, the Archbishop of Canterbury's right of granting special licences of marriage is particularly reserved to him.

reputed, and taken legitimate in all courts, as well spiritual as temporal, and in all other places, and inherit the inheritance of their parents and ancestors within this your realm, and all other your dominions, according to the laws and customs of the same; and all acts to be done, had, or executed according to the tenor of such licences, dispensations, faculties, writings, or other instruments, to be made or granted by authority of this act, shall be firm, permanent, and remain in force; any foreign laws, constitutions, decrees, canons, decretals, inhibitions, use, custom, prescription, or any other thing had, or hereafter to be made to the contrary notwithstanding.

“IX. And be it further enacted, that the said archbishop and his successors shall have power and authority to ordain, make, and constitute a clerk, which shall write and register every such licence, dispensation, faculty, writing, or other instrument to be granted by the said archbishop, and shall find parchment, wax, and silken laces convenient for the same, and shall take for his pains such sums of money as shall be hereafter in this present act to him limited in that behalf for the same; and that likewise your grace, your heirs and successors, shall by your letters patents, under your great seal, ordain, depute, and constitute one sufficient clerk, being learned in the course of the chancery, which shall always be attendant upon the lord chancellor, or the lord keeper of the great seal for the time being, and shall make, write, and enroll the confirmations of all such licences, dispensations, instruments, or other writing as shall be thither brought under the archbishop’s seal, there to be confirmed and enrolled; and shall also intitle in his books, and inroll of record, such other writings as shall thither be brought under the archbishop’s seal, not to be confirmed, taking for his pains such reasonable sums of money as hereafter by this act to him shall be limited for the same; and that as well the said clerk appointed by the said archbishop, as the said clerk to be appointed by your highness, your heirs or successors, shall subscribe their names to every such licence, dispensation, faculty, or other writing that shall come to their hands to be written, made, granted, sealed, confirmed, registered, and inrolled by authority of this act, in form as is before rehearsed.

“X. And forasmuch as the charges of obtaining the said licences, dispensations, faculties, and other rescripts or writings aforementioned, at the court of Rome, by the losses and exchanges, and in conducting of currors, and waging solicitors to sue for any such licences, dispensations, faculties, instruments, and other rescripts or writings, have been grievous and excessive to your people, and many times greater sums have been demanded for the speedy expedition in the court of Rome, than be expressed in the old tax limited to be paid for the said expeditions, whereby your people have been brought to an uncertainty upon the payment for expeditions of such things, and by reason thereof have been constrained to pay more than they were wont to do, to the great impoverishing of this realm, as is aforesaid; and sometimes the speeding of such dispensations, faculties, licences, and other writings at Rome, hath been so long deferred, that the parties labouring for the same have suffered great incommodities and loss for lack of quick speed, which hereafter may be had within this your realm, to the great commodity of your people, whereby the charges of making exchanges, conducting of currors and solicitors for the said dispensations, shall be abated, and your people so much relieved and eased; to the intent that all ambiguity, and uncertainty of payments for dispensations, faculties, licences, and other rescripts and writings, may be taken away, that no fraud or exaction shall be exercised upon your people by such officers as shall be appointed by this act, to take pains in speeding such dispensations, faculties, and licences, but that your people may be sure and certain what they be appointed to pay for the same:

“XI. Be it enacted by this present parliament, and by the authority of the same, that there shall be two books drawn and made of one tenor, in which shall be contained the taxes of all *customable dispensations* (1), faculties, licences, and other

STAT. 25 HEN. 8, c. 21.

after the same marriages. 25 Hen. 8, c. 22, s. 4. Hob. 248.

A clerk to register dispensations appointed by the archbishop. A clerk assigned by the king to write confirmations.

The charges qualified which had wont to be spent in obtaining dispensations and licences from Rome.

Two books shall be made, wherein the taxes of dis-

(1) *Customable dispensations*.—From the book which relates to customable dispensations, of which one copy at least is still re-

maining, the extent of the powers originally conveyed to the Archbishop of Canterbury by this act, is ascertained; and by comparing

STAT. 25 HEN.
8, c. 21.

pensions
shall be
written.

The fees of
dispensations,
faculties,
licences, &c.

The penalty of
extortion in
officers.

How the tax
for every dis-
pensation,
faculty, or
other writing,
shall be
divided.

writings wont to be sped at Rome, which books, and every leaf of those books, and both sides of every leaf, shall be subscribed by the Archbishop of Canterbury, the lord chancellor of England, the lord treasurer of England, and the two chief justices of both benches for the time being; to the which books all suitors for dispensations, faculties, licences, and other writings afore-rehearsed, shall have recourse if they require it; and one of the said books shall remain in the hands of him which shall be appointed to be register and scribe of the said dispensations, faculties, and licences, under the said Archbishop of Canterbury, in form as is before said; and the other book shall remain with the clerk of the chancery, which by your grace, your heirs or successors, shall be appointed, as is before rehearsed; which clerk of the chancery shall also intitle, and note particularly and daily, in his book ordained for that purpose, the number and qualities of the dispensations, faculties, licences, and other rescripts and writings, which shall be sealed only with the seal of the said archbishop, and also which shall be sealed with the said seal, and confirmed with the great seal, in form as is before said, that all fraud and concealment in this behalf may be avoided.

“XII. And be it enacted by this present parliament, and by the authority of the same, that no man suing for dispensations, faculties, licences, or other rescripts or writings, which were wont to be sped at Rome, shall pay any more for their dispensations, licences, or rescripts, than shall be contained, taxed, and limited in the said duplicate Books of Taxes, only compositions excepted, of which, being arbitrary, no tax can be made, wherefore the tax thereof shall be set and limited by the discretion of the said Archbishop of Canterbury, and the lord chancellor of England, or the lord keeper of the great seal, for the time being; and that such as shall exact or receive of any suiter more for any dispensation, faculty, or licence, than shall be contained in the said Books of Taxes, shall forfeit ten times so much as he shall so extortiously exact and receive; the one half of the which forfeiture to be to the use of your grace, your heirs or successors, and the other half thereof to be to such of your subjects as will sue for the same by action, bill, or plaint, in any of your grace's courts, wherein the defendant shall have *none essoin* nor protection allowed, neither shall be admitted to wage his law.

“XIII. Be it also enacted by this parliament, and by authority of the same, that the tax or sum appointed to be paid for every such dispensation, licence, faculty, instrument, rescript, or other writing to be granted by authority of this act, shall be employed and ordered, as hereafter ensueth; that is to say, if the tax extend to *iv. li.* or above, by reason whereof the dispensation, licence, faculty, rescript or writing, which shall pass by the said archbishop's seal, must be con-

those powers with several statutes, which have been since made, it will be perceived in what particulars they have been limited and restrained: thus, the age required for institution to a benefice; the age required for orders; the degrees within which persons may or may not marry, &c., have been since fixed by acts of parliament, and rendered unalterable by dispensation.

As to the cases that are still dispensable, they will be subsequently discussed, but there is one article, which being not a matter merely ecclesiastical, may be here mentioned, viz. the right of conferring degrees of all kinds, which this act has vested in the Archbishop of Canterbury for the time being. Among the other heads in which faculties had been customarily grantable, and were now made grantable by the archbishop in virtue of this act, the following entries occur in the Book of Taxation:

“Creatio doctorum in quacunque facultate, *4l.*

“Creatio aliorum graduatorum in quacunque facultate, *4l.*”

Which power, as it hath not been abrogated, or touched, by any succeeding law, so hath it been exercised by the successive archbishops, as a right vested in their see, by no less authority than that of parliament; to which authority, as conveyed by this act, special reference is made in the body of every faculty, that is granted upon this head. Gibson's Codex, 91.

But although the archbishop can confer all the degrees which are taken in the universities, yet the graduates of the two universities, by various acts of parliament, and other regulations, are entitled to many privileges, which are not extended to what is called a Lambeth degree; as, for instance, those degrees which are a qualification for a dispensation to hold two livings, are confined, by Stat. 21 Hen. 8, c. 13, s. 23, to the two universities. It may be also observed that, although the archbishop has authority to grant dispensations to hold two livings, they must, under Stat. 25 Hen. 8, c. 21, s. 11, be confirmed under the great seal.

firmed by the appension of the great seal, then the said tax so extending to iv. *li.* or above, shall be divided into three parts, whereof two shall be perceived by the said clerk of the chancery, (to be appointed as is aforesaid,) to the use of your highness, your heirs and successors, and to the use of the lord chancellor, or the keeper of the great seal for the time being, and to the use of the said clerk in such wise as shall hereafter be declared; and that the third part shall be taken by the said clerk of the archbishop, to the use of the same archbishop, and his commissary, and his said clerk and register, in such wise as shall hereafter be ordered and limited, by this act; that is to say, the said two parts shall be divided into four parts, of which three parts shall be taken to the only use of your highness, your heirs and successors, and the fourth part shall be divided into three parts, whereof the chancellor of England, or lord keeper of the great seal for the time being, shall have two parts, and the said clerk of the chancery the third part for his pains, travel, and labours that he is limited to write and do by virtue of this act; and the said third part of the whole tax appointed to the said archbishop, and his officers, (as is aforesaid,) shall be divided into three parts, whereof the archbishop shall have to his use two parts, and his officers shall have the third part thereof; of which third part, to be divided into two parts, the said clerk or register, which shall find parchment, wax, and silk, and shall devise and write the said dispensations, licences, faculties, rescripts, or other writings, and register the same, shall have for his said labour, and for receiving and repaying of the sums of money that shall come to his hands for dispensations, faculties, licences, and other rescripts aforesaid, the one moiety thereof, and the commissary of the said archbishop appointed to seal the said dispensations, faculties, licences, and other rescripts, shall have the other part.

“XIV. And if the tax be under iv. *li.*, and not under xl. *s.*, then the said tax shall be divided into three parts, as is aforesaid, whereof the king's highness, his heirs and successors, shall have two parts thereof, abating iii. *s.* iv. *d.*, which shall be to the said clerk of the chancery for subscribing, intituling, and inrolling the said dispensations, licences, faculties, rescripts, and other writings aforesaid, and receiving of the king's money so taxed; and the archbishop and his officers shall have the third part, which third part shall be divided into two parts, whereof the archbishop shall have the one entirely to himself, his scribe and commissary shall have the other part thereof, equally to be divided amongst them for their costs and pains in that behalf; and if the tax be under xl. *s.*, and not under xxvi. *s.* viii. *d.*, the same tax shall be divided into two parts, whereof the one part shall be to your grace, your heirs and successors, deducting thereof ii. *s.* for the clerk of the chancery for his pains, as is aforesaid; and the other part shall be to the said archbishop and his officers, which other part shall be divided into two parts, whereof the archbishop shall have the one, and his commissary and scribe shall have the other, equally divided amongst them; and if the tax be under xxvi. *s.* viii. *d.*, and not under xx. *s.*, the same shall be divided into two parts, whereof your grace, your heirs and successors, shall have one part entirely, abating ii. *s.* thereof to the said clerk of the chancery; and the archbishop and his officer shall have the other part, and the same other part shall be divided into three parts, whereof the archbishop shall have one, his commissary the second, and his scribe or register the third; and in case the tax be under xx. *s.*, the same shall be perceived to the use of the said commissary, clerk of the said archbishop, and clerk of the chancery, to be equally divided amongst them for their pains and labours by them to be sustained, by authority of this act, as aforesaid.

“XV. Provided always, that this act shall not be prejudicial to the Archbishop of York, or to any *bishop*(1) or prelate of this realm; but that they may

If the tax be under iv. *li.* and not under xl. *s.*

If the tax be under xl. *s.* and not under xxvi. *s.* viii. *d.*

If the tax be under xxvi. *s.* viii. *d.* and not under xx. *s.*

Dispensations by other prelates.

(1) *Bishop*:—The canonists are much divided about the powers of bishops in the point of dispensing; but it is stated, (Gloss. v. *Minora*, Extra. l. 2, t. 1, c. 4.) “*Alia est magis communis opinio, quod episcopus ubicunque potest dispensare, ubi non inveni-*

tur prohibitum;” “*Generaliter, ubicunque non prohibetur dispensatio, intelligitur esse permissa;*”—which dispensations seem to refer, chiefly, to canonical defects, and irregularities of that kind.

STAT. 25 HEN.
8, c. 21.

lawfully (notwithstanding this act,) dispense in all cases in which they were wont to dispense by the common law or custom of this realm afore the making of this act.

Dispensations
by the guardian
of the
spiritualities.

“XVI. Provided also, and be it enacted by the authority aforesaid, that if it happen the see of the archbishoprick of Canterbury to be void, that then all such manner of licences, dispensations, faculties, instruments, rescripts, and other writings, which may be granted by virtue and authority of this act, shall (during the vacation of the same see,) be had, done, and granted under the name and seal of the guardian of the spiritualities of the said archbishoprick for the time being, according to the tenor and form of this act, and shall be of like force, value, and effect, as if they had been granted under the name and seal of the archbishop for the time being.

A remedy
where the
archbishop or
guardian of the
spiritualities
deny to grant
dispensations,
licences, &c.

“XVII. And be it further enacted, that if the foresaid Archbishop of Canterbury for the time being, or the said guardian of the spiritualities for the time being, hereafter refuse or deny to grant any licences, dispensations, faculties, instruments, or other writings, which they be authorized to do by virtue and authority of this act, in such manner and form as is afore remembered, to any person or persons that ought, upon a good, just, and reasonable cause, to have the same, by reason whereof this present act, by their wilfulness, negligence, or default, should take no effect; then the chancellor of England, or the lord keeper of the great seal, for the time being, upon any complaint thereof made, shall direct the king's writ to the said archbishop or guardian denying or refusing to grant such licences, dispensations, faculties, or other writings, enjoining him by the said writ, upon a certain pain therein to be limited by the discretion of the said chancellor or keeper of the said seal, that he shall in due form grant such licence, dispensation, faculty, or other writing, according to the request of the procurers of the same, or else signify unto your highness, your heirs or successors, in the court of chancery at a certain day, for what occasion or cause he refused and denied to grant such licences, faculties, or dispensations; and if it shall appear to the said chancellor or lord keeper of the great seal, upon such certificate, that the cause of refusal or denial of granting such licences, faculty, or dispensation, was reasonable, just, and good, that then it so being proved by due search and examination of the said chancellor, or lord keeper of the great seal, to be admitted and allowed. And if it shall appear upon the said certificate, that the said archbishop or guardian of the spiritualities for the time being, of wilfulness in contemning the due execution of this act, without a just and reasonable cause, refused or denied to grant such licence, faculty, or dispensation, that then your highness, your heirs or successors, being thereof informed, after due examination had, that such licences, faculties, or dispensations, may be granted without offending the Holy Scriptures and laws of God, shall have power and authority in every such case, for the default, negligence, and wilfulness of the said archbishop or guardian, to send your writ of injunction under your great seal, out of your said court of Chancery, commanding the archbishop or guardian that shall so deny or refuse to grant such licence, faculty, or dispensation, to make sufficient grant thereof, according to the tenor and effect of this act, by a certain day, and under a certain pain, in the said writ to be contained, and to be limited by your highness, your heirs or successors, kings of this realm. And if the said archbishop or guardian, after the receipt of the said writ, refuse or deny to grant such licences, faculties, or dispensations, as shall be enjoined him by virtue of the said writ, and shew and prove before your majesty, your heirs or successors, no just or reasonable cause why he should do so; then the said archbishop or guardian that shall so refuse to put this act in due execution according to the said writ of injunction, shall suffer, lose, and forfeit to your highness, your heirs and successors, such pain and penalty as shall be limited and expressed in the said writ of injunction. And over that, it shall be lawful to your highness, your heirs and successors, for every such default and wilfulness of the said archbishop or guardian for the time being, to give power and authority, by commission under your great seal, to two such spiritual prelates or persons, to be named by your highness,

your heirs or successors, as will do and grant such licences, faculties, and dispensations, refused or denied to be granted by the said archbishop or guardian in contempt of this act.

STAT. 25 HEN.
8, c. 21.

“XVIII. And be it further enacted by authority aforesaid, that the said two spiritual prelates or persons, to whom in such cases any such commission shall be directed, shall have power and authority to grant every such licence, faculty, dispensation, instrument, and other writings, so refused to be granted by the said archbishop or guardian for the time being, by any instrument under their seals, taking like fees and charges for the same as is before rehearsed, and not above, under the pains afore remembered. And that every such licence, faculty, and dispensation so granted for any cases or matters, whereunto any confirmation under the king's great seal is appointed by this act, to be had in manner and form above declared, shall be had and obtained accordingly. And such licences and confirmation shall be had for like fees and charges as they are above specified, and not above, under the pains above mentioned. And that every such licence, faculty, dispensation, and other writing, to be granted by the said prelates or persons to be assigned by the king's highness, his heirs and successors, as is afore said, shall be of as good value, strength, and effect, and as beneficial and profitable to the persons procuring the same, as if they had been made, granted, and obtained under the name and seal of the said archbishop.

Dispensations granted by other spiritual prelates.

“XIX. Provided always, that this act, nor any thing or things therein contained, shall be hereafter interpreted or expounded, that your grace, your nobles and subjects intend by the same to decline or vary from the congregation of Christ's church in any things concerning the very articles of the Catholick faith of Christendom, or in any other things declared by Holy Scripture and the Word of God, necessary for your and their salvations, but only to make an ordinance by policies necessary and convenient to repress vice, and for good conservation of this realm in peace, unity, and tranquillity, from ravin and spoil, insuing much the old antient customs of this realm in that behalf; not minding to seek for any relief, succours, or remedies for any worldly things and human laws, in any cause of necessity, but within this realm at the hands of your highness, your heirs and successors, kings of this realm, which have, and ought to have, an imperial power and authority in the same, and not obliged in any worldly causes to any other superior.

The king and the realm do not mean to vary from the articles of the Catholick faith of Christendom.

“XX. Provided alway, that the said Archbishop of Canterbury, or any other person or persons, that have no power or authority by reason of this act, to visit or vex any monasteries, abbeys, priories, colleges, hospitals, houses, or other places religious, which be or were exempt before the making of this act; any thing in this act to the contrary thereof notwithstanding; but that redress, visitation, and confirmation shall be had by the king's highness, his heirs and successors, by commission under the great seal, to be directed to such persons as shall be appointed requisite for the same, in such monasteries, colleges, hospitals, priories, houses, and places religious exempt: so that no visitation nor confirmation shall from thenceforth be had or made, in or at any such monasteries, colleges, hospitals, priories, houses and places religious exempt, by the said Bishop of Rome, nor by any of his authority, by any out of the king's dominions; nor that any person, religious or other, resiant in any the king's dominions, shall from henceforth depart out of the king's dominions to or for any visitation, congregation, or assembly for religion, but that all such visitations, congregations, and assemblies, shall be within the king's dominions.

The king by commission may visit colleges, hospitals, and places exempt, and not the Archbishop of Canterbury.

“XXI. Provided also, that this present act, or any thing therein contained, or any licence or dispensation hereafter to be made by virtue or authority thereof, shall not extend to the repeal or derogation of *the late act* (1), made sith the

None shall go forth of England to general councils.

This act shall not derogate from the sta-

(1) *The late act*:—The powers granted by Stat. 25 Hen. 8, c. 21, ss. 3 & 4, are general; viz. all manner of dispensations which have been accustomed to be had at the see of Rome, in case they were not contrary to the

laws of God. The Pope was accustomed to grant dispensations, sometimes, for as many benefices as the party could obtain, (which dispensations were commonly called *tol quot.*) and very frequently for a large number of

STAT. 25 HEN.
8, c. 21.

tute of 21 Hen.
8, c. 13,
touching plu-
ralities, &c.

The penalty
for suing to
the see of
Rome for any
licence, dispen-
sation, &c. or
for obeying
any process
from thence.

6 Rich. 2, c. 5.

Grants and
confirmations
of liberties
from the see of
Rome to any
abbey, &c.
shall still be of
force.

Abbeys, &c.
shall pay no
pensions to the
see of Rome,
nor accept any
visitation or
confirmation
from thence,
nor shall make
an oath to the
bishop thereof.

beginning of this present parliament for reformation of pluralities of benefices, and for non-residences of spiritual persons upon their dignities or benefices, nor to anything contained or mentioned in the said act; nor that this act, nor anything to be done by authority thereof, shall not be taken, expounded, or interpreted to give licence to any person or persons to have any more number of benefices than is limited in the said act; and that the same act for pluralities and non-residences of benefices, and every thing therein contained, shall stand good and effectual in all intents, according to the true meaning thereof; any thing in this present act, or any licence or dispensation to be had by authority thereof, in any wise notwithstanding.

“XXII. And be it further enacted by authority aforesaid, that if any person or persons, subject or resiant within this realm, or within any of the king’s dominions, at any time hereafter sue to the court of Rome, or the see of Rome, or to any person claiming to have his authority by the same, for any licence, faculty, dispensation, or other thing or things contrary to this act, or put in execution any licence, faculty, dispensation, or any other thing or things hereafter to be obtained from Rome, or the see of Rome, or from any claiming authority by the same, for any of the causes above mentioned in this act, or for any other causes that may be granted by authority of this act, or attempt, or do any thing or things contrary to this act, or maintain, allow, admit, or obey any manner of censures, excommunications, interdictions, or any other process from Rome, of what name or nature soever it be, to the derogation or let of the execution of this act, or of any thing or things to be done by reason of the said act; that then every such person or persons so doing, offending, and being thereof convict, their aiders, counsellors, and abettors, shall incur and run into the pain, loss, and penalty, comprised and specified in the Act of *Provision and Præmunire* (1), made in the sixteenth year of your most noble progenitor, King Richard the Second, against such as sue to the court of Rome, against your crown and dignity royal.

“XXIII. Provided alway, that this act, or any thing therein contained, shall not hereafter be taken nor expounded to the derogation or taking away of any grants, or confirmations of any liberties, privileges, or jurisdiction of any monasteries, abbeys, priories, or other houses, or places exempt, which heretofore the making of this act hath been obtained at the see of Rome, or by authority thereof, but that every such grant and confirmation shall be of the same value, force, and effect, as they were before the making of this act, and as if this act had never been made. Provided always, that the abbots, priors, and other chief rulers and governors of such monasteries, abbeys, priories, and other houses, and places exempt, shall not hereafter pay any pension, portion, or other cense to the see of Rome; nor admit or accept any visitation, nor any confirmation from or by the said see of Rome, or by authority thereof, of or for any person to be elected, named, or presented to be heads of any such monasteries, abbeys, priories, places, or houses exempt; nor shall make any corporal oath to the Bishop of Rome, otherwise called the Pope, upon the pains limited in this act; but that every such visitation, and confirmation of such heads elect in any such monasteries, abbeys, priories, houses, or places exempt, where after their election they were bounden

benefices, of which a remarkable testimony exists in the Register of Archbishop Winchelsea, (f. 34 (a).) upon a question concerning the right of the see of Canterbury to prove wills in other dioceses, in cases of *bona notabilia*; where many instances are stated of the probates of wills of clergymen possessed of benefices in different dioceses; thus, one person had enjoyed thirteen benefices, in nine dioceses; a second, thirteen benefices, in eight dioceses; a third, fifteen benefices, in eight dioceses; a fourth, twenty-three benefices, in eight dioceses.

To preclude the general words in Stat. 25 Hen. 8, which sets dispensations on a new

basis, and vests a new power in the archbishop, from being interpreted as an abrogation of the restraint which Stat. 21 Hen. 8, had laid; this clause was judged necessary, to prevent any such interpretation, and to confirm the limitations, therein contained. Dyer, 352 (a). *Colt & Glover v. Coventry & Lichfield* (Bishop of), Hob. 158.

(1) *Provision and Præmunire*.—This penalty was afterwards changed into high treason by Stat. 13 Eliz. c. 2, s. 3, the guilt and punishment of which is thereby inflicted upon any person who shall obtain from Rome any bull, instrument, or writing whatsoever.

to have and obtain any confirmation of their election, or of the person named, presented, or elect, shall be from henceforth had, made, and done within this realm, at and within every such abbeyes, monasteries, priories, and other houses and places exempt, by such person and persons as shall be appointed, by authority of the king's commission, from time to time, as the case shall require, and not by the see of Rome, nor by authority thereof; any thing in this next proviso above specified to the contrary thereof notwithstanding.

“XXIV. Provided always, that in such monasteries, abbeyes, priories, and houses exempt, where after election, presentation or nomination of their heads, no such confirmation is requisite to be had, nor hath been used to be taken, by reason of such privileges as they have concerning the same, that in every such monasteries, abbeyes, priories, and places exempt, they shall not be bounden to obtain, have, or take any confirmation for the same within this realm, by authority of this act, but use their privileges therein as they have done before the making of this act; any thing in this act, or any the provisos next above rehearsed, to the contrary thereof notwithstanding.

“XXV. Provided also and be it enacted, that this act, or any thing or things, word or words therein, or in the preamble thereof mentioned or contained, is not intended or meant, nor shall be expounded nor interpreted, that any dispensations, licences, or confirmations for marriages, granted to any of the king's subjects born under his obeysance, at any time before the twelfth day of March in the year of our Lord God 1533, shall be appaired, or of any less value, strength, force, or effect, than they were at the said twelfth day of March; nor that this act, or any thing therein contained, shall not extend to the derogation, appairing, or adnullation of any licences, dispensations, confirmations, faculties, or indulgences at any time before the said twelfth day of March in the year of our Lord God 1533, had or obtained at the see of Rome, or by authority thereof, to or for any subjects born in this realm, or in any the king's dominions, or to or for the hospital of the prior of Saint John's Jerusalem in England, or any commandries or members thereof, or to or for any other cathedral churches, hospitals, monasteries, abbeyes, priories, colleges, conventual churches, parochial churches, chapels, fraternities, brotherheads or bodies politic within this realm, or in any other the king's dominions; but that every such licence, dispensation, confirmation, faculty, and indulgence granted before the said xii. day of March to any such subject, or to the said hospital of the prior of St. John's Jerusalem in England, commandries or members thereof, or to any other cathedral church, hospital, monastery, abbey, priory, college, church conventual, parochial church, chapel, fraternity, brotherhead or body politick, or to their predecessors or ancestors within this realm, or in any other the king's dominions, shall be of the same force, strength, value, and effect, and may be from time to time put in execution at all times hereafter, by and to them that will use and have the same, as they might have been afore the making of this act, and as if this act had never been had ne made; any thing in the said act to the contrary hereof notwithstanding.

“XXVI. Provided always, that such licences, dispensations, confirmations, or faculties heretofore obtained at the see of Rome, or by authority thereof, contrary to the express provisions of the laws and statutes of this realm heretofore made, shall not at any time hereafter be used or put in execution in any case, to the derogation, or contrary to the said laws and statutes of this realm, and the provisions of the same; any thing in this proviso to the contrary thereof notwithstanding.

“XXVII. And be it enacted by authority of this present parliament, that the king our sovereign lord, by the advice of his honourable council, shall have power and authority from time to time, for the ordering, redress, and reformation of all manner of indulgences and privileges thereof within this realm, or within any the king's dominions, heretofore obtained at the see of Rome, or by authority thereof, and of the abuses of such indulgences and privileges thereof, as shall seem good, wholesome, and reasonable, for the honour of God and weal of his people; and that such order and redress as shall be taken by his highness in that behalf,

STAT. 25 HEN.
8, c. 21.

Monasteries,
houses, &c.
where no con-
firmation is
requisite.

Licences and
dispensations
obtained at the
see of Rome
before March
12, 1533, shall
be of the same
force they were
before.
21 Hen. 8.
c. 13, s. 11.

Hob. 146.

The king with
the advice of
his council may
reform the
manner of
indulgences.
Rep. by 1 & 2
P. & M. c. 8,
and revived by
1 Eliz. c. 1.

STAT. 25 HEN. 8, c. 21. shall be observed and firmly kept, upon the pains limited in this act for the offending of the contents of the same.

✓ “XXVIII. Provided alway, and be it enacted by authority of this present parliament, that this present act, or any thing or things therein contained, shall not begin to take effect, nor be put in execution, till the feast of the Nativity of St. John Baptist next coming, except the king’s majesty, on this side the said feast, by his letters patents under his great seal, to be inrolled in the Parliament Roll of this present parliament, do declare and express, that it is his pleasure that it shall begin and take effect at any time afore the said feast; and if his highness happen so to do, that then, immediately after such declaration of his pleasure by his said letters patents in form aforesaid, this said act shall begin and be put in execution afore the said feast, according to his said pleasure so to be declared by his said letters patents; anything in this proviso to the contrary hereof notwithstanding.

“XXIX. And be it further enacted by authority aforesaid, that the king’s majesty at all times on this side the said feast shall have full power and authority, by his letters patents under his great seal, to be inrolled in the Parliament Roll of this present parliament, to abrogate, adnull, and utterly repeal and make void this act, and every thing and things therein contained, or else as much and such part thereof as shall be declared and limited on this side the said feast by his letters patents to be void and repealed; and that all such repeal and adnullation so to be made in form aforesaid by his highness on this side the said feast, shall be as good and effectual as though it had been done and had by authority of parliament; any thing or things contained in this present act to the contrary hereof notwithstanding; and if no such repeal be had or made by the king’s majesty on this side the said feast, in form as is afore rehearsed, that then the said act, or as much and such part thereof as shall not be repealed on this side the said feast, shall immediately after the said feast stand firm, good, and effectual, and from thenceforth be put in due execution according to the tenor thereof; anything in this act or in any the provisions aforesaid to the contrary hereof notwithstanding.”

STAT. 25 HEN. 8, c. 22.

XXIII. STAT. 25 HENRICI 8, c. 22 (1). A.D. 1533.

“An Act concerning the King’s Succession.”

The succession of the king’s majesty in the imperial crown. Repealed by 1 & 2 P. & M. c. 2 & 8.

“In their most humble wise shewn unto your majesty, your most humble and obedient subjects, the lords spiritual and temporal, and the commons, in this present parliament assembled, that since it is the natural inclination of every man, gladly and willingly to provide for the surety of both his title and *succession* (2), although it touch only his private cause, we therefore, most rightful and dreadful sovereign lord, reckon ourselves much more bound to beseech and instance your highness, (although we doubt not of your princely heart and wisdom, mixed with a natural affection to the same,) to foresee and provide for the perfect surety of both you and of your most lawful succession and heirs, upon which dependeth all our joy and wealth, in whom also is united and knit the only merely true inheritance and title of this realm, without any contradiction; wherefore we your said most humble and obedient subjects, in this present parliament assembled, calling to our remembrance the great divisions which in times past have been in this realm, by reason of several titles pretended to the imperial crown of the same, which sometimes, and for the most part ensued, by occasion of ambiguity and doubts, then not so perfectly declared, but that men might upon froward intents, expound them to every man’s sinister appetite and affection, after their sense, contrary to the right legality of the succession and posterity of the lawful kings and emperors of this

(1) *Vide* Stat. 28 Hen. 8, c. 7. Stat. 1 Mar. sess. 2, c. 1. Stat. 1 & 2 P. & M. c. 8.

In 2 Burn’s E. L. by Phillimore, 439, it is observed, “Dr. Gibson states, that Stat. 25 Hen. 8, c. 22, was repealed by Stat. 28 Hen. 8, c. 7, s. 3, and by Stat. 1 Mar. sess. 2, c. 1, and which Mr. Cay takes notice of, as repealed, but which Mr. Hawkins inserts in his

edition of the statutes as being in force, and unrepealed;”—under such circumstances, it has been deemed expedient to print the statute at length.

(2) *Succession*:—This was the succession of the king’s children, by Queen Anne; upon declaring the marriage between his majesty and Queen Katherine to be void.

realm; whereof hath ensued great effusion and destruction of man's blood, as well of a great number of the nobles, as of other the subjects, and especially inheritors in the same; and the greatest occasion thereof hath been, because no perfect and substantial provision by law hath been made within this realm of itself, when doubts and questions have been moved and proponed, of the certainty and legality of the succession and posterity of the crown; by reason whereof the Bishop of Rome, and see apostolick, contrary to the great and inviolable grants of jurisdictions given by God immediately to emperors, kings, and princes, in succession to their heirs, hath presumed in times past, to invest who should please them, to inherit in other men's kingdoms and dominions, which thing we your most humble subjects, both spiritual and temporal, do utterly abhor and detest; and sometimes other foreign princes and potentates of sundry degrees, minding rather dissension and discord to continue in the realm, to the utter desolation thereof, than charity, equity, or unity, have many times supported wrong titles, whereby they might more easily and facily aspire to the superiority of the same; the continuance and sufferance whereof deeply considered and pondered, were too dangerous and perilous to be suffered any longer within this realm, and too much contrary to the unity, peace, and tranquillity of the same, being greatly reproachable and dishonourable to the whole realm.

“II. In consideration whereof, your said most humble and obedient subjects, the nobles and commons of this realm, calling further to their remembrance, that good unity, peace, and wealth of this realm, and the succession of the subjects of the same, most especially and principally above all worldly things, consisteth and resteth in the certainty and surety of the procreation and posterity of your highness, in whose most royal person at this present time, is no manner of doubt nor question; do therefore most humbly beseech your highness, that it may please your majesty, that it may be enacted by your highness, with the assent of the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, that the marriage heretofore solemnized between your highness and the Lady Katherine, being before the lawful wife to Prince Arthur, your elder brother, which by him was carnally known, as doth duly appear by sufficient proof in a lawful process had and made before Thomas, by the sufferance of God, now Archbishop of Canterbury, and metropolitan and primate of all this realm, shall be, by authority of this present parliament, definitively, clearly, and absolutely declared, deemed, and adjudged to be against the laws of Almighty God, and also accepted, reputed, and taken of no value nor effect, but utterly void and adnihilated, and the separation thereof, made by the said archbishop, shall be good and effectual to all intents and purposes; any licence, dispensation, or any other act or acts going afore, or ensuing the same, or to the contrary thereof, in any wise notwithstanding; and that every such licence, dispensation, act or acts, thing or things heretofore had, made, done, or to be done to the contrary thereof, shall be void and of none effect; and that the said Lady Katherine shall be from henceforth called and reputed only Dowager to Prince Arthur, and not Queen of this realm; and that the lawful matrimony had and solemnized between your highness and your most dear and entirely beloved wife, Queen Anne, shall be established, and taken for undoubtful, true, sincere, and perfect ever hereafter, according to the just judgment of the said Thomas, Archbishop of Canterbury, metropolitan and primate of all this realm, whose grounds of judgment have been confirmed, as well by the whole clergy of this realm in both the convocations, and by both the universities thereof, as by the universities of Bonony, Padua, Paris, Orleans, Tolouse, Angiewe, and divers others, and also by the private writings of many right excellent well learned men; which grounds so confirmed, and judgment of the said archbishop ensuing the same, together with your marriage solemnized between your highness and your said lawful wife Queen Anne, we your said subjects, both spiritual and temporal, do purely, plainly, constantly, and firmly accept, approve, and ratify for good, and consonant to the laws of Almighty God, without error or default; most humbly beseeching your majesty that it may be so established for ever by your most gracious and royal assent.

STAT. 25 HEN.
8, c. 22

The ambiguity of the several titles to the crown of this realm, and the notestablishing of the succession thereof, hath been the causes of much trouble.

The marriage between the king and the Lady Katherine shall be adjudged void, and the separation good.

The Lady Katherine shall be called Dowager to Prince Arthur, and not Queen.

The marriage between the king and his wife Queen Anne shall be taken for good, and consonant to God's law.

STAT. 25 HEN.
8, c. 22.

Marriage
within the
degrees pro-
hibited by
God's law.
2 Vent. 11.
32 Hen. 8,
c. 38.

No man hath
power to dis-
pense with
God's law.

Persons here-
tofore married
within the de-
grees aforesaid
shall be sepa-
rated by the
ordinary's
sentence.
Hob. 148.
25 Hen. 8,
c. 21, s. 8, n. 1.

All the issue
procreate be-
tween the king
and his wife
Queen Anne
shall be his
lawful chil-
dren.

"III. And furthermore, since many *inconveniences* (1) have fallen, as well within this realm as in others, by reason of marrying within the degrees of marriage prohibited by God's laws, that is to say, the son to marry the mother or the stepmother, the brother the sister, the father his son's daughter, or his daughter's daughter, or the son to marry the daughter of his father procreate and born by his stepmother, or the son to marry his aunt, being his father's or mother's sister, or to marry his uncle's wife, or the father to marry his son's wife, or the brother to marry his brother's wife, or any man to marry his wife's daughter, or his wife's son's daughter, or his wife's daughter's daughter, or his wife's sister; which marriages, albeit they be plainly prohibited and detested by the laws of God, yet nevertheless, at some times they have proceeded under colours of dispensations by man's power, which is but usurped, and of right ought not to be granted, admitted, nor allowed; for no man, of what estate, degree, or condition soever he be, hath power to dispense with God's laws, as all the clergy of this realm in the said convocations, and the most part of all the famous universities of Christendom, and we also, do affirm and think.

"IV. Be it therefore enacted by the authority aforesaid, that no person or persons, subjects or resiants of this realm, or in any your dominions, of what estate, dignity, or degree soever they be, shall from henceforth marry within the said degrees afore rehearsed, what pretence soever shall be made to the contrary thereof; and in case any person or persons, of what estate, dignity, degree, or condition soever they be, hath been heretofore married within this realm, or in any the king's dominions, within any the degrees above expressed, and by any the archbishops, bishops, or ministers of the Church of England, be separate from the bonds of such unlawful marriage, that then every such separation shall be good, lawful, firm, and permanent for ever, and not by any power, authority, or means, to be revoked or undone hereafter, and that the children proceeding and procreate under such unlawful marriage, shall not be lawful ne legitimate; any foreign laws, licences, dispensations, or other thing or things to the contrary thereof notwithstanding.

"V. And in case there be any person or persons within this realm, or in any the king's dominions, already married within any the said degrees above specified, and not yet separate from the bonds of such unlawful marriage, that then every such person so unlawfully married, shall be separate by the definitive sentence and judgments of the archbishops, bishops, and other ministers of the Church of England, and in other your dominions, within the limits of their jurisdictions and authorities, and by none other power or authority; and that all sentences and judgments given and to be given by any archbishop, bishop, or other minister of the Church of England, or in other the king's dominions, within the limits of their jurisdictions and authorities, shall be definitive, firm, good, and effectual, to all intents, and be observed and obeyed, without suing any provocations, appeals, prohibitions, or other process from the court of Rome, to the derogation thereof, or contrary to the act made since the beginning of this present parliament, for restraint of such provocations, appeals, prohibitions, and other processes.

"VI. And also be it enacted by authority aforesaid, that all the issue had and procreate, or hereafter to be had and procreate, between your highness and your said most dear and entirely beloved wife Queen Anne, shall be your lawful children, and be inheritable, and inherit according to the course of inheritance and laws of this realm, the imperial crown of the same, with all dignities, honours, pre-eminences, prerogatives, authorities, and jurisdictions to the same annexed or belonging, in as large and ample manner as your highness at this present time hath the same as king of this realm, the inheritance thereof to be and

(1) *Inconveniences*.—One reason and end of those restraints is thus laid down by the canon law: "Habita est ratio rectissima charitatis, ut homines, quibus esset utilis atque honestissima concordia diversarum ne-

cessitudinum vinculis neclerentur, nec unus in unâ multas haberet, sed singulæ spargerentur in singulos, ac sic ad socialem vitam diligentius colligandam plurimæ plurimos obtinerent." Caus. 35, q. 1, c. 1.

remain to your said children and right heirs, in manner and form as hereafter shall be declared.

STAT. 25 HEN.
8, c. 22.

“VII. That is to say, first the said imperial crown and other the premisses, shall be to your majesty, and to your heirs of your body lawfully begotten; that is to say, to the first son of your body, between your highness and your said lawful wife Queen Anne begotten, and to the heirs of the body of the same first son lawfully begotten, and for default of such heirs, then to the second son of your body and of the body of the said Queen Anne begotten, and the heirs of the body of the said second son lawfully begotten, and so to every son of your body and of the body of the said Queen Anne begotten, and to the heirs of the body of every such son begotten, according to the course of inheritance in that behalf; and if it shall happen your said dear and entirely beloved wife Queen Anne do decease without issue male of the body of your highness to be begotten, (which God defend,) then the same imperial crown, and all other the premisses, to be to your majesty, as is aforesaid, and to the son and heir male of your body lawfully begotten, and to the heirs of the body of the same son and heir male lawfully begotten; and for default of such issue, then to your second son of your body lawfully begotten, and to the heirs of the body of the same second son lawfully begotten, and so from son and heir male to son and heir male, and to the heirs of the several bodies of every such son and heir male to be begotten, according to the course of inheritance, in like manner and form as is above said; and for default of such sons of your body begotten, and of the heirs of the several bodies of every such sons lawfully begotten, that then the said imperial crown, and other the premisses, shall be to the issue female between your majesty and your said most dear and entirely beloved wife Queen Anne begotten, that is to say, first to the eldest issue female, which is the Lady Elizabeth, now princess, and to the heirs of her body lawfully begotten, and for default of such issue, then to the second issue female, and to the heirs of her body lawfully begotten, and so from issue female to issue female, and to the heirs of their bodies one after another, by course of inheritance, according to their ages, as the crown of England hath been accustomed, and ought to go, in cases when there be heirs female to the same; and for default of such issue, then the said imperial crown, and all other the premisses, shall be in the right heirs of your highness for ever.

The imperial crown of England, &c. intailed.

The Lady Elizabeth the first issue female of the king and Queen Anne his wife.

“VIII. And be it further enacted by authority aforesaid, that on this side the first day of May next coming, proclamation shall be made in all shires within this realm, of the tenor and contents of this act; and if any person or persons, of what estate, dignity, or condition soever they be, subject or resiant within this realm, or elsewhere within any the king's dominions, after the said first day of May, by writing or imprinting, or by any exterior act or deed, maliciously procure or do, or cause to be procured or done, any thing or things to the peril of your most royal person, or maliciously give occasion by writing, print, deed, or act, whereby your highness might be disturbed or interrupted of the crown of this realm, or by writing, print, deed, or act, procure or do, or cause to be procured or done, any thing or things to the prejudice, slander, disturbance, or derogation of the said lawful matrimony solemnized between your majesty and the said Queen Anne, or to the peril, slander, or disherison of any of the issues and heirs of your highness, being limited by this act to inherit and to be inheritable to the crown of this realm in such form as is aforesaid, whereby any such issues or heirs of your highness might be destroyed, disturbed, or interrupted in body or title of inheritance to the crown of this realm, as to them is limited in this act in form above rehearsed; that then every such person and persons of what estate, degree, or condition they be of, subject or resiant within this realm, and their aiders, counsellors, maintainers, or abettors, and every of them, for every such offence shall be adjudged high traitors, and every such offence shall be adjudged high treason, and the offenders and their aiders, counsellors, maintainers, and abettors, and every of them, being lawfully convict of such offence by presentment, verdict, confession, or process, according to the customs and laws of this realm, shall suffer pains of death, as in cases of high treason; and that also every such offender, being convict

This act shall be proclaimed in all the shires of England.

The penalty for hurting the king's person, disturbing his title to the crown, or slandering his marriage.

Rep. by 1 Edw.
6, c. 12, s. 2.

STAT. 25 HEN.
8, c. 22.

The rights of
all others,
except the
offenders,
saved.

The penalty
for publishing
any thing to
the peril of the
king, or the
slander of his
marriage, or
to the dis-
heritance of
his issue.

An offender
shall not have
the privilege of
sanctuary.

Who shall
have the
government of
the king's
issue and heir
during
minority.

as is aforesaid, shall lose and forfeit to your highness, and to your heirs, kings of this realm, all such manors, lands, tenements, rents, annuities, and hereditaments, which they had in possession as owners, or were sole seised of by or in any right, title, or means, or any other person or persons had to their use, of any estate of inheritance, at the day of such treasons and offences by them committed and done; and shall also lose and forfeit to your highness, and to your said heirs, as well all manner such estates of freehold and interests for years of lands and rents, as all their goods, chattels, and debts, which they had at the time of conviction or attainder of any such offence: saving always to every person and persons, and bodies politick, to their heirs, assigns, and successors, and every of them, other than such persons as shall be so convict, and their heirs and successors, and all other claiming to their uses, all such right, title, use, interest, possession, condition, rents, fees, offices, annuities, and commons, which they or any of them shall happen to have in, to, or upon any such manors, lands, tenements, rents, annuities, or hereditaments, that shall so happen to be lost and forfeit by reason of attainder for any the treasons and offences above rehearsed, at any time before the said treasons and offences committed.

“IX. And be it further enacted by authority aforesaid, that if any person or persons after the said first day of May, by any words, without writing, or any exterior deed or act, maliciously and obstinately shall publish, divulge, or utter any thing or things to the peril of your highness, or to the slander or prejudice of the said matrimony solemnized between your highness and the said Queen Anne, or to the slander and disherison of the issue and heirs of your body begotten and to be begotten by the said Queen Anne, or any other your lawful heirs, which shall be inheritable to the crown of this realm, as is before limited by this act; that then every such offence shall be taken and adjudged for misprision of treason; and that every person and persons, of what estate, degree, or condition soever they be, subject or resiant within this realm, or in any the king's dominions, so doing and offending, and being thereof lawfully convict by presentment, verdict, process, or confession, shall suffer imprisonment of their bodies at the king's will, and shall lose as well all their goods, chattels, and debts, as all such interests and estates of freehold or for years, which any such offender shall have of or in any lands, rents, or hereditaments whatsoever, at the time of conviction and attainder of such offence.

“X. And be it also enacted by the authority aforesaid, that no person nor persons offending in any the treasons and misprisions contained and limited by this act, shall in anywise have or enjoy the privilege and immunity of any manner of sanctuaries within this realm, or elsewhere within any the king's dominions, but shall utterly lose and be excluded of the same; any use, custom, grant, prescription, confirmation, or any other thing or things to the contrary thereof in any wise notwithstanding.

“XI. And be it also enacted by authority aforesaid, that if your majesty should happen to decease before any such your issue and heir male which should inherit the crown of this realm, shall be of his age of eighteen years, or before such your issue and heir female which should inherit the crown of this realm shall be married, or be of the age of sixteen years, which Almighty God defend, that then your said issue and heir male to the crown, so being within the said age of eighteen years, or your said issue and heir female to the crown, being unmarried, or within the said age of sixteen years, shall be and remain unto such time as such issues and heirs shall come to the said several ages afore limited, at and in the governance of their natural mother, she living, with such other counsellors of your realm as your majesty in your life-time shall depute and assign by your will, or otherwise, for the same, without contradiction of any person or persons to the contrary thereof.

“XII. And if any person and persons, by writing, or exterior deed or act, procure or do, or cause to be procured or done, any thing or things to the let or disturbance of the same; that then every such offence shall be high treason, and the offenders being thereof convict, shall suffer such pains of death and losses of

inheritance, freeholds, interests for years, goods, chattels, and debts, in such manner and form as is above specified in cases of treason afore mentioned.

“XIII. And for the more sure establishment of the succession of your most royal majesty, according to the tenor and form of this act; be it further enacted by authority aforesaid, that as well all the nobles of your realm spiritual and temporal, as all other your subjects now living and being, or which hereafter shall be, at their full ages, by the commandment of your majesty or of your heirs, at all times hereafter from time to time, when it shall please your highness or your heirs to appoint, shall make a corporal oath in the presence of your highness or your heirs, or before such others as your majesty or your heirs will *depute* (1) for the same, *that they shall* (2) truly, firmly, and constantly, without fraud or guile, observe, fulfil, maintain, defend, and keep, to their cunning, wit, and uttermost of their powers, the whole effects and contents of this present act. And that all manner your subjects, as well spiritual as temporal, suing livery, restitutions, or *ouster le main*, out of the hands of your highness or of your heirs, or doing any fealty to your highness or to your heirs, by reason of tenure of their lands, shall swear a like corporal oath, that they and every of them, without fraud or guile, to their cunning, wit, and uttermost of their powers, shall truly, firmly, and constantly observe, fulfil, maintain, defend, and keep the effects and contents contained and specified in this act, or in any part thereof; and that they, nor any of them, shall hereafter have any liveries, *ouster le mains*, or restitution out of your hands, nor out of the hands of your heirs, till they have made the said corporal oath above rehearsed; and if any person or persons, being commanded by authority of this act to make the said oath afore limited, obstinately refuse that to do, in contempt of this act, that then every such person so doing, to be taken and accepted for offender in misprision of high treason; and that every such refusal shall be deemed and adjudged misprision of high treason; and the offender therein to suffer *such pains* (3) and imprisonment, losses and forfeitures, and also lose privileges of sanctuaries, in like manner and form as is above mentioned for the misprisions of treasons afore limited by this act.

“XIV. Provided always, that the article in this act contained concerning prohibitions of marriages within the degrees aforementioned in this act, shall always be taken, interpreted, and expounded of such marriages, where marriages were solemnized and carnal knowledge was had.”

XXIV. STAT. 26 HENRICI 8, c. 1 (4). A.D. 1534.

“*The King's Grace to be authorized Supreme Head.*”

“Albeit the king's majesty justly and rightfully is and ought to be the supreme head of the church of England, and so is *recognised by the clergy* (5) of

STAT. 25 HEN. 8, c. 22.

All persons shall be sworn to perform the contents of this act. 26 Hen. 8, c. 2.

The penalty of them which refuse to take the oath.

Marriage with carnal knowledge. See 1 Eliz. c. 1.

STAT. 26 HEN. 8, c. 1.

The king shall be reputed

(1) *Depute*.—As soon as the session of parliament was over, commissioners were accordingly deputed and sent into all parts, to offer the oath to the king's subjects.

(2) *That they shall*.—This act did not set down the form of the oath to be taken; nor is it easy to know, whether any particular form was observed throughout England; (a commission having been given to Bishop Bonner and others, in Queen Mary's time, to raze out of the records, all things that had been done in contempt of the see of Rome, or to the defamation of religious houses;) but Bishop Burnet (App. p. 8.) found two forms, with the subscriptions remaining; one of which he has printed at length; from whence it is ascertained, that (besides the point of the succession,) they swore, “*Quòd confirmatum ratumque habemus, semperque perpetuò habituri sumus, quòd prædictus rex noster Henricus est, caput ecclesiæ Anglicanæ.*” Item, [this was voted in convocation, Mar. ult. 1534, Jour. Conv.] *quòd episcopus*

Romanus, qui in suis bullis papæ nomen usurpat et summi pontificis principatum sibi arrogat nihilo majoris neque auctoritatis aut jurisdictionis habendus sit, quàm cæteri quivis episcopi in Anglia alibi in sua ejusque diocesi. Item, *quòd unusquisque, in suis orationibus et comprecationibus de more faciendis, primùm omnium regem, tanquam supremum caput ecclesiæ Anglicanæ, Deo et populi precibus commendabit.*”

(3) *Such pains*.—As in sect. 9 of this statute, (*antè* 176.) viz. “They shall suffer imprisonment of their bodies at the king's will, and shall lose as well all their goods, chattels, and debts, as all such interests and estates of freehold, or for years, which any such offender shall have of or in any lands, rents, or hereditaments whatsoever, at the time of conviction and attainer of such offence.”

(4) Repealed by Stat. 1 & 2 P. & M. c. 8. Revived by Stat. 1 Eliz. c. 1. Stat. 5 Eliz. c. 1. Stat. 8 Eliz. c. 1.

(5) *Recognised by the clergy*.—This re-

STAT. 26 HEN.
8, c. 1.

supreme head
of the church
of England,
and correct all
heresies and
offences.

this realm in their convocations, yet nevertheless, for corroboration and confirmation thereof, and for increase of virtue in Christ's religion within this realm of England, and to repress and extirp all errors, heresies, and other enormities and abuses heretofore used in the same: be it enacted by authority of this present parliament, that the king our sovereign lord, his heirs and successors, kings of this realm, shall be taken, accepted, and reputed the only supreme head in earth of the church of England, called *Anglicana Ecclesia*; and shall have and enjoy, annexed and united to the imperial crown of this realm, as well the title and stile thereof, as all honours, dignities, pre-eminences, jurisdictions, privileges, authorities, immunities, profits, and commodities to the said dignity of supreme head of the same church belonging and appertaining; and that our said sovereign lord, his heirs and successors, kings of this realm, shall have full power and authority from time to time to visit, repress, redress, reform, order, correct, restrain, and amend all such errors, heresies, abuses, offences, contempts, and enormities, whatsoever they be, which by any manner spiritual authority or jurisdiction ought or may lawfully be reformed, repressed, ordered, redressed, corrected, restrained, or amended, most to the pleasure of Almighty God, the increase of virtue in Christ's religion, and for the conservation of the peace, unity, and tranquillity of this realm; any usage, custom, foreign laws, foreign authority, prescription, or any other thing or things to the contrary hereof notwithstanding."

Repealed by
1 & 2 P. & M.
c. 8, and
revived by
1 Eliz. c. 1.

STAT. 26 HEN.
8, c. 3.

XXV. STAT. 26 HENRICI 8, c. 3 (1). A.D. 1534.

"The Bill for the First-fruits, with the yearly Pensions to the King."

First-fruits of
all dignities
spiritual shall
be paid to the
king, &c.
12 Co. 45.
Rep. 2 & 3
P. & M. c. 4,
and revived by
1 Eliz. c. 4.
2 Ann. c. 11.

"Forasmuch as it is, and of every duty ought to be, the natural inclination of all good people, like most faithful, loving, and obedient subjects, sincerely and willingly to desire to provide, not only for the public weal of their native country, but also for the supportation, maintenance, and defence of the royal estate of their most dread, benign, and gracious sovereign lord, upon whom, and in whom dependeth all their joy and wealth, in whom also is united and knit so princely a heart and courage, mixed with mercy, wisdom, and justice, and also a natural affection joined to the same, as by the great, inestimable, and benevolent arguments thereof, being most bountifully, largely, and many times shewed, ministered, and approved towards his loving and obedient subjects, hath well appeared, which requireth a like correspondence of gratitude to be considered, according to their most bounden duties; wherefore his said humble and obedient subjects, as well the lords spiritual and temporal, as the commons, in this present parliament assembled, calling to their remembrance not only the manifold and innumerable benefits daily administered by his highness to them all, and to the residue of all other his subjects of this realm; but also how long time his majesty hath most victoriously, by his high wisdom and policy, protected, defended, and governed this his realm,

cognition was given, when the clergy made a grant of 100,000*l.* to obtain from the king a general pardon of all forfeitures by them incurred, upon the Statutes of Præmunire and Præmunire, particularly, for their having submitted to the legatine authority of Cardinal Wolsey, contrary to the tenour of such statutes. The grant of the subsidy, as to the money, appears to have passed the convocation quickly and easily; but the king refused to accept the gift, or grant the pardon, unless after the words, "*ecclesiæ et cleri Anglicani*," in the form of the grant, they would add, "*cujus protector et supremum caput is solus est*," &c. This remained under the deliberation of both houses of convocation, who, by their debates, appear to have been very desirous, that the king should accept the subsidy without the clause; but in the thirty-fourth session, the king's commissioners, upon being sent to

inquire, whether they had yet come to a resolution, told them, "*quod dominus rex noluit admittere ullam qualificationem super eadem*;" and in the next session, the commissioners declared: "*Se non habere commissionem de concludendo super articulo pardonationis et exceptionis ejusdem, priusquam conclusum fuisset per episcopos et clerum, super dicto primo articulo*." At length it was agreed to in these words: "*Ecclesiæ et cleri Anglicani cujus singulare protectorem unicum et supremum dominum et quantum per Christi legem licet, etiam supremum caput ipsius majestatem recognoscimus*."

(1) *Vide* Stat. 7 Edw. 6, c. 4. Stat. 1 Eliz. c. 4. Stat. 2 & 3 Ann. c. 11. Stat. 5 Ann. c. 24. Stat. 6 Ann. c. 27. Stat. 1 Geo. 1, St. II. c. 10. Stat. 3 Geo. 1, c. 10. Stat. 43 Geo. 3, c. 107. Stat. 1 & 2 Vict. c. 20.

and maintained his people and subjects of the same in tranquillity, peace, unity, quietness, and wealth; and also considering what great, excessive, and inestimable charges his highness hath heretofore been at, and sustained by the space of five and twenty whole years, and also daily sustaineth, for the maintenance, tuition, and defence of this his realm, and his loving subjects of the same, which cannot be sustained and borne without some honourable provision and remedy may be made, found, provided, and ordained for maintenance thereof; do therefore desire, and most humbly pray, that for the more surety of continuance and augmentation of his highness' royal estate, being not only now recognized (as he always indeed hath heretofore been) the only supreme head in earth, next, and immediately under God, of the church of England, but also their most assured and undoubted natural sovereign liege lord and king, having the whole governance, tuition, defence, and maintenance of this his realm, and most loving and obedient subjects of the same: it may therefore be ordained and enacted by his highness, and the lords spiritual and temporal, and the commons, in this present parliament assembled, and by authority of the same, in manner and form following:

"II. That is to say, that the king's highness, his heirs and successors, kings of this realm, shall have and enjoy from time to time, to endure for ever, of every such person and persons which at any time after the first day of January next coming shall be nominated, elected, prefected, presented, collated, or by any other means appointed, to have any archbishoprick, bishoprick, abbacy, monastery, priory, college, hospital, archdeaconsry, deanery, provostship, prebend, parsonage, vicarage, chauntry, free chapel, or other dignity, benefice, office, or promotion spiritual within this realm, or elsewhere within any of the king's dominions, of what name, nature, or quality soever they be, or to whose foundation, patronage, or gifts soever they belong, the first-fruits, revenues, and profits for one year of every such archbishoprick, bishoprick, abbey, monastery, priory, college, hospital, archdeaconsry, deanery, provostship, prebend, parsonage, vicarage, chauntry, free chapel, or other dignity, benefice, office, or promotion spiritual afore named, whereunto any such person or persons shall after the said first day of January be nominated, elected, prefected, presented, collated, or by any other means appointed; and that every such person and persons, before any actual or real possession, or meddling with the profits of any such archbishoprick, bishoprick, abbacy, monastery, college, hospital, deanery, provostship, prebend, parsonage, vicarage, chauntry, free chapel, priory, or other dignity, benefice, office, or promotion spiritual, shall satisfy, content, and pay, or compound or agree to pay to the king's use, at reasonable days, upon good sureties, the said first-fruits and profits for one year.

"III. And be it also enacted by authority aforesaid, that the chancellor of England and master of the rolls for the time being, jointly and severally, or such other person and persons as shall please the king's highness, his heirs or successors, from time to time, at his or their pleasure, to name and depute, by commission or commissions under the great seal, shall have power and authority, as well to examine and search for the just and true value of the said first-fruits and profits, by all ways and means that they can, as to compound and agree for the rate of the said first-fruits and profits, and to stall and limit reasonable days for payment thereof upon good and sufficient surety or sureties, by writings obligatory by their discretions; and if composition or agreement be had or made for the said first-fruits before the said lord chancellor or master of the rolls, that then the writings obligatory, or money taken for the same, shall rest, remain, and abide in the hanaper of the king's chancery, there safely to be kept to the king's use, and the money to be due of such writings obligatory, or to be received in hand by reason of any such composition, shall be paid in the said hanaper to the clerk of the hanaper for the time being, and that the said clerk of the hanaper shall make a true and just account thereof, like as he is bound to do of the money received of the profits of the king's great seal; and if composition or agreement be had or made for the said first-fruits, afore any other person or persons to be deputed by the king's highness, his heirs or successors, by commission under his great seal, that then the writings

STAT. 26 HEN.
8, c. 3.

First-fruits and profits for one year of every spiritual living is granted to the king.

By 27 Hen. 8, c. 8, s. 1, a deduction is to be made of the tenth part of the whole out of the first-fruits for the first year.

Every spiritual person shall be bound for his first-fruits before his actual possession of his benefice. See 28 Hen. 8, c. 11, s. 3, declaring when first-fruits shall commence.

Commissioners to search for the value of benefices, and to compound for the first-fruits.

The money taken for first-fruits shall be delivered to the treasurer of the chamber,

STAT. 26 HEN.
8, c. 3.

whose acquittance shall be sufficient discharge for the first-fruits.

An obligation for the first-fruits shall be of the same strength that a Statute of the Staple is.

The penalty of commissioners concealing bonds taken for the payment of first-fruits.

Whoso entreth upon his spiritual living before composition, shall forfeit double the value of the first-fruits.

obligatory, and money taken for the same, shall be delivered to the treasurer of the king's most honourable chamber, for the time being, or elsewhere to whom it shall please the king's highness, his heirs or successors, to give authority by commission under the great seal, to receive the same.

"IV. And it is also ordained and enacted by authority aforesaid, that every writing of acquittance subscribed with the hand and name of the clerk of the hanaper, and treasurer of the chamber, or other commissioners aforesaid, or any of them, witnessing the receipt of the said first-fruits or any part thereof, shall be as good and effectual against the king's highness, his heirs and successors, to every person and persons having the same, for so much money as shall be mentioned to be received and contained in every such acquittance, as if such acquittance were or had been lawfully had and obtained in the king's name, under the king's great seal, and so shall be admitted, accepted, allowed, and taken in every of the king's courts; and that all writings obligatory to be taken for payment of the said first-fruits, by and afore the said lord chancellor, or master of the rolls, or by and afore any other person or persons to be deputed to compound and agree for the said first-fruits, as is aforesaid, shall be of the same strength, force, virtue, quality, and effect, to all intents and purposes, as writings obligatory heretofore made by any lay person by authority of the Statute of the Staple been; and that upon certificate hereafter to be made into the king's chancery, of any such writings obligatory to be taken for payment of such first-fruits, like process and execution shall be thereupon made and had against any person spiritual and temporal, as hath been accustomed to be made against any lay person, upon certificate of writings obligatory of the said Statute of the Staple; and that no person shall be compelled to pay for any writing obligatory to be made for the said payment of the said first-fruits, above viii. *d.*, nor for any acquittance to be made for receipt of such first-fruits, above iv. *d.*, and that such person and persons as shall be deputed by the king's highness, by commission under the great seal, to compound and agree for the said first-fruits, shall, at the end of every six months next after the date of their commission, and so from six months to six months, deliver or cause to be delivered unto the treasurer of the chamber for the time being, or elsewhere to such commissioners as shall be appointed as is aforesaid, to receive the same, as well all such money, as all such specialties and bonds as they shall have taken for the payment of the said first-fruits, by indenture to be made between them and the said treasurer, or other commissioners as is aforesaid, containing the certainty and number of the sums of money and specialties, and bonds by them taken and received; and if any person or persons to whom any deputation shall be made by commission, to compound and agree for the payment of the said first-fruits, their heirs, executors, or administrators, conceal or imbezzle any of the said specialties or bonds taken for the sure payment of the said first-fruits, and do not deliver them according to the tenor of this act, that then every such offender shall forfeit that office of deputation, and over that make fine and ransom at the king's own pleasure and will.

"V. And it is also enacted by authority aforesaid, that if any person or persons, which at any time after the said first day of January shall be nominated, elected, prefected, presented, collated, or by any other means appointed to any of the dignities, offices, benefices, or other promotions spiritual before-mentioned, do enter into the actual and real possessions thereof, or meddle with the profits thereof, before they shall have truly satisfied and paid to the king's use, the first-fruits and profits thereof for one year, or else shall have agreed or compounded for payment of the same at reasonable days upon good sureties, in manner and form as by this act is above specified, that then every such person and persons so doing and offending, and being thereof convict by presentment, verdict, confession, or witness before the said lord chancellor, or such other as shall have authority by commission to compound for the said first-fruits and profits as is aforesaid, shall be accepted and taken an intruder upon the king's possession; and that they, their executors or administrators, shall pay to the use of the king's highness, for every such offence, so much sums of money as shall amount to the double value of the said first-fruits and profits of such dignities, benefices, or other spiritual promotions wherein they

shall so enter and intrude before the payment of the said first-fruits and profits for one year thereof, or before due agreement made for the same, in manner and form as is above rehearsed. STAT. 26 HEN. 8, c. 3.

“VI. And be it further enacted by authority aforesaid, that the first-fruits of benefices heretofore accustomed to be paid to the Bishop of Norwich, within his diocese, and to the Archdeacon of Richmond, within his archdeaconry, or to any other person or persons within this realm, or any other the king’s dominions, shall from the said first day of January cease, and be extinct, and no longer be paid, but only to the king’s highness, his heirs and successors, in such form as is above mentioned in this act. All first-fruits payable to other persons shall cease, and be paid to the king. See 32 Hen. 8, c. 47, s. 3.

“VII. Provided always, that archbishops and bishops, and all other having jurisdiction ordinary, may give and deliver letters of institution and induction, as they might do before the making of this act, without any offence of any article contained in this act; any thing in this act contained to the contrary thereof notwithstanding. The bishops may give institution and induction.

“VIII. Provided also, that where there be divers cells appertaining to monasteries and priories, and that the priors of such cells be named, and removeable from time to time, at the only wills and pleasures of their masters and sovereigns of the monasteries and priories whereunto such cells belong; that the priors of such cells shall not be compelled to pay any first-fruits by virtue or authority of this act; any thing in this act contained to the contrary thereof notwithstanding; but that the first-fruits and profits of every such cell shall be paid to the king’s highness, his heirs and successors, whensoever and as often as any person shall be nominated, elected, prefected, or collated to the monastery or priory whereunto such cells belong. Priors removeable shall pay no first-fruits.

“IX. And over this be it enacted by the authority aforesaid, that the king’s majesty, his heirs and successors, kings of this realm, for more augmentation and maintenance of the royal estate of his imperial crown and dignity of supreme head of the church of England, shall yearly have, take, enjoy, and receive, united and knit to his imperial crown for ever, one yearly rent or pension, amounting to the value of the *tenth part* (1) of all the revenues, rents, farms, tithes, offerings, emoluments, and of all other profits, as well called spiritual as temporal, now appertaining or belonging, or that hereafter shall belong to any archbishoprick, bishoprick, abbacy, monastery, priory, archdeaconry, deanery, hospital, college, house collegiate, prebend, cathedral church, collegiate church, conventual church, parsonage, vicarage, chauntry, free chapel, or other benefice or promotion spiritual, of what name, nature, or quality soever they be, within any diocese of this realm, or in Wales: the said pension or annual rent to be yearly paid for ever to our said sovereign lord, to his heirs and successors, kings of this realm, at the feast of the Nativity of our Lord God, and the first payment thereof to begin at the feast of the Nativity of our Lord God, which shall be in the year of our Lord God 1535, and to be paid yearly by such as shall be appointed to have the collection thereof by this act, in such manner and form as shall hereafter be limited by this act, before the first day of April yearly next following after the said feast of the Nativity of our Lord. A yearly tenth of all spiritual livings given to the king.

“X. And it is ordained and enacted by authority aforesaid, that the said yearly rent and pension shall be taxed, rated, levied, perceived, and paid to the king’s use, his heirs and successors, in manner and form hereafter to be declared by this act; that is to say, that the chancellor of England for the time being shall have power and authority to direct into every diocese in this realm, and in Wales, several commissions in the king’s name, under his great seal, as well to the archbishop or bishop of every such diocese, as to such other person or persons as the king’s highness shall name and appoint, commanding and authorizing the said commissioners so to be named in every such commission, or three of them at the The tenth must be paid at Christmas.

(1) *Tenth part*:—In the times of popery, the kings of England did, on several occasions, obtain leave of the popes to receive the tenth part of all spiritual promotions, for a certain term of years; especially, to main-

tain and support the wars of the Holy Land. “Hujusmodi decimas obtinuit rex Angliæ Ricardus Primus, et ab exemplis istis, posteris sæpe reges.” Spel. *Decimæ*.

Commissions shall be awarded into every diocese to inquire of the value of every spiritual living.

STAT. 26 HEN.
8, c. 3.

Deductions to
be defalked out
of spiritual
livings.

The commis-
sioners shall
be sworn
indifferently to
execute their
commissions.

least, to examine, search, and inquire by all the ways and means that they can by their discretions, of and for the true and just whole and entire *yearly values* (1) of all the manors, lands, tenements, hereditaments, rents, tithes, offerings, emoluments, and other profits, as well spiritual as temporal, appertaining or belonging to any archbishoprick, bishoprick, abbacy, monastery, priory, archdeaconry, deanery, hospital, college, house collegiate, prebend, cathedral church, collegiate church, conventual church, parsonage, vicarage, chauntry, free chapel, or to any other benefice or promotion spiritual within the limits of their commission, with a clause to be contained in every such commission, that the said commissioners, or three of them at the least, shall deduct and allow in the making and rating of the said yearly values of the premises these deductions following, and none other; that is to say, the rents resolute to the chief lords, and all other annual and perpetual rents and charges, which any spiritual person or persons been bounden yearly to pay to any person or persons, to their heirs and successors for ever, or to give yearly in alms, by reason of any foundation or ordinance, and all fees for stewards, receivers, bailiffs, and auditors, and synods and proxies, with another clause to be also contained in every such commission, that the said commissioners, or three of them at the least, shall certify under their seals, at such days as shall be limited by the said commissions, as well the whole and intire value, as the deductions aforesaid, of every archbishoprick, bishoprick, abbacy, monastery, priory, archdeaconry, deanery, hospital, college, house collegiate, prebend, cathedral church, collegiate church, conventual church, parsonage, vicarage, chauntry, free chapel, and of all other benefits and promotions spiritual.

"XI. And it is ordained and enacted by authority aforesaid, that the said commissioners that shall be so appointed, or three of them at the least, shall have full power and authority to do, accomplish, and execute the effects and contents of their said commissions in every behalf; and that every the said commissioners, before they shall execute their said commission, shall receive and take a corporal oath before the lord chancellor, or before such other as shall be appointed by the said chancellor by the king's writ of *dedimus potestatem*, that they shall diligently and truly, without favour, affection, fraud, covin, meed, dread, or corruption, do, fulfil, and execute the whole effects and contents expressed in every such commission within the limits thereof, to their cunning, wits, and uttermost of their powers.

"XII. And it is ordained and enacted by authority aforesaid, that after such certificate made by the said commissioners, the said yearly rent and pension of the tenth part shall be set, taxed, rated, and taken justly and truly and indifferently by the treasurer, chancellor, chamberlain, and barons of the king's exchequer, of

(1) *Yearly values*:—The valuation by which all grants from the clergy to the crown, with all impositions upon the clergy by the Pope, &c. had been levied and collected, was the valuation, that was made in the time of King Edward 1. Concerning which, it is said in *Colt & Glover*, (1 Roll. 473,) that the Pope wrote a letter to the king, (which is recorded in the Office of Exchequer,) whereby he requested, that there might be a taxation of all benefices, (for till that time, the Pope had not in England any dismes or tenths,) offering, that the king should have one moiety of the tenths, and he another; but afterwards, in process of time, the Pope took the whole to himself, and excluded the king and his successors.

This looks like a formal establishment of tenths, then made and begun, and continued from that time: but, in fact, this valuation, (which was made ann. 19 & 20 Edw. 1.) was upon an occasional grant of the tenths for six years only, made by Pope Nicolas the Fourth to King Edward the First, towards his expedition to the Holy Land; (as they

had been granted by Innocent the Fourth to Henry the Third, ann. 1253, which occasioned the Norwich taxation;) and in order that such tax granted to Edward the First might be collected more easily and effectually, it was agreed between the Pope and the king, that this new taxation should be made; which was accordingly done, under the direction of the Bishops of Winchester and Lincoln, "*Taxatoribus principalibus à domino Nicolao deputatis*," as they are called in an ancient MS. copy of the taxation then taken in the diocese of Lincoln. Kenn. Par. Ant. 315.

Both these taxations seem to be referred to, in the grant of a subsidy by the clergy, A.D. 1297, (Wake Conv. App. 27,) where it is said, that all dignitaries shall pay "*secundum taxationem ultimam veri valoris, sicut decima dabatur in subsidium Terræ Sanctæ*;" and the rest, "*secundum taxationem Norwicensem*." In a grant made by the province of York, A.D. 1420, the rule is said to be "*secundum novam taxam*." 9 Rym. 855. Gibson's Codex, 828.

and out of the clear yearly value of the premises, that shall be above the deductions aforementioned, and none otherwise. And that every archbishoprick, bishoprick, abbacy, monastery, priory, archdeaconry, deanery, hospital, college, house collegiate, prebend, cathedral church, collegiate church, conventual church, parsonage, vicarage, chauntry, free chapel, or other benefice or promotion spiritual, shall be severally and distinctly taxed, charged, and chargeable, in the proper diocese where they been, for the payment of such portion of the said tenth part, as shall be taxed and set upon them by authority of this act; that is to say, every of them by and for themselves shall be taxed, charged, and chargeable in the proper diocese where they been, for the tenth part of the yearly value of their possessions and profits to them belonging, wheresoever their said possessions and profits shall happen to be or lie in any part of this realm, or elsewhere in any of the king's dominions; and that none of them shall be charged or chargeable for the payment of the other's charge or portion.

"XIII. And it is also enacted by authority aforesaid, that after such certificate made into the king's exchequer, and tax set out of the tenth part, in form above remembered, every archbishop and bishop now being, and that hereafter shall be, shall be charged and chargeable to levy, collect, and receive, within their proper diocese, as well in places exempt as not exempt, all such sums of money wherewith the dignities, benefices, and other promotions spiritual afore mentioned within their diocese, chargeable by this act, shall be set, taxed, and charged towards the payment of the said yearly pension, and shall pay and content the said sums of money yearly, before the said first day of April, to the treasurer of the king's chamber for the time being, or to any other person or persons whom it shall please the king's highness to appoint to receive the same; and that every of the said archbishops and bishops, their executors and administrators, and the possessions of their dignities and churches, shall stand charged and chargeable for the sure and true payment of such sums of money as they shall collect and receive of the said yearly rent and pension.

"XIV. And that the treasurer, chancellor, chamberlain, and barons of the king's exchequer, shall yearly cause process to be made by their discretions for non-payment of the said pension or yearly rent, or any parcel thereof, against every archbishop and bishop of this realm; that is to say, against every archbishop and bishop for so much part and portion of the said pension and yearly rent, wherewith the dignities, benefices, and other promotions spiritual afore mentioned within his diocese shall be taxed and charged; so that every of the said archbishops and bishops shall be charged and chargeable for the rate and portion of the said yearly rent and pension set and taxed within his own peculiar diocese, and not otherwise.

"XV. And be it also enacted by authority aforesaid, that every archbishop and bishop shall have power and authority to levy, take, and perceive, by authority of the censures of the church, or by distress or otherwise, by their discretion, all such sums of money as shall be rated, taxed, and set to go out of the lands, tenements, hereditaments, profits, and emoluments of any dignity, office, benefice, or other place or promotion spiritual within their diocese, towards the payment of the said yearly rent and pension; and that no replevin, prohibition, nor *supersedeas* upon any excommunication, nor any other writ or impediment shall be sued, allowed, or obeyed, for any person or persons making default of payment of such part and portion as they shall be rated and taxed unto by authority of this act, till such time as they have truly satisfied their said part and portion to them allotted of the said yearly rent and pension.

"XVI. And it is also enacted by authority aforesaid, that whensoever and as often as any of the archbishopricks or bishopricks happen to be void, that then the dean and chapter of the cathedral church, or the prior and convent, or chapter or convent of the monastery or cathedral church, where the see of such archbishoprick or bishoprick being void shall happen to be, during the time of the vacation thereof, and their executors, administrators, and possessions, shall be charged and chargeable to do and cause to be done all and every thing and things

STAT. 26 HEN.
8, c. 3.

Every spiritual person shall be charged for his tenths in the diocese where they be, though their possessions lie in other dioceses.

Bishops shall be charged to the collection of their tenths in their dioceses.

12 Co. 45.

32 Hen. 8, c. 47.

34 Hen. 8, c. 17.

31 Hen. 8,

c. 13.

27 Hen. 8.

c. 28.

By 3 Geo. 1, c. 10, the king is to appoint a collector to receive the tenths.

Process against a bishop for the payment of all tenths within his diocese.

By what means the bishop shall levy the tenths of every spiritual promotion.
32 Hen. 8, c. 22.

Who shall be collectors in time of vacation of a bishoprick.

STAT. 26 HEN.
8, c. 3.

for the due execution of this act, within the diocese of such archbishoprick or bishoprick being void, as the same archbishop or bishop of the see, being void, should have done, according as it is limited and appointed by this act, or by any thing therein contained.

The penalty
for default of
payment of
tenths.
1 Eliz. c. 4.
Moor, 541, pl.
714.

“XVII. And it is ordained and enacted by authority aforesaid, that if any sum of money being once due by any incumbent of any the dignities, benefices, or promotions spiritual afore specified, charged to the payment of the said yearly pension and annual rent, be reasonably demanded and required any time after the said feast of the Nativity of our Lord, at their dignities, monasteries, priories, hospitals, colleges, churches, chaunteries, or houses, by the archbishop or bishop, or such as shall be charged with the collection of any part of the said pension, or by any other their ministers, servants, or officers, to pay such portion of the said pension and yearly rent, as they shall be taxed and assessed unto, be not truly contented and paid unto such archbishop or bishop, or their ministers and officers, and to such other person or persons, or their ministers or servants, as shall have the charge of collection thereof every year yearly, at the time of such request and demand thereof, or else within forty days next after every such request at the farthest; that then every incumbent making such default of payment, after such default thereof certified into the king's exchequer in writing under the seals of any archbishop or bishop, or of such as be limited and charged to the collection of the said pension by this act, shall be adjudged deprived *ipso facto* of all such dignities, benefices, pensions, and promotions spiritual, as any such incumbent making such default, shall have at the time of such certificate to be made, or at any time after; so that all such dignities, benefices, pensions, and promotions spiritual, which any incumbent, making such default of payment, shall have at the time of any such certificate to be made, or at any time after, shall be clearly void and destitute of incumbent in the law, to all intents and purposes, as if such incumbent, making such default of payment, were dead indeed.

Altered by
2 & 3 Edw. 6,
c. 20, s. 3.
Dyer, 237.

The bishop
making a cer-
tificate of any
incumbent
omitting to
pay his tenths,
shall be
discharged
thereof.
7 Edw. 6, c. 4.
Savil, 1.
Dyer, 116.

“XVIII. And it is ordained and enacted by authority aforesaid, that if any archbishop or bishop, or any other, limited and charged by this act to the collection and payment of the said pension and annual rent, do make a certificate unto the king's exchequer before the said first day of April, or at any time within four and twenty days next after the said first day of April, that they according to this act have reasonably required and demanded any incumbent of any dignity, benefice, or promotion spiritual, chargeable by this act, to pay such part or portion of the said pension and annual rent, as they shall happen to be assessed unto, and that such incumbent, so being required, hath not paid his said part and portion according to the form and effect of this act; that then every such archbishop and bishop, and every other person having the charge by this act for collection and payment of the said pension and annual rent, upon every such certificate, shall be discharged and acquitted for ever against the king, his heirs and successors, of and for such sums of money as any such incumbent, against whom any such certificate shall be made, should or ought to have paid by this act; and that then in every such case the treasurer, chancellor, chamberlain, and barons of the king's exchequer, shall devise and direct, upon every such certificate, such process out of the king's exchequer against every such incumbent, against whom any such certificate shall be made, and their executors and administrators, or for insufficiency of them, against the successors of every such incumbent, whereby the king's highness, his heirs and successors, shall and may be truly answered, paid, and contented of such portion and part, as the incumbent against whom any such certificate shall be made, was taxed and assessed for his dignities, benefices, or promotion spiritual chargeable by this act.

Process shall
be awarded
against the
refusers to pay
their tenths.

Whose acquit-
tances shall be
a discharge for
the payment of
the tenths.

“XIX. And it is also ordained and enacted by authority aforesaid, that all manner of acquittances made by the treasurer of the king's chamber, or by any other such commissioners as shall be appointed as is aforesaid, to receive the said pension, or any part thereof, and subscribed with the name of the said treasurer, or any other such commissioner, for the payment of the said pension or annual rent, or any part thereof to any such person or persons as be limited and

charged with the collection thereof, shall be of as good strength, force, virtue, and effect to the parties having the same, as if they were made in the king's name, under his great seal, and so shall be allowed, admitted, and accepted in all courts of this realm; and that the treasurer, chancellor, chamberlain, and barons of the king's exchequer, shall, by virtue and authority of this act, as well admit and allow such acquittances, as all such certificates as shall be made against any incumbent for default of payment, as is above said, upon the account of every archbishop and bishop, and of every other person limited and charged by this act for the collection and payment of the said pension and annual rent, without any writ, bill, or warrant, to be used in or for that behalf.

STAT. 26 HEN.
8, c. 3.

“XX. And that no manner of officer of the king's exchequer shall take of any archbishop or bishop, or of any other person having charge with the collection and payment of the said pension and annual rent, any manner reward or thing for making their account or *quietus est* in the same exchequer, or for any manner of thing appertaining to the same, concerning the said pension and annual rent, upon pain of every officer, doing contrary to this act, to lose and forfeit his office, and make fine to the king at his will and pleasure.

Nothing shall be taken in the exchequer of a bishop or his collector for his account or *quietus est*. Savil, 38.

“XXI. And forasmuch as every incumbent of the dignities, benefices, and promotions spiritual afore mentioned, shall be charged by this act to the payment of the tenth part of the value of their dignities, benefices, and promotion spiritual, without any deduction or allowance of such pension or pensions, wherewith some of them been charged to pay to their predecessors during their lives, or to other persons to the use of such their predecessors during their lives: it is therefore ordained and enacted by authority aforesaid, that it shall be lawful to every incumbent charged with any such pension payable to any his predecessors, or to any to his use, to retain and keep in his hand the tenth part of every such pension; and that every such incumbent and his sureties shall from henceforth be acquitted and discharged of the said tenth part of every such pension, by virtue and authority of this present act; any decree, ordinance, or assignment of any ordinary, or any collateral writing or security made for such pension to any spiritual person or persons, or to any to their uses for term of their lives, in any wise notwithstanding; and that as well every incumbent, as such persons as stand bound for him for payment of any such pensions, shall plead this act in every of the king's courts, for the clear extinguishment and discharge of the tenth part of every such pension.

They which pay pensions to others out of their spiritual living may retain the tenth part thereof.

“XXII. And be it also ordained and enacted by authority aforesaid, that no pension shall hereafter be assigned by the ordinary, or by any other manner of agreement, by collateral surety, or otherwise, upon any resignation of any dignity, benefice, or promotion spiritual, above the value of the third part of the dignity, benefice, or promotion spiritual resigned: and if any pension amounting above the value of the third part of the dignity, benefice, or promotion spiritual heretofore resigned, be already limited and made sure to any spiritual person or persons by decree of the ordinary, or otherwise by any collateral surety, or hereafter shall happen to be assigned and made sure to any person or persons spiritual, or to any other to their use, by decree of the ordinary, or by any other collateral surety, upon any resignation thereof; yet nevertheless the incumbent charged with such pension, nor his sureties collateral, shall not be compelled to pay any more pension than the value of the third part of his dignity, benefice, or promotion spiritual so resigned shall amount unto; but shall by authority of this act be clearly acquitted and discharged of so much of the said pension as shall amount above the value of the third part of the dignity or benefice resigned; any decree or assignment of the ordinary, or any collateral writings or sureties heretofore made, or hereafter to be had or made for the same, to the contrary thereof notwithstanding.

No pension shall be reserved upon the resignation of a benefice, above the value of the third part. 13 Eliz. c. 20.

“XXIII. And forasmuch as divers abbots and priors been charged to pay great pensions to sundry their predecessors yet living, to the great decay of their hospitalities and housekeeping; be it enacted by authority aforesaid, that every such predecessors of such abbots or priors, having any pension made sure unto them, or to any to their use, during their lives, amounting above the yearly value of *xli. li.*,

Abbots or priors paying pensions to their predecessors.

STAT. 26 HEN.
8, c. 3.

shall from henceforth be defalked and abated of the moiety and half-deal of every such pension; and that every abbot, and all other persons charged for the payment of such pension above the said yearly value of *xli. li.* shall be clearly acquitted and discharged by authority of this act of the moiety and half deal thereof for ever; any decree or assignment thereof by the ordinary, or any writing or surety collateral had or made for the surety thereof notwithstanding.

The Prior of
St. John's of
Jerusalem shall
pay first-fruits
and tenths.

“XXIV. And forasmuch as the Lord Prior of Saint John's of Jerusalem in England, and his brethren, be not specially named and expressed in this act, whereby ambiguity might arise, whether they should be comprised within the limits of this act; it is therefore for plain declaration thereof enacted by authority aforesaid, that every person and persons which after the said first day of January shall happen to be nominated, elected, collated, or by any other means appointed, to the dignity of the said priory of Saint John's of Jerusalem in England, or to any commandry appertaining unto the same, shall before their actual and real entry into the same dignity or commandry, or meddling with the profits thereof, satisfy and pay to the use of the king's highness, his heirs and successors, the first-fruits and profits thereof for one whole year, or agree to compound for the same at reasonable days, in like manner and form, and upon like pain in every behalf, as archbishops and bishops and other spiritual persons be bound to do by virtue and authority of this act: and that also the Prior of St. John's now being, and his successors, and every of his brethren, having any commandry, and their successors, shall contribute and pay yearly to the king's highness, his heirs and successors, one yearly rent and pension amounting to the tenth part of all their possessions and profits, as well spiritual as temporal, and shall be charged, rated, taxed, and set to the contribution and payment of the said tenth part; and that also the said tenth part shall be levied, collected, and paid, in such like manner and form, to all intents and purposes, as the tenth part of other dignities and benefices spiritual shall be charged, taxed, set, levied, collected, and paid by authority of this act.

They which in
one corpora-
tion have
several
possessions
belonging to
their dignities,
shall pay for
their own pos-
sessions, and
not for others.

“XXV. And forasmuch as in sundry and many cathedral churches, colleges, and hospitals of this realm, there is, and time out of mind hath been, certain ordinances instituted and made, whereby the dean, provost, master, or other chief governor of such churches, colleges, and hospitals, hath a certain part and portion of the possessions and profits belonging to such churches, colleges, and hospitals, all only limited and belonging to their offices and dignities; and every prebendary, brother, vicar, fellow, petit canon, and other ministers spiritual, in such churches, colleges, and hospitals, hath another portion, all only and distinctly limited, appertaining and belonging to their dignities and offices in such churches, hospitals, and colleges: it is therefore provided and ordained by authority aforesaid, that such person and persons which at any time after the said first day of January shall be nominated, elected, presented, prefected, collated, or by other means appointed to be dean, provost, master, or other chief governor of such cathedral churches, colleges, or hospitals, shall be rated, compound and pay, for their first-fruits, but only after the rate of the yearly value of the possessions and profits limited and belonging to their office and dignity.

“XXVI. And that every other person and persons, that after the said first day of January shall be nominated, elected, presented, prefected, collated, or by any other means appointed to have any prebend, brothership, fellowship, or to be any vicar or petit canon, or to have any other dignity or office spiritual in any such cathedral churches, colleges, or hospitals, shall be rated, compound, and pay, for their first-fruits, after the rate of the yearly value of the possessions and profits limited and belonging to their dignities and offices, in such churches, colleges, and hospitals, and none otherwise; any thing in this act to the contrary hereof notwithstanding.

No first-fruits
shall be paid
for a benefice
being not above
the yearly value

“XXVII. Provided always, that such person or persons, that after the said first day of January, shall be presented or collated to any parsonage or vicarage, whereof the yearly value shall not exceed *viii. marks*, shall not be compelled to pay any first-fruits for any such parsonage or vicarage whereunto they shall be

presented or collated, not being above the said yearly value of viii. marks; except that the incumbent presented or collated to such parsonage or vicarage, whereof the yearly value shall not exceed viii. marks, do live three years next and immediately following after his institution, induction, or collation to such parsonage or vicarage; and if such incumbent do live after the said three years, then he or his executors or administrators, shall pay, at days to be limited after the said three years, upon sureties, (as is aforesaid,) the first-fruits of every such parsonage or vicarage: and that in every obligation to be made by any incumbent of such parsonage or vicarage, and his sureties, for payment of the first-fruits of such parsonage or vicarage, there shall be contained a proviso, that if the said incumbent die within three years next after the date of the institution, induction, or collation of the said parsonage or vicarage, that then the obligation shall be void and of none effect; any thing in this act to the contrary hereof notwithstanding.

“XXVIII. And over this where the clergy of the province of Canterbury, in their convocation, have granted unto the king’s highness one hundred thousand pounds, and the clergy of the province of York, eighteen thousand eight hundred forty pounds ten pence, to be paid by even portions in five years, and that which could not be levied thereof in the same five years, to be paid in the sixth year, as by the tenor of their several grants thereof made in their several convocations more plainly appeareth: it may please the king’s majesty of his excellent goodness, in consideration that the said yearly pension and annual rent shall be yearly from henceforth duly paid and satisfied to his highness and to his heirs and successors, according to the tenor, form, purport, and effect of this present act, that it may be enacted by authority of this present parliament, that the clergy of the said province of Canterbury, and every of them, shall be discharged and acquitted against our said sovereign lord, his heirs and successors, of and for the twenty thousand pound, parcel of the said hundred thousand pound, which should be paid in the fifth year of payment limited by their grant: and that the clergy of the said province of York, shall likewise be discharged and acquitted of and for all such sums of money, parcel of the said eighteen thousand eight hundred forty pounds and ten pence, which should be paid in the fifth year of payment limited by their grant; any thing in their said several grants thereof made in any wise notwithstanding.

“XXIX. Provided always, that all the residue of sums of money, which be yet to be paid, and not released nor discharged by this act, shall be truly paid and satisfied to our said sovereign lord, his heirs and successors, according to the tenor, form, and effect of their said several grants.

“XXX. Provided also, that all such fees, which any archbishop, bishop, abbot, prior, or other prelate of the church is bounden yearly to pay to any chancellor, master of the rolls, justices, sheriffs, or other officers or ministers of record, for temporal justice to be done or ministred within their diocese or jurisdictions, shall be allowed and deducted by the commissioners aforesaid, in and upon the valuation of the dignities, monasteries, priories, or churches chargeable with such fees; any thing in this act to the contrary hereof notwithstanding.”

2 & 3 Edw. 6, c. 20. 7 Edw. 6, c. 4. 1 Eliz. c. 4. 2 Ann. c. 11. 5 Ann. c. 24. 6 Ann. c. 27. 1 Geo. 1, c. 10. 3 Geo. 1, c. 10.

XXVI. STAT. 26 HENRICI 8, c. 12 (1). A.D. 1534.

“*The Bill concerning Counties in Wales.*”

[Clerks convict in Wales shall find surety for their good abearing. The benefit of clergy taken from offenders in several felonies, unless they be within holy orders. He within holy orders, who is convict of felony, before his purgation shall find sureties for his good abearing. A remedy where there be no justices of peace in that county in Wales where the clerk convict doth remain in prison.]

STAT. 26 HEN. 8, c. 3.

of eight marks. Altered by 1 Eliz. c. 4, s. 29.

A proviso in the obligation, if the incumbent die within three years.

How much the clergy of the two provinces of Canterbury and York shall be yearly discharged of, and wherefore.

Fees which any prelate is bound to pay for temporal justice. 26 Hen. 8, c. 17. 27 Hen. 8, c. 8. 32 Hen. 8, c. 22.

STAT. 26 HEN. 8, c. 12.

STAT. 26 HEN.
8, c. 13.

XXVII. STAT. 26 HENRICI 8, c. 13. A.D. 1534.

"An Act whereby Offences be made High Treason, and taking away all Sanctuaries for all manner of High Treasons."

STAT. 26 HEN.
8, c. 14.

XXVIII. STAT. 26 HENRICI 8, c. 14(1). A.D. 1534.

"For Nomination of Suffragans, and Consecration of them."

By whom
suffragans shall
be nominated
and appointed.
25 Hen. 8,
c. 20.

Sees for the
suffragan
bishops.

The bishop
shall present
two persons to
the king for
his suffragans.

"Albeit that sithen the beginning of this present parliament, good and honourable ordinances and statutes have been made and established for elections, presentations, consecrations, and investing of archbishops and bishops of this realm, and in all other the king's dominions, with all ceremonies appertaining unto the same, as by sundry statutes thereof made more at large is specified; yet nevertheless *no provision hitherto hath been made* (2) for suffragans, which have been *accustomed to be had* (3) within this realm, *for the more speedy administration* (4) of the sacraments, and other good, wholesome, and devout things, and laudable ceremonies, to the increase of God's honour, and for the commodity of good and devout people: be it therefore enacted by authority of this present parliament, that the towns of Thetford, Ipswich, Colchester, Dover, Guilford, Southampton, Taunton, Shaftsbury, Molton, Marlborough, Bedford, Leicester, Gloucester, Shresbury, Bristow, Penreth, Bridgwater, Nottingham, Grantham, Hull, Huntington, Cambridge, and the towns of Pereth and Berwick, S. Germans in Cornwall, and the Isle of Wight, shall be taken and accepted for sees of bishops suffragans to be made in this realm, and in Wales, and the bishops of such sees shall be called suffragans of this realm; and that every archbishop and bishop of this realm, and of Wales, and elsewhere within the king's dominions, being disposed to have any suffragan, shall and may at their liberties name and elect, that is to say, every of them for their peculiar diocese, two honest and discreet spiritual persons, being learned, and of good conversation, and those two persons so by them to be named, shall present to the king's highness, by their writing under their seals, making humble request to his majesty, to give to one such of the said two persons as shall please his majesty, such title, name, stile, and dignity of bishop of *such of the sees* (5)

(1) Repealed by Stat. 1 & 2 P. & M. c. 8. Revived by Stat. 1 Eliz. c. 1, and Stat. 8 Eliz. c. 1.

(2) *No provision hitherto hath been made*:—That is, by act of parliament, as had been for archbishops and bishops by Stat. 25 Hen. 8, c. 20; *antè* 1533.

(3) *Accustomed to be had*:—These were the same with the ancient chorepiscopi, or bishops of the country; so called by way of distinction from the proper bishops of the city or see; and who were very common in England, taking their titles from places *in partibus infidelium*, or from places in which (though there were settled sees, and they had been ordained to them,) they could not remain with safety; and upon this account several Irish bishops from time to time were received and acted as suffragans, under English bishops. Archbishop Peckham, by a particular instrument, required the Bishop of Lichfield, in consideration of his infirmities, to provide a suffragan, and it is mentioned, because the same instrument expresses the duties of an English suffragan: "Qui circumeat, prædicando, ecclesias dedicando, virginis consecrando, ordines celebrando, parvulos confirmando et alia exequendo, quæ ad episcopale officium requiruntur;" which last clause is to be understood with a limitation, *viz.* as to what concerned the episcopal office, and its exercise;

because the jurisdiction and temporalities (in case of the infirmities of a bishop in body or mind) were put under the management of a coadjutor, (*vide post*. Stat. 1 Eliz. c. 1, *in not.*) constituted by the archbishop.

(4) *For the more speedy administration*:—In King Charles the Second's declaration touching ecclesiastical affairs, immediately before his restoration, one head is as follows: "Because the dioceses, especially some of them, are thought to be of too large extent, we will appoint such a number of suffragan bishops in every diocese, as shall be sufficient for the due performance of their work."

(5) *Such of the sees*:—As there were not sees for suffragans appointed in every diocese, so neither was the king obliged to give the suffragan a title within the diocese of the bishop who recommended him; but he was left at liberty (without regard to the diocese wherein he was to officiate) to give him any of the titles mentioned in this act. Accordingly, in virtue of it, the Bishop of London had a suffragan with the title of Bedford; the Bishop of Ely another with the title of Colchester; and the Bishop of St. Asaph a third, with the title of Shaftsbury. This, the king was entitled to do, at pleasure, by the tenour of the act; but generally speaking, the titles were given in the dioceses, within which they were to assist. Gibson's Codex, 134, 135.

above specified, as the king's highness shall think most convenient for the same; and that the king's majesty, upon every such presentation, shall have full power and authority to give to one of those two persons so to his highness to be presented, the stile, title, and name of a bishop of such of the sees aforesaid, as to his majesty shall be thought most convenient and expedient, so it be within the same province whereof the bishop that doth name him is.

"II. And that every such person to whom the king's highness shall give any such stile and title of any of the sees aforesaid, shall be called bishop suffragan of the same see whereunto he shall be named.

"III. And after such title, stile, and name so given as is aforesaid, the king's majesty shall present every such person, by his letters patents under his great seal, to the Archbishop of Canterbury, if the town whereof he hath his title be within the province of Canterbury, and likewise to the Archbishop of York, if the town whereof he hath his title be within the province of York, signifying and declaring by the same letters patents, the name of the person presented, and the stile and title of dignity of the bishoprick whereunto he shall be nominated, requiring the same *archbishop* (1) to whom such letters patents shall be directed, to consecrate the said person so nominate and presented to the same name, title, stile and dignity of bishop, that he shall be nominated and presented unto, and to give him all such *consecrations* (2), benedictions, and ceremonies, as to the degree and office of a bishop suffragan shall be requisite.

"IV. And be it also enacted by authority aforesaid, that all and every such person and persons as shall be nominated, elected, presented, and consecrated, as is afore rehearsed, shall be taken, accepted, and reputed, in all degrees and places, according to the stile, title, name, and dignity, that he shall be so presented unto, and have such capacity, power, and authority, honour, pre-eminence, and reputation, in as large and ample manner, in and concerning the execution of *such commission* (3), as by any of the said archbishops or bishops within their diocese

STAT. 26 HEN. 8, c. 14.

The king's allowance of a suffragan.

The king presenteth the suffragan to the archbishop.

Within what time after the king's presentation the archbishop shall consecrate a suffragan.

(1) *Archbishop*.—By the canon law, the consecration was to be by the bishop: "A quo consecrabitur iste episcopus? Respondeo, à suo episcopo, non à metropolitano (cum ei non subist) adjunctis sibi duobus vicinis episcopis—et illi tenentur venire ad advocacionem illius, quia sibi invicem mutuum consilium et auxilium exhibere tenentur." Extra. l. i., t. 31, c. 14, v. *Vicarium*.

(2) *Consecrations*.—It has been disputed, whether the ancient chorepiscopi were strictly of the order of bishops; which dispute seems to have arisen from two circumstances: first, that one bishop was sufficient for their ordination; (as it was declared in the council of Antioch, and as the body of the canon law expresses it: "Presbyteri verò et chorepiscopi ab uno episcopo ordinari possunt;" Can. 10, Dist. 67;) the second, that they might only ordain to the inferior offices of the church, as that of subdeacon and others more subordinate, which were performed without laying on of hands, but were not, as such, allowed to confer the order of deacon or presbyter. But these differences and restraints were probably meant for no more, than marks of distinction, between them and the superior bishops, under whom they acted, to the end that there might not be two bishops equal in the same diocese, and there are other canons which say, that they might ordain the superior orders also, with the leave of the city bishop. Some of the most judicious writers have concluded them (in their ancient state) to have been really of the order of bishops; (Cave, Prim. Christ. par. 1, p. 224; Beveridge, Pandect. t. 2; Ancyra. 13;) and in

England, it is certain that they were so, being such as had been ordained abroad to distinct and proper sees, which they might not repair to, or remain at with safety; and who, being received oft-times by particular bishops on account of their infirmity, were in such cases to discharge all the offices merely episcopal; as will be perceived from a consideration of the duties of a chorepiscopus or bishop suffragan, (for thus he, as well as the comprovincial bishops, was termed in England,) which have been explained in the order of Archbishop Peckham to the Bishop of Lichfield; where the suffragan had direction to provide, he was not only to confer orders without limitation, but also, (in general,) "Alia exequi quæ ad episcopale officium requiruntur." Antè 188, n. (3). Much less can it be doubted, whether the suffragans made in virtue of this act, were of the order of bishops; since the act itself provides for the canonical consecration of them (as of all other bishops) by three, and the acts of many consecrations remain on our records, though, at the same time, it is observable, that by the tenour of the first commissions, some, if not all, in the article of conferring orders, were restrained to the lesser sort. Cramm. Regist. ff. 187, 201, 202, 203, 214, 223. Cramm. Comm. Stryp. App. 41.

(3) *Such commission*.—There can be no doubt, but the persons received to be suffragan bishops in England, before the making of this act, were confined to the exercise of such powers only as they had commission for from time to time; supposing the proper bishop not to be wholly disabled by infirmity.

STAT. 26 HEN. 8, c. 14. shall be given to the said suffragans, as to suffragans of this realm heretofore hath been used and accustomed.

“V. And be it further enacted by the authority aforesaid, that every archbishop of this realm, to whom any the king’s letters patents, in the cases afore rehearsed, shall be directed, having no lawful impediment, shall perform and accomplish the effects and contents of this act within the time of three months next after such letters patents shall come to their hands; any usages, customs, foreign laws, privileges, prescriptions, or other thing or things heretofore used, had, or done to the contrary hereof notwithstanding.

“VI. Provided always, that no such suffragans, which shall be made and consecrate by virtue and authority of this act, shall take or perceive any manner of profits of the places and sees whereof they shall be named, nor use, have, or execute any jurisdiction, or episcopal power, or authority, within their said sees, nor within any diocese or place of this realm, or elsewhere within the king’s dominions, but only such profits, jurisdiction, power, and authority, as shall be licenced and limited to them to take, do, and execute, by any archbishop or bishop of this realm, within their diocese to whom they shall be suffragans, by their commission under their seals; and that every archbishop and bishop of this realm, for their own peculiar diocese, may and shall give such commission or commissions to every such bishop suffragan as shall be so consecrate by authority of this act, as hath been accustomed *for suffragans heretofore* (1) to have, or else such commission as by them shall be thought requisite, reasonable, and convenient; and that no such suffragan shall use any jurisdiction, ordinary, or episcopal power, otherwise, nor longer time, than shall be limited by such commission to him to be given as is aforesaid, upon pain to incur into the pains, losses, forfeitures, and penalties, mentioned in the Statute of Provisions, made in the sixteenth year of King Richard the Second.

“VII. Provided always, that the bishop that shall nominate the suffragan to the king’s highness, or the suffragan himself that shall be nominate, shall provide

What authority and benefit suffragans shall have in their dioceses.

A suffragan’s residence over the diocese shall be sufficient for his benefice.

ties of body or mind, and therefore the limiting them to such commissions here, was only a continuance of them in their former state. Which commissions, being left to the discretion of the several bishops, could not, probably, be all of the self-same tenour and extent; but as to the kinds of business allotted to them upon their first institution, the commission of Archbishop Cranmer to the suffragan of Dover affords an illustration: “Ad confirmandum, sacri chrisimatis unctione, pueros quoscunque infra civitatem, &c., necnon altaria, calices, vestimenta et alia ecclesiæ ornamenta quæcunque et ea concernent’ benedicend’, locaque profana, si quæ inveneris, de quibus te inquirere volumus, à divinatorum celebratione ultimè suspendend’, ecclesias etiam et cœmeteria, sanguinis vel seminis effusione polluta forsan, vel polluend’, reconciliand’ ecclesias et altaria noviter ædificata consecrand’; omnes ordines minores quibuscunque civitatis, &c., conferend’; ac etiam oleum sanctum chrisimatis et sacræ unctionis consecrand’.” *Tèque quoad præmissa suffraganeum nostrum ordinamus et præcicimus per præsentès, donec eas ad nos duxerimus revocand’.*” *Vide post.* Stat. 6 & 7 Vict. c. 62.

(1) *For suffragans heretofore*:—Among other branches of the office of the ancient chorepiscopi, it is clear, and all writers agree, that at first they had seats and votes in councils; and they, who were made pursuant to this act, are by some concluded to have had the same privilege in an English

convocation, inasmuch as among the members of the lower house, ann. 1586 & 1588, the following entries occur: “Reverendus Pater, D. Ric. Rogers, Ep. Suffraganeus Dover,” and long before that: “Dominus Suffraganeus Thetford, et Dominus Johannes Suffraganeus Thetford.” But it is to be observed, that such suffragans had other capacities entitling them to sit in convocation, (*viz.* Dean of Canterbury, Archdeacon of Anglesey, and Dean of Norwich,) and though the style of suffragan is added in the entry, it appears not, that they really sat in any other capacity, than as dignitaries of the church. In the year 1606, the abstract from the Journal of the Convocation states, that Dr. Stern, suffragan bishop of Colchester, was suspended for not appearing; but it does not appear that he had any other title.

Dr. Gibson, (Codex, 136,) observes: “This was one of the last suffragan bishops (if not the last) upon the foot of this act, and the act being still in force, as much as ever, and having so effectually restrained suffragans from any possibility, almost, of encroaching upon their bishops, or being uneasy to them, and the institution also being of such evident use in large dioceses, and under infirm and aged bishops, especially for the work of confirmation, it is humbly referred to the wisdom of our governors, to inquire for what causes they have been so long disused, and to consider how far the revival of them would be serviceable to the Church of Christ.”

two bishops or suffragans to consecrate him with the archbishop, and shall bear their reasonable costs; provided also, that the residence of him that shall be suffragan over the diocese where he shall have commission, shall serve him for his residence, as sufficiently as if he were resident upon any other his benefice; any act heretofore made to the contrary notwithstanding.

“VIII. Be it further enacted, that all such suffragans as shall hereafter exercise the offices aforesaid, by the commission of the bishop, for the better maintenance of his dignity, may have two benefices with cure; any former act made to the contrary notwithstanding.”

STAT. 26 HEN. 8, c. 14.

A suffragan may have two benefices with cure.
Rep. 1 & 2 P. & M. c. 8, and revived by 1 Eliz. c. 1.

XXIX. STAT. 26 HENRICI 8, c. 15(1). A.D. 1534.

“To avoid Exactions taken by Spiritual Men in the Archdeaconry of Richmond.”

STAT. 26 HEN. 8, c. 15.

“Forasmuch as divers and many the king our sovereign lord’s subjects, inhabited within the archdeaconry of Richmond, in the county of York, be, and of long time have been, sore and grievously exacted and impoverished by the parsons, vicars, and others, such as have benefices and spiritual promotions within the same, as by taking of every person, when he dieth, in the name of a pension, or of a portion, sometime the ninth part of all his goods and chattels, and sometime the third part, to the open and manifest impoverishing of most part of all the king’s poor subjects inhabited, and deceased, within the same.

“II. Wherefore be it ordained, enacted, and established by the king our sovereign lord, the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, that from the feast of S. Mark the Evangelist next coming, no manner of spiritual person or others, now having

What duties spiritual men

(1) The origin of the custom mentioned in the preamble of this act, was this: of very ancient time, the inhabitants of the parish of St. Rumald’s Kirk, and after their example the inhabitants of the several other parishes within the archdeaconry of Richmond, being dissatisfied for that the executors or administrators of persons deceased gave nothing of the deceased’s personal estate to the parish church, for the minister (according to the superstition of those times) to pray for the soul of the deceased; whereas, by the custom established within the province of York, (and at that time throughout the whole kingdom,) a certain portion of the deceased’s personal estate ought to have been disposed of for the welfare of the soul of the deceased, which portion such person himself could not otherwise dispose of by will, nor his administrator after his death in case of intestacy; and this was, if the deceased did leave a wife, and also a child or children, a third part of the clear personal estate; if he left a wife and no child, or a child or children, and no wife, then a moiety; and if neither wife nor child, then the whole was the dead man’s portion, to be disposed for the good of his soul; now the inhabitants, observing that the executors or administrators took and applied this whole dead man’s portion to their own use, came to an agreement and resolution amongst themselves, to settle and establish for ever inviolably a determinate share and proportion of the said dead man’s part to be given to the incumbent of their parish church, to pray for the soul of the deceased. But in process of time, their posterity, thinking this concession too burdensome, applied to the court of Rome for redress; setting forth, that the clergy, although they received, according to

the custom of the kingdom of England, one of the best two quick goods of the deceased, demanded also one other of the best quick goods; and likewise the ninth part of all the moveable goods of the deceased, if he had a wife and children; if he had a wife and no child, or a child or children, and no wife, then a sixth part; and if he had neither wife nor child, then a third part. The Pope, having granted a commission to hear and determine the cause, did finally, in the year 1254, order and decree, that, for the future, the clergy should receive only one of the two best quick goods; and if the deceased left a wife and children, his whole, clear, personal estate should be divided into three parts, of which the wife should have one, the children another, and the third part (being the dead man’s part) should be divided into four, of which four parts the church should receive one; if the deceased left a wife and no child, or a child or children and no wife, then the whole should be divided into two parts, of which the wife or child or children respectively should have one, and the other part (being the dead man’s share) should be divided into five, of which five parts, the church should receive one; if he had neither wife nor child, then the whole (as pertaining entirely to the deceased) should be divided into six, of which six parts the church should have one. So that, in the first case, where there was both wife and children, the church should have a twelfth part; in the second case, where there was a wife and no child, or a child or children and no wife, a tenth part; and in the third case, where there was neither wife nor child, the church should have a sixth part. Registr. Hon. de Richm. 101; cit. 2 Burn’s E. L. by Phillimore, 566.

STAT. 26 HEN.
8, c. 15

in Richmond
in Yorkshire
shall take after
the decease of
any person.
25 Edw. 3,
St. VI.

or that from the said feast shall have any manner of benefice or other spiritual promotion within the said archdeaconsry, shall in no wise ask, levy, demand, or take after the decease of any person or persons, any such portions and pensions, nor any other demand or duty in the name or lieu of the same, upon pain to incur such dangers, forfeitures, and penalties, as be contained in the Statute of Provisors, made the five and twentieth year of the reign of your most noble progenitor King Edward the Third; but that all and every the king's subjects of the said archdeaconsry, and their executors and administrators, from henceforth shall be ordered, intreated, and used for their goods and chattels, after their decease, in like manner, form, order, and condition, as is contained in the statute made in the one and twentieth year of your most noble and victorious reign, for probate of testaments, and none otherwise; any use, custom, bull, composition, prescription, or ordinance heretofore had, obtained, or used to the contrary, within the aforesaid archdeaconsry, in any wise notwithstanding."

STAT. 26 HEN.
8, c. 17.

XXX. STAT. 26 HENRICI 8, c. 17 (1). A.D. 1534.

"For Lessees to be discharged for paying anything for their Lessors to the King, by reason of the Act of First-fruits."

26 Hen. 8, c. 3.

"For certain reasonable and urgent considerations moving the king's most high court of parliament, it is ordained and enacted by authority of the same, that all and singular fermors and lessees of any manors, lordships, lands, tenelements, or other hereditaments, parsonages, vicarages, portions of tythes, or other whatsoever profits or commodities belonging to any archbishop, bishop, or other prelate, or spiritual person or persons, or spiritual body corporate or politick, whereof any first-fruits or yearly pension of the tenth part is granted to the king our sovereign lord in this present session of the said court of parliament, shall be discharged, and not chargeable to pay to our said sovereign lord, of his or their proper money, cost, or charge, for or in discharge of the lessor or lessors, owner or owners of the same, by reason of any covenant, bargain, bond, condition, clause of re-entry, or other thing heretofore made or concluded; but that every of the said lessors, and owners, and their successors, shall be charged and chargeable to pay and satisfy the same of his and their proper cost and charge, to the king our sovereign lord, his heirs and successors, according to the grant thereof; any covenant, bargain, contract, bond, condition, clause of re-entry, or other thing heretofore made or concluded to the contrary thereof, in any wise notwithstanding."

1 Eliz. c. 4.

STAT. 26 HEN.
8, c. 18.

XXXI. STAT. 26 HENRICI 8, c. 18 (2). A.D. 1534.

[An Act concerning the King's General Pardon.]

[Except(3), Clerks convict in custody of ordinary. Robberies of churches. Titles and actions of quare impedit.]

STAT. 27 HEN.
8, c. 8.

XXXII. STAT. 27 HENRICI 8, c. 8 (4). A.D. 1535.

"An Act that the King's Spiritual Subjects shall pay no Tenths of their Spiritual Promotions for that first Year for which they paid their First-fruits."

"Where by a late act made in this parliament, for and concerning the grant made to the king's highness of the tenth of the yearly value of all spiritual possessions of this realm, and of the first-fruits thereof, there appeareth by the words of the said act, that prelates and all other incumbents be charged to the payment of the tenth that shall be due to the king's highness in and for the first year that they shall be elected, prefected, presented, collated, or admitted to any dignities, benefices, or other promotion spiritual, and for the same first year shall also pay

(1) *Vide* Stat. 2 & 3 Ann. c. 11. Stat. 5 of parliament concerning pardon during this
Ann. c. 24. Stat. 1 Geo. 1, St. II. c. 10. reign.
Stat. 3 Geo. 1, c. 10. Stat. 43 Geo. 3, c. 107. (4) *Vide* Stat. 2 & 3 Ann. c. 11. Stat. 5
Ann. c. 24. Stat. 1 Geo. 1, St. II. c. 10.
Stat. 3 Geo. 1, c. 10. Stat. 43 Geo. 3, c. 107.

(2) Expired.

(3) These exceptions occur in all the acts

Stat. 1 & 2 Vict. c. 20.

the whole first-fruits of their said dignities, benefices, and promotions, which is a double charge: for reformation whereof, the king's highness, for the entire and hearty love that his grace beareth to the prelates, and other incumbents, chargeable to the payment of the said tenth and first-fruits, of his excellent goodness is pleased and contented that it be enacted by authority of this present parliament, that whosoever any person or persons, from the first day of May, which shall be in the year of our Lord God one thousand five hundred thirty and six, shall be named, prefected, presented, collated, or by any other means appointed to have any archbishoprick, bishoprick, abbacy, monastery, priory, college, hospital, archdeaconry, deanery, provostship, prebend, parsonage, vicarage, chauntry, free chapel, or other dignity, benefice, or promotion spiritual, by virtue whereof they shall be charged or chargeable, as well for the payment of the tenth of every the said archbishoprick, bishoprick, abbacy, monastery, priory, college, hospital, archdeaconry, deanery, provostship, prebend, parsonage, vicarage, chauntry, free chapel, or other dignity, benefice, or promotion spiritual, as with the payment of the first-fruits of the same, and every of the same, shall at his or their composition, agreement, or entry into specialty or specialties for the payment of the said first-fruits, have allowance and deduction of the said tenth part of the whole out of the sum to be paid for the said first-fruits for the year wherein he or they shall be first nominated, prefected, presented, collated, or by any other means appointed to have any of the said dignities, benefices, offices, or other promotions spiritual, according to the just rate, taxation, and sessment of the tenth of every of the said archbishoprick, bishoprick, abbacy, monastery, priory, college, hospital, archdeaconry, deanery, provostship, prebend, parsonage, vicarage, chauntry, free chapel, or other dignity, benefice, office, or promotion spiritual within this realm, or elsewhere within any of the king's dominions, of what name, nature, or quality soever they be, or to whose foundation, patronage, or gift soever they belong, now being inrolled, or that hereafter shall be inrolled in the king's exchequer, or in any other the king's courts of record.

"II. And be it further enacted, that every commissioner or commissioners, or other the king's officers or ministers, or any other person or persons, which either by authority of any act of parliament, or by commission or commissions under the king's great seal, or otherwise by his grace's commandment, or by the commandment of such as by his highness shall be authorized for that purpose, be appointed, assigned, or deputed, or that hereafter shall be appointed, authorized, assigned, or deputed to compound, agree, and receive bonds and specialties to his majesty's use, for payment of the said first-fruits of every of the said dignities, benefices, offices, or other promotions spiritual, and shall and may by force of this act, from the said first day of May for ever forward, have authority to deduct and allow unto every such person or persons as from the aforesaid first day of May shall be nominated, prefected, presented, collated, or by any other means appointed to have any of the said archbishoprick, bishoprick, abbacy, monastery, priory, college, hospital, archdeaconry, deanery, provostship, prebend, parsonage, vicarage, chauntry, free chapel, or other dignity, benefice, office, or promotion spiritual, the tenth part of the whole, as is aforesaid, out of the same first-fruits for the year wherein he or they shall be first nominated, prefected, presented, collated, or by any other means appointed unto every of the same as is aforesaid, without any further suit to be made to the king's highness, and without imposition, exaction, or other charge to be in any wise demanded or exacted of the person or persons so preferred, for the allowance unto them of the said tenth, for the said first year, in form above expressed; any thing or things in the said act of the grant of the said tenth and first-fruits to the contrary notwithstanding.

"III. And it is also enacted by the authority aforesaid, that all and every person and persons, that upon his or their composition and agreement for the first-fruits shall be defalked and allowed the tenth part of the whole sum of his or their dignities, benefices, offices, or promotions spiritual, for the year wherein he or they shall be first nominated, prefected, presented, collated, or by any other means appointed unto any of the same as is abovesaid, shall yield and pay the said

STAT. 27 HEN. 8, c. 8.

No spiritual person shall pay any tenth the same year they pay their first-fruits.
26 Hen. 8, c. 3, s. 9.

Every person authorized to compound for first-fruits, may deduct the tenth part out of the first-fruits.

He that hath his tenth deducted out of the first-fruits, shall pay it to the king.
Lane, 20.

STAT. 27 HEN.
8, c. 8.

tenth part unto the king's majesty, his heirs and successors, the said first year, in like manner and form, and at such day as is limited in the said act of the grant of the said tenth and first-fruits; any thing contained in this act to the contrary notwithstanding.

What remedy the successor shall have, who is compelled to pay the tenth for his predecessor.

13 Vin. Abr.
375 to 378.

"IV. Be it further enacted by the authority aforesaid, that in such cases where the successor of any incumbent shall be chargeable to the payment of such sums of money as shall be due of and for the said tenth that shall happen to be behind unpaid in the time or life of his predecessor, there every such successor may lawfully distrain such goods and chattels of his predecessor as shall happen to be and remain in and upon the dignity, benefice, or promotion spiritual, of the which the same tenth was behind and unpaid in the life or time of his predecessor, and to retain the same goods and chattels till such time as the said predecessor, if he be alive, and if he be dead, then his executors or administrators, or such other to whom his goods or chattels should appertain, have fully satisfied and paid such sums of money as shall happen to be behind and unpaid of the said tenth; and in case the said predecessor, his executors, administrators, or such other to whom his goods or chattels should appertain, within twelve days next after the distress thereof, do not satisfy the said sums of money, being behind of the said tenth as is aforesaid, that then for such default of payment, it shall be lawful to every such successor, to cause the said goods and chattels so distrained, to be praised by two or three indifferent persons to be sworn for the same; and according to the same appraising, to sell so much thereof as shall amount as well to the full satisfaction of the said sums of money being behind and unpaid of the said tenth in the life or time of his predecessor, as for the reasonable costs that shall be spent by the occasion of distraining and appraising of the same goods and chattels; and in case no sufficient goods and chattels may be found in or upon such dignities, benefices, or promotions spiritual, for the satisfaction of the said tenth, being behind unpaid, as is abovesaid, that then the predecessor by whom such tenth was due to be paid, if he be alive, and if he be dead, then his executors, administrators, and other to whom his goods and chattels shall appertain or belong, shall be compelled to the payment of the said tenth being behind and unpaid, as is aforesaid, by bill to be pursued in the king's chancery by the successor, that shall be chargeable for the same, or else by action or plaint of debt to be taken or commenced by such successor, by order of the common laws."

Rep. 2 & 3
P. & M. c. 4,
and revived by
1 Eliz. c. 4.
See farther
32 Hen. 8,
cc. 22 & 47.
34 Hen. 8,
c. 17.
2 & 3 Edw. 6,
c. 20.
7 Edw. 6, c. 4.
For farther
provisions concern-
ing tenths,
see 2 Ann.
c. 11; 5 Ann.
c. 24; 6 Ann.
c. 27; 1 Geo. 1,
c. 10; and
3 Geo. 1, c. 10.

STAT. 27 HEN.
8, c. 15.

XXXIII. STAT. 27 HENRICI 8, c. 15 (1). A.D. 1535.

"The King shall have Authority to name xxxij. Persons, viz. xvi. Spiritual and xvi. Temporal, to examine the Canons and Constitutions heretofore made according to the Statute of 25 Hen. 8, c. 9. But no Canons or Constitutions shall be made without the King's Assent, nor which be contrary to the King's Prerogative, or the Laws of this Realm."

STAT. 27 HEN.
8, c. 19.

XXXIV. STAT. 27 HENRICI 8, c. 19 (2). A.D. 1535.

[An Act limiting an Order for Sanctuaries and Sanctuary Persons.]

STAT. 27 HEN.
8, c. 20.

XXXV. STAT. 27 HENRICI 8, c. 20 (3). A.D. 1535.

"For Tithes to be paid throughout this Realm."

This statute is confirmed and enlarged by 2 & 3 Edw. 6, c. 13.
18 Edw. 3,
St. III. c. 7.
45 Edw. 3, c. 3.
5 Hen. 4, c. 11.

"Forasmuch as divers numbers of evil-disposed persons inhabited in sundry counties, cities, towns, and places of this realm, having no respect to their duties to Almighty God, but against right and good conscience have attempted to subtract and withhold, in some places the whole, and in some places great parts of their tithes and oblations, as well personal as predial, due unto God and holy church; and, pursuing such their detestable enormities and injuries, have attempted in late time past to disobey, contemn, and despise the process, laws, and decrees of

(1) Expired.

(3) Confirmed and enlarged by Stat. 2 &

(2) Rep. by Stat. 21 Jac. 1, c. 28, ss. 6 & 7. 3 Edw. 6, c. 13.

the ecclesiastical courts of this realm, in more temerous and large manner than before this time hath been seen: for reformation of which said injuries, and for unity and peace to be preserved amongst the king's subjects of this realm, our sovereign lord the king, being supreme head on earth (under God) of the church of England, willing the spiritual rights and duties of that church to be preserved, continued, and maintained, hath ordained and enacted by authority of this present parliament, that every of his subjects of this realm of England, Ireland, Wales, and Calais, and marches of the same, according to the ecclesiastical laws and ordinances of his church of England, and after the laudable usages and customs of the parish or other places where he dwelleth or occupieth, shall yield and pay his tithes, offerings, and other duties of holy church; and that for such subtractions of any of the said tithes, offerings, or other duties, the parson, vicar, curate, or other party in that behalf grieved, may, by due process of the king's ecclesiastical laws of the church of England, convent the person or persons so offending before his ordinary, or other competent judge of this realm, having authority to hear and determine the right of tithes, as also to compel the same person or persons offending to do and yield their said duties in that behalf. And in case the ordinary of the diocese, or his commissary, or the archdeacon, or his official, or any other competent judge aforesaid, for any contempt, contumacy, disobedience, or other misdemeanor of the party defendant, make information and request to any of the king's most honourable council, or to the justices of the peace of the shire where such offender dwelleth, to assist and aid the same ordinary, commissary, archdeacon, official, or judge, to order or reform any such person in any cause before rehearsed; that then he of the king's said honourable council, or such two justices of the peace, whereof the one to be of the quorum, to whom such information or request shall be made, *shall have full power* and authority, by virtue of this act, *to attach* (1) or cause to be attached, the person or persons against whom such information or request shall be made, and to commit the same person or persons to ward, there to remain without bail and mainprize, till that he or they shall have found sufficient surety, to be bound by recognizance or otherwise before the king's said councillor, or justice of peace, or any other like councillor, or justice of peace, to the use of our said sovereign lord the king, to give due obedience to the processes, proceedings, decrees, and sentences of the ecclesiastical court of this realm, wherein such suit or matter for the premises shall depend or be. And that every of the king's said councillors, or two justices of the peace, whereof the one to be of the quorum, as is aforesaid, shall have full power and authority, by virtue of this act, to take, receive, and record recognizances and obligations in any of the causes above written.

"II. Provided alway, that this act, or any thing therein contained, shall not extend to any inhabitant of the city of London, for or concerning any manner of tithe, offering, or other ecclesiastical duty, grown and due, to be paid or yielded within the same city, because there is another order made for the payment of tithes and other duties within the same city.

"III. Provided also, that every person and persons, being party or parties to any such suit, shall and may make and have his and their lawful action, demand, or prosecution, appeals, prohibitions, and all other their lawful defences and remedies in every such suit, according to the said ecclesiastical laws, and statutes of this realm, in as ample and liberal manner and form as they or any of them might have had, if this act had never been made; any thing in this act above written notwithstanding.

"IV. Provided alway, and be it enacted by authority aforesaid, that *this act* for recovering of tithes, ne any thing therein contained, *shall take force* (2)

STAT. 27 HEN. 8, c. 20.

Tithes shall be paid according to the custom of the parish where they be due. The offender in subtracting of tithes shall be convented before the ordinary.

The offender shall be bound by two justices of peace, &c. to obey the ordinary's sentence. See 4 Bur. 2095.

This act shall not extend to London.

Every person shall have his demand and defence according to the laws ecclesiastical.

25 Hen. 8, c. 19, s. 7.

(1) *Shall have full power to attach*:—In *Rex v. Sanchee*, (1 Ld. Raym. 323; vide etiam *Rex v. Owen*, 4 Burr. 2095,) where several quakers had been committed on this statute, it was alleged, that the jurisdiction of the spiritual court had been taken away by Stat. 7 & 8 Gul. 3, c. 34, s. 4, which

gives the parson a remedy to recover such tithes by distress: to which the court observed, that such statute seemed only to be an accumulative remedy, and not to repeal Stat. 27 Hen. 8, c. 20.

(2) *This act shall take force*:—It has been contended, that this statute was

STAT. 27 HEN. 8, c. 20. and effect, but only until such time as the king's highness, and such other xxxii. persons which his highness shall name and appoint for the making and establishing of such laws as his highness shall affirm and ratify, to be called the Ecclesiastical Laws of the Church of England; and after the said laws so ratified and confirmed as is afore said, that then the said tithes to be paid to every ecclesiastical person according to such laws, and none otherwise."

13 Car. 2, St. I. c. 12, s. 5. Farther provided for by 32 Hen. 8, c. 7; 37 Hen. 8, c. 12; 22 & 23 Car. 2, c. 15; 7 & 8 Gul. 3, c. 6; and 11 & 12 Gul. 3, c. 16, which is made perpetual by 1 Geo. 1, St. II. c. 26, s. 2.

STAT. 27 HEN. 8, c. 21. XXXVI. STAT. 27 HENRICI 8, c. 21 (1). A.D. 1535.

"An Act for the Payment of Tithes within the City and Suburbs of London, until another Law and Order shall be made and published for the same."

STAT. 27 HEN. 8, c. 25. XXXVII. STAT. 27 HENRICI 8, c. 25 (2). A.D. 1535.

[An Act for Punishment of Sturdy Vagabonds.]

[Item, the money of all and every the foresaid free and charitable collections shall be kept in the common coffer or box, standing in the church of every parish, or else shall be committed unto the hands and safe custody of any other such good and substantial trusty man, as they can agree upon, where they shall think it always sure and safe, and where it may be surely delivered unto the uses before expressed, from time to time, as necessity shall require, making always mention thereof in two several places of the parish poor book, as it is before declared, as often times as any part thereof shall be spent or gathered.]

STAT. 27 HEN. 8, c. 25. XXXVIII. STAT. 27 HENRICI 8, c. 28. A.D. 1535.

"All Monasteries given to the King, which have not Lands above Two Hundred Pounds by the Year."

"Forasmuch as manifest synne, vicious, carnal, and abominable living is dayly used and committed commonly in such little and small abbeyes, priories, and other religious houses of monks, canons, and nuns, where the congregation of such religious persons is under the number of twelve persons, whereby the governors of such religious houses, and their covent, spoyle, destroye, consume, and utterly waste, as well their churches, *monasteries* (3), priories, principal houses, farms, granges, lands, tenements, and hereditaments, as the ornaments of their churches, and their goods and chattels, to the high displeasure of Almighty God, slander of good religion, and to the great infamy of the king's highness and the realm, if redress should not be had thereof. And albeit that many continual visitations hath been heretofore had, by the space of two hundred years and more, for an honest and charitable reformation of such unthrifty, carnal, and abominable living, yet neverthesse little or none amendment is hitherto had, but their vicious

only of a temporary nature, but in *Rex v. Owen*, (4 Burr. 2096,) it was holden, that it was permanent, having been continued by Stat. 2 & 3 Edw. 6, c. 13.

In *Rex v. Sanchee*, (1 Ld. Raym. 323,) it was decided, that notwithstanding Stat. 7 & 8 Gul. 3, c. 34, the remedy was cumulative, and that the temporal and spiritual courts had in this case a concurrent jurisdiction.

(1) The citizens of London finding that, by the common laws of the realm, no bull of the Pope, nor arbitrary composition, nor act of common council, could bind them in such things as concerned their inheritance, still wrestled with the clergy, and would not condescend to the payment of 11*d.* by the year, obtruded upon them by the addition of the two and twenty saints' days; whereupon there was a submission to the lord chan-

cellor, and divers others of the privy council, in the time of King Henry 8; and they made an order for the payment of tithes, according to the rate of 2*s.* 9*d.* in the pound; which order was first promulgated by proclamation, and afterwards established by Stat. 27 Hen. 8, c. 21. *Privilegia Londini*, 456-458.

(2) Obsolete.

(3) *Monasteries*:—Before this time, Cardinal Wolsey, (by licence of the King and of Pope Clement the Seventh,) had obtained a dissolution of above thirty religious houses, (most of them very small,) for the founding and endowing of his colleges at Oxford and Ipswich;—consequently, the Pope himself had made a precedent for the dissolutions which followed.

living shamelessly increaseth and augmenteth, and by a cursed custom so rooted and infected, that a great multitude of the religious persons in such small houses do rather choose to rove abroad in apostasy, than to conform themselves to the observation of good religion; so that without such small houses be utterly suppressed, and the religious persons therein committed to great and honourable monasteries of religion in this realm, where they may be compelled to live religiously, for reformation of their lives, the same else be no redress nor reformation in that behalf. In consideration whereof, the king's most royal majesty, being supreme head on earth, under God, of the church of England, dayly studying and devysing the increase, advancement, and exaltation of true doctrine and virtue in the said church, to the only glory and honour of God, and the total extirping and destruction of vice and sin, having knowledge that the premises be true, as well by the accompts of his late visitations, as by sundry credible informations, considering also that divers and great solemn monasteries of this realm, wherein (thanks be to God) religion is right well kept and observed, be destitute of such full number of religious persons, as they ought and may keep, hath thought good that a plain declaration should be made of the premises, as well to the lords spiritual and temporal, as to other his loving subjects the commons, in this present parliament assembled; whereupon the said lords and commons, by a great deliberation, finally be resolved, that it is and shall be much more to the pleasure of Almighty God, and for the honour of this his realm, that the possessions of such small religious houses, now being spent, spoiled, and wasted, for increase and maintenance of sin, should be used and committed to better uses, and the unthrifty religious persons, so spending the same, to be compelled to reform their lives; and thereupon most humbly desire the king's highness that it may be enacted by authority of this present parliament, that his majesty shall have and enjoy to him and his heirs for ever, all and singular such monasteries, priories, and other religious houses of monks, canons, and nuns, of what kinds of diversities of habits, rules, or order soever they be called or named, which have not in lands, tenements, rents, tithes, portions, and other hereditaments, above the clear *yearly value of two hundred pounds* (1). And in like manner shall have and enjoy all the sites and circuits of every such religious houses, and all and singular the manors, granges, meases, lands, tenements, rents, reversions, services, tithes, pensions, portions, churches, chapels, advowsons, patronages, annuities, rents, rights, entries, conditions, and other hereditaments appertaining or belonging to every such monastery, priory, or other religious house, not having, as is aforesaid, above the said clear yearly value of two hundred pound, in as large and ample manner as the abbots, priors, abbesses, prioresses, and other governors of such monasteries, priories, and other religious houses now have, or ought to have the same in the right of their houses. And that also his highness shall have to him and to his heirs all and singular such monasteries, abbeyes, and priories, which at any time within one year next before the making of this act hath been given and granted to his majesty by any abbot, prior, abess, or prioress, under their covent seals, or that otherwise hath been suppressed or dissolved, and all and singular manors, lands, tenements, rents, services, reversions, tithes, pensions, portions, churches, chapels, advowsons, patronages, rights, entries, conditions, and all other interests and hereditaments to the same monasteries, abbeyes, and priories, or to any of them appertaining or belonging; to have and to hold all and singular the premises, with all their rights, profits, jurisdictions, and commodities, unto the king's majesty, and his heirs and assigns for ever, to do and use therewith his and their own wills, to the pleasure of Almighty God, and to the honour and profit of this realm.

STAT. 27 HEN.
8, c. 28.

Cro. Car. 422.
All monasteries given to the king which have not in lands above two hundred pounds yearly.

The king shall have all monasteries before assured to him, or that have been suppressed.
Hob. 307.
Hob. 242.

(1) *Yearly value of two hundred pounds*:—But the king had a right reserved to him of continuing as many as he pleased of the religious houses, by his letters patents; and that he did continue some of them, appears by the case of *Walklate & Wilshaw*, mentioned by Sir Simon Degge; (Parson's Counsellor, 407;) in which it was shown, that the Abbey

of Croxden, though under the yearly value of 200*l. per ann.*, and consequently within this statute, was not dissolved by Stat. 31 Hen. 8, c. 13, having been continued, by the king's letters patents; and being of the Cistercian Order, it was thereby adjudged to be discharged from tithes.

STAT. 27 HEN.
8, c. 28.

They shall
enjoy those
abbey lands to
whom the king
hath given
them.

“II. And it is ordained and enacted by the authority aforesaid, that all and every person and persons, and bodies politick, which now have, or hereafter shall have, any letters patents of the king's highness, of any of the sites, circuits, manors, lands, tenements, rents, reversions, services, tithes, pensions, portions, churches, chapels, advowsons, patronages, tithes, entries, conditions, interests, or other hereditaments, which appertained to any monasteries, abbeys, or priories, heretofore given or granted to the king's highness, or otherwise suppressed or dissolved, or which appertaineth to any of the monasteries, abbeys, priories, or other religious houses, that shall be suppressed or dissolved by the authority of this act, shall have and enjoy the said sites, circuits, manors, lands, tenements, rents, reversions, services, tithes, pensions, portions, churches, chapels, advowsons, patronages, tithes, entries, conditions, interests, and all other hereditaments, contained and specified in their letters patents now being thereof made, and to be contained and expressed in any letters patents hereafter to be made, according to the tenor, purport, and effect of any such letters patents; and shall also have all such actions, suits, entries, and remedies to all intents and purposes, for any thing and things contained in every such letters patents now made, or to be contained in any such letters hereafter to be made, in like manner, form, and conditions, as the abbots, priors, abbesses, prioresses, and other chief governors of any religious houses which had the same, might or ought to have had, if they had not been suppressed or dissolved.

A saving of the
right of others.

“III. Saving to every person and persons, and bodies politick, their heirs and successors, (other than the abbots, priors, abbesses, prioresses, and other chief governors of the said religious houses specified in this act, and the covents of the same, and their successors, and such as pretend to be founders, patrons, or donors of such religious houses, or of any lands, tenements, or hereditaments belonging to the same, and their heirs and successors,) all such right, title, interest, possessions, leases for years, rents, services, annuities, commodities, fees, offices, liberties, and livings, pensions, portions, corrodies, synodies, proxies, and all other profits, as they or any of them hath, ought, or might have had, in or to any of the said monasteries, abbeys, priories, or other religious houses, or in or to any manors, lands, tenements, rents, reversions, tithes, pensions, portions, or other hereditaments appertaining or belonging, or that appertained to any of the said monasteries, priories, or other religious houses, as if the same monasteries, priories, or other religious houses had not been suppressed by this act, but had continued in their essential bodies and states that they now be, or were in.

Fraudulent
assurances
made by
governors of
houses before
their dissolution,
shall be
void.

“IV. Provided always, and be it enacted, that forasmuch as divers of the chief governors of such religious houses, determining the utter spoil and destruction of their houses, and dreading the suppressing thereof, for the maintenance of their detestable lives, have lately fraudulently and craftily made feoffments, estates, gifts, grants, and leases, under the covent seals, or suffered recoveries of their manors, lands, tenements, and hereditaments in fee-simple or fee-tail, for term of life or lives, or for years, or charged the same with rents or corrodies, to the great decay and diminution of the houses; that all such crafty and fraudulent recoveries, feoffments, estates, gifts, grants, and leases, and every of them, made by any of the said chief governors of such religious houses, under their covent seals, within one year next before the making of this act, shall be utterly void and of none effect: provided always, that such person and persons as have leases for term of life or years, whereupon is reserved the old rents and fermes accustomed, and such as have any offices, fees, or corrodies, that have been accustomed or used in such religious houses, and have bought any livery or living in any such houses, shall have and enjoy their said leases, offices, fees, corrodies, liberties, liveries, and livings, as if this act had never been made.

Ornaments,
jewels, goods,
chattels, debts,
of monasteries
given to the
king.

“V. And it is further enacted, by authority aforesaid, that the king's highness shall have and enjoy to his own proper use, all such ornaments, jewels, goods, chattels, and debts, which appertained or belonged to any of the chief governors of the said monasteries or religious houses, in the right of their said monasteries or houses, at the first day of March in the year of our Lord God 1535, or any

time sithen whensoever, and to whose possession soever they shall come or be found, except only such beasts, grain, and woods, and such other like chattels and revenues, as have been sold before the said first day of March, or sithen, for the necessary or reasonable expences or charges of any of the said monasteries or houses. STAT. 27 HEN.
8, c. 28.

“Provided always, that such of the said chief governors which have been elect or made abbot, prior, abbess, or prioress of any of the said religious houses sithen the first day of January, which was in the year of our Lord God 1534, and by reason thereof be bounden to pay the first-fruits to the king’s highness, at days to come, limited by their bonds made for the same, that in every such case such chief governors and their sureties, or any of them, shall be clearly discharged by authority of this act, against the king’s highness and all other persons, for the payment of such sums of money as they stood bounden to pay for the said first-fruits, or for any part thereof. And forasmuch as the clear yearly value of all the said monasteries, priories, and other religious houses in this realm, is certified into the king’s exchequer, amongst the books of the yearly valuation of all the spiritual possessions of this realm, amongst which shall and may appear the certainty and number of such small and little religious houses, as have not in lands, tenements, rents, tithes, portions, and other hereditaments, above the said clear yearly value of two hundred pounds.

“VI. Be it therefore enacted by authority aforesaid, that the king’s highness shall have and enjoy, according to this act, the actual and real possession of all and singular such monasteries, priories, and other religious houses, as shall appear by the said certificate remaining in the king’s exchequer, not to have in lands, tenements, rents, tithes, portions, and other hereditaments, above the said clear yearly value of two hundred pounds, so that his highness may lawfully give, grant, and dispose them, or any of them, at his will and pleasure, to the honour of God, and the wealth of this realm, without farther inquisitions or offices to be had or found for the same.

The king shall have the actual possession of the abbey lands.

“In consideration of which premises to be had to his highness, and to his heirs, as is aforesaid, his majesty is pleased and contented, of his most excellent charity, to provide to every chief head and governor of every such religious house, during their lives, such yearly pensions and benefices as for their degrees and qualities shall be reasonable and convenient, wherein his highness will have most tender respect to such of the said chief governors, as well and truly preserve and keep the goods and ornaments of their houses, to the use of his grace, without spoil, waste, or embezzling the same; and also his majesty will ordain and provide, that the covents of every such religious house shall have their capacities, if they will, to live honestly and virtuously abroad, and some convenient charity disposed to them towards their living, or else shall be committed to such honourable great monasteries of this realm wherein good religion is observed, as shall be limited by his highness, there to live religiously during their lives; and it is ordained by the authority aforesaid, that the chief governors and covents of such honourable great monasteries shall take and accept into their houses from time to time, such number of the persons of the said covents as shall be assigned and appointed by the king’s highness, and keep them religiously, during their lives, within their said monasteries, in like manner and form as the covents of such great monasteries be ordered and kept.

“Provided always, that all archbishops, bishops, and other persons which be or shall be chargeable to and for the collection of the tenths, granted and going out of the spiritual possessions of this realm, shall be discharged and acquitted of and for such parts and portions of the said tenths wherewith the said houses of religion, suppressed and dissolved by this act, were charged or chargeable to the king’s highness, except of such sums of money thereof, as they or any of them have or shall have received for the said tenths, of the chief governors of such religious houses. Provided also, that where the clergy of the province of Canterbury stand and be indebted to the king’s highness in great sums of money, remaining yet unpaid, of the rest of a hundred thousand pounds granted and given to his grace

STAT. 27 HEN.
8, c. 28.

in their convocation, towards the payment whereof the said religious houses should have been contributory if they had not been suppressed by this act; and also some of the governors of the said religious houses have been collectors for levying of the said debt, and have received thereof great sums of money yet remaining in their hands; the king's most royal majesty is pleased and contented to deduct, abate, release, and defalk, to the said clergy, of the said rest yet unpaid, as well such sums of money as any the chief governors of such religious houses hath received, and not paid, as so much money as every of the said religious houses, suppressed by this act, were rated and taxed to pay in any one year, to and for the payment of the said hundred thousand pounds: and also the king's majesty is pleased and contented, that it be enacted by authority aforesaid, that his highness shall satisfy, content, and pay all and singular such just and true debts which be owing to any person or persons by the chief governors of any the said religious houses, in as large and ample manner, as the said chief governors should or ought to have done if this act had never been made: provided always, that the king's highness, at any time after the making of this act, may at his pleasure ordain and declare, by his letters patents under his great seal, that such of the said religious houses which his highness shall not be disposed to have suppressed nor dissolved by authority of this act, shall still continue, remain, and be in the same body corporate, and in the said essential estate, quality, and condition, as well in possessions as otherwise, as they were afore the making of this act, without any suppression or dissolution thereof, or of any part of the same, by the authority of this act, and that every such ordinance and declaration, so to be made by the king's highness, shall be good and effectual to the chief governors of such religious houses which his majesty will not have suppressed, and to their successors, according to the tenors and purports of the letters patents thereof to be made; any thing or things contained in this act to the contrary hereof notwithstanding. Provided also, that where the clergy of the province of York stand and be indebted to the king's highness in great sums of money yet unpaid, of the rest of such sums of money which was granted by them to his majesty in their convocation, towards the payment whereof the religious houses that shall be suppressed and dissolved by this act, being within the same province, should have been contributory if they had not been dissolved, and also some of the governors of the said religious houses within the said province, that shall be suppressed by this act, have been collectors for levying of part of the said sums of money granted to the king's highness as is aforesaid, and have certain sums thereof in their hands yet unpaid, the king's majesty is pleased and contented to deduct, abate, release, and defalk, to the said clergy of the said province of York, of the rest of their said debt yet unpaid, as well such of the said sums of money, as any chief governors of any religious houses within the same province, but shall be suppressed by this act, hath collected and not paid, as so much money as every of the said religious houses, suppressed by this act, were rated and taxed to pay in any one year, towards the payment of the said sums of money granted to the king's highness.

A proviso for
the cells of
other monas-
teries being un-
der obedience.

"VII. Provided always, that this act, or any thing or things therein contained, shall not extend, nor be prejudicial to any abbots or priors of any monasteries or priories being certified into the king's exchequer to have in possessions and profits spiritual and temporal, above the clear yearly value of two hundred pounds, for or concerning such cells of religious houses, appertaining or belonging to their monasteries or priories, in which cells the priors or other chief governors thereof be under the obedience of the abbots or priors to whom such cells belong, as the monks or canons of the covents of their monasteries or priories, and cannot sue nor be sued, by the laws of this realm, in or by their own proper names, for the possessions or other things appertaining to such cells whereof they be priors or governors, but must sue and be sued in and by the names of the abbots or priors to whom they be obedient, and to whom such cells belong; and also be priors or governors dative, and removable from time to time, and accountants of the profits of such cells, at the only pleasure and will of the abbots or priors to whom such cells belong; but that every such cell shall be and remain undissolved in the

same estate, quality, and condition, as if this act had never been made; any thing in this act to the contrary hereof notwithstanding. STAT. 27 HEN. 8, c. 28.

“VIII. Saving always, and reserving unto every person and persons, being founders, patrons, or donors of any abbeys, priories, or other religious houses, that shall be suppressed by this act, their heirs and successors, all such right, title, interest, possession, rents, annuities, fees, offices, leases, commons, and all other profits whatsoever, which any of them have, or should have had, without fraud or covin, by any manner of means, otherwise than *by reason* or occasion of the dissolution⁽¹⁾ of the said abbeys, priories, or other religious houses, in, to or upon any the said abbeys, priories, or other religious houses, whereof they be founders, patrons, or donors, or in, to or upon any the lands, tenements, or other hereditaments appertaining or belonging to the same, in like manner, form, and condition, as other persons and bodies politick be saved by this act, as is afore rehearsed, and as if the said abbeys, priories, or other religious houses had not been suppressed and dissolved by this act, but had continued still in their essential bodies and estates as they be now in; any thing in this act to the contrary hereof notwithstanding.

“IX. And be it further enacted, ordained, and established by authority aforesaid, that all and singular persons, bodies politick and corporate, to whom the king's majesty, his heirs and successors, hereafter shall give, grant, let, or demise any site or precinct, with the houses thereupon builded, together with the demesns of any monasteries, priories, or other religious houses, that shall be dissolved or given to the king's highness by this act, and the heirs, successors, executors, and assigns of every such person, body politick and corporate, shall be bound by authority of this act, under the penalties hereafter ensuing, to keep, or cause to be kept, an honest continual house and household in the same site or precinct, and to occupy yearly as much of the same demesns in ploughing and tillage of husbandry, that is to say, as much of the said demesns which hath been commonly used to be kept in tillage by the governors, abbots, or priors of the same houses, monasteries, or priories, or by their farmer or farmers, occupying the same within the time of twenty years next before this act.

“X. And if any person or persons, bodies politick or corporate, that shall be bounden by this act, do not keep an honest household of husbandry and tillage, in manner and form as is aforesaid, that then he or they so offending, shall forfeit to the king's highness for every month so offending, six pounds thirteen shillings and four-pence, to be recovered to his use in any of his Courts of Record.

“XI. And over that it is enacted by authority aforesaid, that all justices of peace in every shire where any such offence shall be committed or done, contrary to the true meaning and intent of this present act, shall, in every quarter and general sessions within the limits of their commission, inquire of the premisses, and shall have full power and authority to hear and determine the same, and to tax and assess no less fine for every the said offences, than is afore limited for the same offences, and the estreats thereof to be made and certified into the king's exchequer, according and at such time and form, as other estreats of fines, issues, and amerciaments been made by the same justices.”

8, c. 20; 34 & 35 Hen. 8, c. 19; 35 Hen. 8, c. 14; 37 Hen. 8, c. 20; 1 Edw. 6, c. 14; and 1 & 2 P. & M. c. 8.

XXXIX. STAT. 27 HENRICI 8, c. 29 (2). A.D. 1535.

“An Act to annex the Monastery of St. Bennet's to the See of Norwich.”

“And be it enacted by the authority aforesaid, that the said Bishop of Norwich and his successors . . . shall be clearly acquitted and discharged of and for the collection of the yearly tenth that is or shall be due and leivable to the king's

(1) *By reason . . . of the dissolution*:—It is said in *Lincoln (Earl of) v. Wood*, (1 Brownl. 39,) that “if the act for dissolution of monasteries had not given the lands to the king, the founders ought to have had them.”

(2) This abridgment of the act has been copied from Gibson's Codex, (836,) the learned author stating, that it had never been “printed before.”

The right of founders and patrons saved.

Hospitality and husbandry shall be kept upon the site of the houses suppressed. Rep. 21 Jac. 1, c. 28.

Justices of peace shall inquire of and punish offenders.

See farther concerning the dissolution of monasteries, 31 Hen. 8, c. 13; 32 Hen.

STAT. 27 HEN. 8, c. 29.

STAT. 27 HEN. 8, c. 29. use within the said diocese of Norwich, of any person or persons, or body politic or corporate, chargeable to the yearly payment of the same tenth; the act of the collection of the tenth to the contrary notwithstanding."

STAT. 28 HEN. 8, c. 1.

Persons in holy orders subject to the same pains that others be.

XL. STAT. 23 HENRICI 8, c. 1 (1). A.D. 1536.

"An Act that Abjurors in cases of Petty Treason shall not have Clergy."

"VII. And be it also enacted by authority aforesaid, that such as be within holy orders shall from henceforth stand and be under the same pains and dangers for the offences contained in any of the said statutes, and be used and ordered to all intents and purposes, as other persons not being within holy orders; any provision or exception specified in any of the said acts, or any other usage or custom of this realm, to the contrary thereof notwithstanding. This act to endure unto the last day of the next parliament."

STAT. 28 HEN. 8, c. 2. [IR.]

XLI. STAT. 28 HENRICI 8, c. 2. [IRELAND.] A.D. 1537.

"An Act of Succession of the King and Queen Anne."

Marriages not to be within the degrees prohibited by the laws of God.

"II. And furthermore, sithence many inconveniences have fallen, as well within this your said land of Ireland, as in others, by reason of marrying within the degrees of marriage prohibited by God's law, that is to say, the son to marry the mother or the stepmother, the brother the sister, the father his sonne's daughter, or his daughter's daughter, or the son to marry the daughter of his father, procreate and born by his stepmother, or the son to marry his aunt, being his father's or mother's sister, or to marry his uncle's wife, or the father to marry his sonne's wife, or the brother to marry the brother's wife, or any man to marry his wife's daughter, or his wife's sonne's daughter, or his wife's daughter's daughter, or his wife's sister; which marriages, albeit they be plainly prohibited and detested by the lawes of God, yet, nevertheless, at som times they have proceeded under colours of dispensations by man's power, which is but usurped, and of right ought not to be graunted, admitted, or allowed: for no man, of what estate, degree, or condition soever he be, hath power to dispenche with God's lawes, as all the clergie of the said realm of England in the said convocations, and the most part of all the famous universities of Christendome, and we also, doe affirm and think. Be it therefore enacted by authority aforesaid, that no person or persons, subjects, or resiants of this your said land of Ireland, of what estate, degree, or dignity soever they be, shall from henceforth marry within any of the said degrees afore rehearsed, what pretence soever shall be made to the contrary thereof; and in case any person or persons of what estate, dignity, degree, or condition soever they be, hath been heretofore married within this your said land of Ireland, within any the degrees above expressed, and by any the archbishops, bishops, or ministers of the church of this your said land of Ireland, be separate from the bands of such unlawfull marriage, that then every such separation shall be good, lawful, firm, and permanent for ever, and not by any power, authority, or means, to be revoked and undone hereafter. And that the children proceeding or procreate under such unlawful marriage, shall not be lawfull ne legitimate, any forrein lawes, licences, dispensation, or other thing or things, to the contrary thereof notwithstanding; and in case there be any person or persons, within this your said land of Ireland, already married within any the said degrees above specified, and not yet separate from the bands of such unlawful marriage, that then every such person so unlawfully married, shall be separated by the diffinitive sentence, and judgment of the archbishops, bishops, or other ministers of the church of this your said land of Ireland, within the limits of their jurisdictions, and authorities, and by none other power or authority. And that all other

Power of dispensation usurped.

The issue of such unlawful marriages illegitimate.

Separation to be made within the limits and jurisdiction of the church of Ireland.

(1) The benefit of sanctuaries was taken away by Stat. 21 Jac. 1, c. 28, s. 7. Stat. 28 Hen. 8, c. 1, was made perpetual by Stat. 32 Hen. 8, c. 3, but was virtually repealed by Stat. 1 Edw. 6, c. 12, and 1 Mar. St. I. c. 1, s. 5;—Sect. 7 was, however, revived by Stat. 6 Geo. 4, c. 25, s. 3.

sentences and judgments, given and to be given by any archbishop, bishop, or other minister of the church of this your said land, within the limits of their jurisdictions and authority, shall be definitive, firm, good, and effectual, to all intents and purposes, and be observed and obeyed, without suing any provocation, appeals, or prohibitions, or other process from the court of Rome to the derogation thereof."

STAT. 28 HEN. 8, c. 2. [IR.]

The article of prohibition intended where marriages solemnized and and natural knowledge had.

"IX. Provided always, that the article in this act contained, concerning prohibitions of marriages within the degrees afore mentioned in this act, shall alwaies be taken, interpreted, and expounded of such marriages, where marriages were solemnised and natural knowledge had."

XLII. STAT. 28 HENRICI 8, c. 5. [IRELAND.] A.D. 1537.

STAT. 28 HEN. 8, c. 5. [IR.]

"An Act authorizing the King, his Heirs and Successors, to be Supreme Head of the Church of Ireland."

"Like as the king's majesty justly and rightfully is and ought to be supreme head of the church of England, and so is recognised by the clergie, and authorised by an act of parliament made and established in the said realme: so in like maner of wise, forasmuch as this land of Ireland is depending and belonging justly and rightfully to the imperial crown of England, for increase of vertue in Christ's religion within the said land of Ireland, and to repress and extirp all errors, heresies, and other enormities and abuses, heretofore used in the same: be it enacted by authority of this present parliament, that the king our sovereign lord, his heyres and successors, kings of the said realm of England, and lords of this said land of Ireland, shall be accepted, taken, and reputed the only supream head in earth of the whole church of Ireland, called *Hibernica Ecclesia*, and shall have and enjoy, annexed and united to the imperial crown of England, as well the title and stile thereof, as all honours, dignities, pre-eminences, jurisdictions, priviledges, authorities, immunities, profites, and commodities to the said dignitie of supreme head of the same church belonging and appertayning, and that our said sovereign lord, his heyres and successors, kings of the said realm of England, and lords of this land of Ireland, shall have full power and authority from time to time to visit, repress, redress, reform; order, correct, restrain, and amend all such errors, herisies, abuses, offences, contempts, and enormities, whatsoever they be, which by any maner spiritual authority or jurisdiction ought or may lawfully be reformed, repressed, ordered, redressed, corrected, restrained, or amended, most to the pleasure of Almighty God, the increase of vertue in Christ's religion, and for the conservation of peace, unitie, and tranquillitie of this land of Ireland: any usage, custome, foreign laws, foreign authoritie, prescription, or any other thing or things to the contrary thereof notwithstanding.

Eng. 26 Hen. 8, c. 1.
The king, his heirs and successors, to be supreme head of the church of Ireland, and shall have the title thereof, and jurisdiction, &c. thereto belonging, annexed to the crown of England, and visit and amend all errors, &c. which by any spiritual jurisdiction may be reformed.
2 Eliz. c. 1.

"II. Provided alway, and be it enacted by the authority of this present parliament, that if it fortune our sovereign lord the king, his heyres or successors, to authorise and depute any person or persons to visit, repress, redress, reform, order, correct, restrain, or amend, by force of the present and aforesaid act, that then any such person or persons shall go with such company, as shall be convenient and necessary for the same; and that according the habilitie, substance, and power of the person, house, or monasterie, which they shall so fortune to visit, repress, redress, reform, order, correct, restrain, or amend; and that no such person or persons, so appointed or authorized to visit, repress, redress, reforme, order, correct, restrain, or amend, shall take, or cause to be taken, any process money, or other exactions of any such person, house, or monasterie, which they shall so fortune to visit, repress, redress, reform, order, correct, restrain, or amend, but onely convenient meat, drink, and lodging for themselves, their company, servants, and horses; and if any such person or persons, so appointed and authorized as aforesaid, do take, or cause to be taken, any process money, or any other exactions, (other than is aforesaid) that every of them so offending shall forfeit four times the value of that, that he receiveth, or cause to be received, the one half thereof to our sovereign lord the king, his heyres and successors, and the other half to any

STAT. 28 HEN. 8, c. 5. [IR.] person or persons that will sue for the same by action of debt, information, or otherwise, wherein no wager of law, essoine, ne protection shall lye."

STAT. 28 HEN. 8, c. 6. [IR.]

XLIII. STAT. 28 HENRICI 8, c. 6. [IRELAND.] A.D. 1537.

"An Act of Appeales."

Recital that good laws were made in England, taking away appeales to Rome in spiritual causes.

Eng. 24 Hen. 8, c. 12.

25 Hen. 8, c. 19.

2 Eliz. c. 1, confirmed.

That the crown has sufficient power to render justice to its subjects.

None hereafter to appeal to Rome, or obey the process of that court, on pain of a *præmunire*.

Appeals shall be to the king, or chief governor of Ireland to their court of chancery, which shall grant a commission or delegacy for final determination.

"Where divers good and wholesome laws and statutes be made and established within the realm of England for the adnulling and utter taking away of appeales in cases spiritual from the Bishop of Rome and see apostolike, and such other as claim by authority of the same, not onely for great speed of justice to the king's subjects of the said realm, but also in taking away the long delayes, costs, charges, and expences that the said subjects sustayned by reason of such appeales: and forasmuch as this land of Ireland is the king's proper dominion of England, and united, knit, and belonging to the imperial crown of the same realm, which crown of itself, and by itself, is fully, wholly, intirely, and rightfully endowed and garnished with all power, authority, and pre-eminence, sufficient to yield and render to all and singular subjects of the same full and plenarie remedies in all causes of strife, debate, contention, or division, without any suite, provocation, appeale, or any other process to be had, made, or sued to any forein prince or potentate spiritual or temporal: be it therefore, and for the common weal of the subjects of this land, ordained, and enacted by authority of this present parliament, that no person or persons, subjects or resiants of this land, shall from the first day of this present parliament pursue, commence, use, or execute any manner of provocations, appeales, or other process, to or from the Bishop of Rome, or from the see of Rome, or to or from any other that claime authority by reason of the same, for any manner of case, grief, or cause, of what nature soever it be, upon the pain that the offenders, their aydors, counsaylors, and abetors, contrary to this act, shall incur and run into such paines, forfeitures, and penalties, as be specified and contained in the Act of Provision and Premunire, made in the realm of England in the sixteenth year of King Richard the Second, sometime King of England and Lord of Ireland, against such as procure to the court of Rome or elsewhere to the derogation or contrary to the prerogative or jurisdiction of the said crown of England. And that no manner of person, subject or resiant within this said land, shall attempt, procure, or obtain any manner of process, of what kind or nature soever it be, to or from the same Bishop of Rome, or court of Rome, or see apostolike, or from any other having authority by the same, to the let or interruption of this act, or any thing therein contained, nor in any wise obey or execute within this land such manner of process, upon like pains and forfeits as been above rehearsed.

"II. And to the intent that the subjects and resiants of this land shall and may take and hear the appeales in their just and lawful causes, for lacke of justice within this land, be it further enacted by authority of this present parliament, that in and for all maner of causes, griefes, and cases, as they or any of them were wont and accustomed to have in their provocations, appeales, and other process in cases of debate and contention, to or from the Bishop of Rome, or to or from the see apostolike, or court of Rome, they now being grieved, shall have, take, and use from the first day of this present parliament their provocations, appeales, and such like process, to the King of England and Lord of Ireland, his heyres and successors, or to his or their lieutenant, deputie, justice, or other governour, whatsoever he be, of this land of Ireland for the time being, to his or their court of chancery within the same realm of England or land of Ireland: and that upon every such provocation, appeal, and process, made to the King of England and Lord of Ireland, and to his heyres and successors, the chauncellor of England, or keeper of the great seale for the time being, shall graunt a commission or delegacy to some discreet and well learned persons of this land of Ireland, or else in the realm of England, for final determination of all causes and griefes containd in the said provocations and appeales, and in the principal matter, and in all circumstances and dependants thereupon. And that upon every such provocation, appeal, or process made to the said lieutenant, deputie, justice, or governour, the chauncellor of this said land of Ireland, or keeper of the great seale of the same for the

time being, by the assent of the chief justices of the King's Bench and Common Place, the master of the rolls, and the underthesaurer of the said land for the time being, or to any two of them, so as the said underthesaurer be one, shall grant a commission or delegacie to some discreet and well learned persons within this land of Ireland, for final determination of all causes and griefes conteyned in the said provocation and appeales, and in the principal matter, and all circumstances and dependants thereupon, which commissioners so named, shall have like power and authority in all manner of things, as commissioners assigned in appeales made to the king's highness in the realm of England have, by authority of their commission, or by vertue of any acts made for appeales within the said realm; any forrein laws, prohibitions, inhibitions from the court of Rome, customes, usages, prescription, or any other thing or things to the contrary thereof notwithstanding."

STAT. 28 HEN. 8, c. 6. [IR.]

XLIV. STAT. 28 HENRICI 8, c. 7 (1). A.D. 1536.

"An Act concerning the Succession of the Crown."

STAT. 28 HEN. 8, c. 7.

XLV. STAT. 28 HENRICI 8, c. 8 (2). [IRELAND.] A.D. 1537.

"An Act for First-fruits."

STAT. 28 HEN. 8, c. 8. [IR.]

XLVI. STAT. 28 HENRICI 8, c. 10 (3). A.D. 1536.

"If any Person shall extol the Authority of the Bishop of Rome, he shall incur the Penalty of Præmunire, provided anno 16 Rich. 2, c. 5. Every Ecclesiastical and Lay Officer shall be sworn to renounce the said Bishop and his Authority, and to resist it to his power, and to repute any Oath taken in maintenance of the said Bishop or his Authority, to be void; and the refusing of the said Oath, being tendered, shall be adjudged High Treason."

STAT. 28 HEN. 8, c. 10.

XLVII. STAT. 28 HENRICI 8, c. 11 (4). A.D. 1536.

"For the Restitution of the First-fruits in time of Vacation to the next Incumbent."

STAT. 28 HEN. 8, c. 11.

"Forasmuch as in the statute of the payment unto the king's majesty, his heirs and successors, of the first-fruits of spiritual promotions, offices, benefices, and dignities, within this realm, and other the king's dominions, express mention and declaration is not had ne made, from what time the year shall be accounted, in which the first-fruits shall be due and payable to his highness, that is to wit, whether immediately from the death, resignation, or deprivation of every incumbent, or from the time of admission or new taking of possession in every such promotion.

The reasons for making this act.
1 Roll. 462, 469.
26 Hen. 8, c. 3.

"II. And also by reason that in the same statute it is not declared who shall have the fruits, tithes, and other profits of the said benefices, offices, promotions, and dignities spiritual, during the time of vacation thereof, divers of the archbishops and bishops of this realm have, not only when the time of perceiving and taking of tithes (that is to say, wooll, lamb, corn, and hay, and tithes usually paid at the holy time of Easter,) hath approached, *deferred* (5) the collation of such

(1) Repealed by Stat. 35 Hen. 8, c. 1. Stat. 1 Mar. sess. 2, c. 1, s. 8.

(2) Repealed by Stat. 3 & 4 Gul. 4, c. 37.

(3) Repealed by Stat. 1 & 2 P. & M. c. 8. Vide Stat. 13 Eliz. c. 2.

(4) Vide Stat. 1 & 2 P. & M. c. 17. Stat. 2 & 3 P. & M. c. 4. Stat. 1 Eliz. c. 4. Stat. 1 & 2 Vict. c. 20. Stat. 3 & 4 Vict. c. 113, s. 49. *Dakins (Clerk) v. Seaman (Clerk)*, 9 M. & W. 777.

(5) *Deferred*:—The thing here complained of, is the undue manner of collecting the revenue of benefices vacant, and not the taking itself, to which the archbishops and bishops

were respectively entitled by custom; and if the bishopricks were vacant, they belonged to the archbishop, being accounted part of the spiritual profits; as appears from the Records containing the entries of the revenues arising from vacant benefices, which were accounted for to the archbishop, among the procurations, fees for dedication of churches, and other revenues of vacant sees. It is also said that, before this statute, the king might have taken the profits of the deanery of a free chapel; and the patron of a donative, the profits of such donative; during the periods of vacation. *Britton v. Wade*, Cro. Jac. 518.

STAT. 28 HEN.
8, c. 11.

benefices as have been of their own patronage, but also have, upon presentations of clerks made unto them by the just patrons, protracted, and deferred to institute, induct, and admit the same clerks, to the intent that they might have and perceive to their own use the same tithes growing during the vacation; so that through such delays (over and above the first-fruits, which be justly due to the king's highness) they have been constrained also to lose all or the most part of one year's profits of their benefices and promotions, and to serve the cure at their and their friends' proper costs and charges, or utterly to forsake and give over their benefices and promotions, to their great loss and hindrance.

The time from which first-fruits are due to the king. Fruits taken during the vacation of a benefice shall be restored to the next incumbent. See 1 Eliz. c. 4, s. 24. Co. pl. f. 368 (b).

"III. For reformation whereof, be it ordained and enacted by the king our sovereign lord, with the assent of the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, that the said year, in which the first-fruits shall be paid to the king's grace, shall begin and be accounted immediately after the avoidance or vacation of any such benefice or promotions spiritual afore rehearsed; and that the tithes, fruits, oblations, obventions, emoluments, commodities, advantages, rents, and all other whatsoever revenues, casualties, or profits, certain and uncertain, affering or belonging to any archdeaconry, deanery, prebend, parsonage, vicarage, hospital, wardenship, provostship, or other spiritual promotion, benefice, dignity, or office (chauntries only except) within this realm, or other the king's dominions, growing, rising, or coming, during the time of vacation of the same promotion spiritual, shall belong and affere to such person as shall be thereunto next presented (1), promoted, instituted, inducted, or admitted (2) (3), and to his executors, towards the payment of

(1) *Next presented*.—This is only an affirmation of the common law of the church, or the taking away the profits from archbishops and bishops, who could only claim them upon the basis of usage and custom.

(2) *To such person as shall be thereunto next presented, promoted, instituted, inducted, or admitted*.—In order to receive the benefit of this clause, it is not absolutely necessary, that the clerk be presented by the lawful patron; but if he get institution and induction, though he be afterwards removed by *quare impedit*, he, and not the clerk who comes in upon such removal, shall have the profits of the vacation. And the reason is, that, until he be removed, he is incumbent *de facto*, and as such is liable to all burdens and duties, and is therefore in reason and equity entitled to all the profits. *Whistler v. Singleton*, 1 Roll. 62. Gibson's Codex, 749. 4 Vin. Abr. *Charitable uses* (F), 495.

And though the church may become void by the omission of some subsequent duty to be performed, yet having been full by institution and induction, and the person thereby liable to the payment of first-fruits, he shall not lose the profits of the vacation; only the profits from the time of such avoidance, *ipso facto*, will go to the next incumbent, as profits of the vacation, which commence from thence. Gibson's Codex, 749.

But in cases where the institution and induction are declared by law to be, *ipso facto*, void, (as in the case of simony, or the like,) there, the church, having been really never full since the death of the foregoing incumbent, and, by consequence, the vacancy still continuing, the profits of course will pass to him, who shall be next presented, instituted, and inducted. Ibid.

(3) *Inducted, or admitted*.—This cannot be understood disjunctively, as if presen-

tation or admission, (without institution or induction,) entitled the successor to the profits of the vacation, but admission here, (coming after induction,) was plainly added to include those preferments which are not taken by institution and induction. And although in preferments, which are so taken, institution gives a right to enter upon and take the profits as well of the vacation as others; yet that which alone can give a right to sue for them, is induction. Ibid. 4 Burn's E. L. by Phillimore, 3. *Bulwer (Clerk) v. Bulwer (D.D.)*, 2 B. & A. 470.

In *Halton (Clerk) v. Cove (Clerk)*, (1 B. & Ad. 538,) the defendant, being incumbent of a living, with cure of souls, valued at less than 8*l.* a year in the king's books, accepted another benefice without having a dispensation to hold both, whereby the first became void *de jure*; but he continued in possession. The patron presented another clerk, and afterwards brought *quare impedit*, and recovered against the defendant, upon which the new presentee was instituted and inducted. In an action by the latter against the defendant, founded on Stat. 28 Hen. 8, c. 11, s. 3, which gives the profits of every benefice, during vacation, to the next incumbent; it was held that the plaintiff could not recover the profits either from the time of his being presented, or from the suing out of the *quare impedit*, the vacation contemplated by the statute being a vacation *de facto*: Lord Tenterden observing, "This was an action brought by the rector of Woolhampton to recover the profits of that rectory. [The lord chief justice then stated the facts of the case.] The profits claimed are from the time of the plaintiff's presentation until his induction, or at least from the time of bringing *quare impedit*, which appears to have been the first notice to the defendant

the first-fruits to the king's highness, his heirs and successors; any usage, custom, liberty, privilege, or prescription to the contrary had, used, or being, in any wise notwithstanding. STAT. 28 HEN. 8, c. 11.

"IV. And it is also enacted by the authority aforesaid, that if any archbishop, bishop, archdeacon, ordinary, or *any other person* (1) or persons, to their uses and The forfeiture of the ordinary

of the plaintiff's claim. We are, however, of opinion, that on this state of facts, the plaintiff is not entitled to recover. He can only be so entitled by the act 28 Hen. 8, c. 11, because he could not, unless under that statute, have any right to the profits until induction. The question therefore was, whether, on the true construction of that statute, the defendant was bound to account to him for the profits from either of the times I have mentioned.

"Now the act begins by reciting, first of all, that in the statute, for the payment of first-fruits to the king, express mention is not made from what time the year shall be accounted, in which the first-fruits shall be due and payable, that is, whether immediately from the death, resignation, or deprivation of every incumbent, or from the admission or new taking possession in each promotion; and also, that, it not being declared by the same statute, who should have the tithes and profits of benefices during vacation, divers archbishops and bishops have deferred collating, instituting, and inducting to such benefices, to the intent, that they might have and receive to their own use the tithes growing during vacation, so that the clerks, over and above the king's first-fruits, have lost all, or the most part, of one year's profits of their benefices, and have been obliged to serve the same at their own and their friends' charges, or utterly to give them over. The great mischief, therefore, which is here recited, and which it is the main object of the legislature to prevent, is, that the ordinary, by delaying to collate, or to present, when the living was actually, *de facto*, vacant, (as by death, resignation, or deprivation,) took the profits of the living to himself. The act then goes on, in the third section, to provide (using a different expression from that in the corresponding part of the preamble,) that the first-fruits shall be accounted immediately after the *avoidance or vacation*; and that the tithes, fruits, &c. of any benefice, growing *during the time of vacation*, shall belong to the person thereunto next presented, promoted, instituted, inducted, or admitted; and then, by the fourth section, it is enacted, that if any archbishop, bishop, ordinary, or other person, to their uses or behoof, shall take the fruits during vacation, and shall not, upon reasonable request made, restore them to the next incumbent being lawfully instituted, inducted, or admitted to the benefice, dignity, or office spiritual, or do let or interrupt the said incumbent to have the same, then every archbishop, bishop, ordinary, or other person, so doing, shall forfeit and lose the treble value of so much as he shall have received.

"It was contended, that the words in the last two sections, 'after the avoidance or vacation,' and 'during the time of vacation,'

which is the language in one, and 'during the vacation,' which is the expression in the other, give the present plaintiff a right, because it ought to be considered, (such was the argument,) that the living became vacant either immediately upon the plaintiff's presentation to it, or at all events, from the bringing of the *quare impedit*, from which time, at least, the defendant had notice of the presentation. And it is very true, as was argued for the plaintiff, that the enacting words of an act of parliament are not always to be limited by the words of the preamble, but must, in many instances, go beyond it. Yet, on a sound construction of every act of parliament, I take it the words in the enacting part must be confined to that which is the plain object and general intention of the legislature in passing the act, and the preamble affords a good clue to discover what that object was. Now, looking at the enactments here, it is impossible not to see that they are intended to meet the case of a living actually vacant; vacated either by death, by resignation, or by deprivation; and not to apply to a case at all like the present, where the living, although voidable, and perhaps actually void, yet was not in fact vacant, the rector still continuing in possession.

"For these reasons we are of opinion, that the plaintiff is not entitled to recover anything, and, consequently, the *postea* will be delivered to the defendant. The putting this construction on the two sections of the statute, makes them uniform, by accounting the time for which the first-fruits shall be payable, from the time when the new incumbent is actually instituted and inducted, and not carrying it back to a period when some other person is receiving the profits of the living. This construction is perfectly consistent with the fourth section, which applies to the receipt of the profits by the ordinary, or any other person, to his use; and it is also consistent with the general rule of law, that an incumbent *de facto* has a right to sue for and receive the tithes." *Sed vide post*. Stat. 1 & 2 Vict. c. 106.

(1) *Any other person*:—Any lay person who shall take such profits, not being duly commissioned by the ordinary, or any clerk pretending himself to be incumbent, when he is not.

"The ordinary way of managing the profits of vacation, is by sequestration granted to churchwardens; whose neglect, unfaithfulness, or obstinacy, proves oft-times a great damage, as well as uneasiness, to the successor; and therefore, (as a learned writer, Watson, 557, upon this head hath well observed,) it were much to be wished, for the good of the church, that, on all such occasions, neighbouring clergymen would be ready to take upon them the trouble of

STAT. 28 HEN.
8, c. 11.

which receiveth
the fruits of a
benefice during
the vacation,
and doth not
restore them
to the next
incumbent.

behoof, at any time heretofore sith the first day of May last past, have perceived, received, or taken, or at any time hereafter do perceive, receive, or take the fruits, tithes, obventions, oblations, emoluments, commodities, revenues, rents, advantages, profits, or casualties, coming, growing, or belonging, or which hereafter shall come, grow, affere, or belong to any archdeaconry, deanery, prebend, parsonage, vicarage, hospital, wardenship, provostship, or other spiritual promotion, benefice, dignity, or office (chaunteries only excepted), within this realm, or other the king's dominions, during the vacation of such archdeaconry, deanery, prebend, parsonage, vicarage, hospital, wardenship, provostship, or other spiritual promotion, benefice, dignity, or office (chaunteries only excepted), and the same, upon reasonable request from henceforth to be made, doth not render, restore, satisfy, content, and pay, to the next incumbent, being lawfully instituted, inducted, or admitted to such archdeaconry, deanery, prebend, parsonage or vicarage, or other promotion, benefice, dignity, or office spiritual, except before excepted, or do let or interrupt the said incumbent to have the same; that then every archbishop, bishop, archdeacon, ordinary, or other person *so doing* (1), shall forfeit and lose the treble value

inspecting and managing the profits, and of supplying or providing for the cures; and that all ordinaries were ready to put the care of these things into their hands, rather than into the hands of churchwardens or other laymen; ("Æquum est fere sequestrationem fieri existenti in ordine, quem requirit beneficium;" Clem. 1. 2, t. 6, De Sequest. v. *Idoneam*;) and above all, that no ordinary, in granting patents, would convey to chancellors, commissaries, or officials, the right of granting sequestrations in times of vacation, but would reserve it to their own immediate cognizance; since it is a point, in which the interest of the church and clergy, and also the immediate care of souls for the time, are so nearly, and so frequently concerned." Gibson's Codex, 749. *Vide* Stat. 1 & 2 Vict. c. 106.

The issuing sequestrations upon vacancies, is thus directed in the canon law: "Cum vos plerumque oporteat ordinationem ecclesiarum differre, pro eo quòd quandoque personæ vobis minus idoneæ præsentantur; aut inter vos et præsentatores aliâ de causâ radix emergerit dissensionis; et infra. Fraternitati vestræ mandamus, quatenus si quando in ecclesiis vacantibus, in quibus ecclesiastica personæ præsentationem non habet, vel quia personæ minus idoneæ præsentantur, vel aliâ de causa, de jure personas non poteritis in eas instituere; appellatione amotâ ponatis Economos qui debeant fructus percipere; et eos aut in ecclesiarum utilitatem expendere, aut futuris personis fideliter reservare." Extra. l. i., t. 31, c. 4.

In *Jones v. Barrett*, (Bunb. 192,) on a bill by the vicar of West Dean, in the county of Sussex, against the defendant, who was sequestrator, for an account of the profits received during the vacation; it was objected for the defendant, that the bishop ought to have been made a party, since the sequestrator is accountable to him for what he receives, by the statute of 28 Hen. 8. And the court seemed to think, the bishop should have been a party; but by consent, the cause was referred to the bishop of the diocese. And in *Berwick v. Swanton*, (cit. *Ibid.* in *not.*) it was resolved, that a sequestrator could not bring a bill for tithes alone, be-

cause he was a bailiff to the bishop, and had no interest. *Vide etiam, Bishop v. Hatch (Clerk)*, 1 A. & E. 171.

The incumbent of a living may maintain ejectment against parties in possession of the glebe lands, though the current year of tenancy from year to year, created by his predecessor, is unexpired. *Doe d. Kerby v. Carter*, R. & M. 237. *Vide etiam, Rex v. Baylay*, 1 B. & Ad. 761. *Rex v. Rochester (Dean & Chapter of)*, 3 *Ibid.* 95.

Where a rector succeeded to a rectory, upon the death of a former incumbent, in April, 1816; and A & B were then in possession of the glebe lands, having been tenants of the former incumbent, and who continued in possession until after December, 1816, when the rector conveyed the lands to trustees for securing an annuity; it was held, that the latter could not maintain an ejectment against A & B without giving them notice to quit:—Lord Chief Justice Abbott observing, "We are of opinion, that the persons who were in possession as tenants, prior to the incumbency of Mr. Finch, were entitled to a notice to quit. The occupiers in Bedworth had been in possession for eight months, and those in Meriden for nine months, between Mr. Finch's promotion and the grant of the annuity, and they had not been disturbed. After such a lapse of time, we think Mr. Finch must be presumed to have assented to the continuance of their tenancy, under the same terms as before, and that he could not have dispossessed them without a notice to quit; and if he could not, neither could any person claiming under him." *Doe d. Cates v. Somerville*, 6 B. & C. 126.

(1) *So doing*:—i. e. detaining profits which he hath received in time of the vacation; but it is said, (upon what authority appears not,) that if such profits be not paid by the parishioners before the church is full of an incumbent, the persons refusing payment, after his induction, shall not be liable to the payment of the treble value, but are only liable to be prosecuted in the ordinary way, as they would be for other profits accruing to the incumbent when the church is full. Gibson's Codex, 750

of so much as he shall then have received of the fruits of every prebend, parsonage, vicarage, hospital, wardenship, provostship, or other spiritual promotion, whereof he so shall perceive, receive, or detain, let, or interrupt the incumbent to perceive, receive, and have the fruits, tithes, obventions, oblations, emoluments, commodities, revenues, rents, advantages, profits, or casualties; the moiety of which forfeiture shall be to the king our sovereign lord, and the other moiety thereof to the incumbent of the same prebend, parsonage, or vicarage, or other spiritual promotion, to be recovered in any of the king's courts, by action, bill, plaint, information, or otherwise, in which action or suit the defendant shall not be admitted to wage his law, nor any protection or essoin shall be unto the defendant allowed.

STAT. 28 HEN.
8, c. 11.

“V. Provided always, that it shall be lawful to every archbishop, bishop, archdeacon, and ordinary, their officers and ministers, to retain in his or their custody so much of the tithes, fruits, obventions, oblations, emoluments, commodities, advantages, rents, revenues, casualties, and profits, as shall amount to pay unto such person (1) or persons, as hath or shall serve or keep the cure (2) of such archdeaconry, deanery, prebend, parsonage, or vicarage, or other spiritual promotion, during the vacation, his or their reasonable stipend or salary; and also for the collection, gathering, and levying of such tithes, fruits, emoluments, rents, and other profits rising and growing during the vacation aforesaid; any thing in this act contained to the contrary in any wise notwithstanding.

What part of the fruits of a benefice the ordinary may retain in his hands, and for what causes.

“VI. Provided also, and be it further enacted by the authority aforesaid, that in case any of the incumbents aforesaid happen to die, and before his death hath caused any of his glebe lands to be manured, and sown at his proper costs and charges with any corn or grain; that then, in that case, all and every of the same incumbents may make and declare their testaments of all the profits of the corn growing upon the said glebe lands so manured and sown; any thing contained in this present act in any wise notwithstanding.

Incumbents may declare their wills of any corn sown by them upon their glebe lands.

“VII. And where also before this time divers and many parsons, vicars, and other spiritual persons being seised for term of their lives, of and in the said spiritual promotions aforesaid, as well for great sums of money to them beforehand paid, as for other causes and considerations, have let in ferm for term of years, by sufficient writings, their said parsonages, vicarages, and other spiritual promotions, or part thereof, unto divers and many of the king's subjects, and after such leases by them so made, the lessors thereof have oftentimes used to resign their said benefices or spiritual promotions so demised and letten in ferm; by reason of which resignation and other acts of the said lessors, the said benefices and other spiritual promotions have been void, and the title and interests of the said lessees hath been thereby annihilate and of none effect in the law, contrary to right and good conscience: for reformation whereof, and for a quietness the better hereafter to be had and continued between the king's subjects, be it enacted by authority of this present parliament, that from the foresaid first day of May last past, no manner of such lease, by sufficient writing heretofore made, nor hereafter to be made, by any spiritual person within this realm of England, Wales, or the marches of the same, to any lay person, of any parsonage, vicarage, or other spiritual promotion aforesaid, within this realm, upon which lease the rent and services reserved, with other the yearly charges of the lease, as in serving the cure and otherwise, shall amount within forty shillings by the year of as much as the said parsonage, vicarage, or other spiritual promotion aforesaid, so letten, is rated and valued at upon the king's books, for paying the first-fruits, shall be adjudged void, annihila-

If a spiritual person do demise his benefice for years, and after doth resign or die, how long the lessee may enjoy it. Altered by 1 & 2 P. & M. c. 17.

(1) *Unto such person*:—i. e. who shall (as soon as he may) be duly licensed by the ordinary for serving of such cure; otherwise, if he go on without such licence, he can have no title to any stipend or salary; nor can any be legally reserved and deducted for him.

(2) *Serve or keep the cure*:—It is extraordinary that, when this question of compen-

sation for the serving of cures was under consideration, a clause was not added, to insure an equitable consideration to the wives and children of such incumbents who died before harvest; and also, to such successors who came in immediately after harvest. *Sed vide* Stat. 1 & 2 Vict. c. 106, s. 36. *Dakins (Clerk) v. Seaman (Clerk)*, 9 M. & W. 777

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8, c. 11.

late, or determined, by reason of any such resignation, or other avoidance of the said benefice or spiritual promotion so letten, by the only act of the said lessor; but that every such lessee or grantee of any such benefices or spiritual promotions aforesaid, their executors or assigns, shall have and may enjoy their terms and interests of and in the same, for the term of six years, to be accounted next and immediately after the said avoidance, if the said lessor do so long live, and the lease so by him before made do so long continue and endure; and that after such avoidance, the successor or successors of every such lessor shall and may distrain for the rent and services so reserved, and have their actions of debt and all other advantages by way of action, entry, or otherwise, against the said lessee, his executors, or assigns, for recovery of the said rent and covenants upon the said lease reserved, as the lessor thereof might have had if no such avoidance had been had (1).

“VIII. And further be it enacted by the authority aforesaid, that if hereafter it happen any such lessor to decease and die before the end of the term by him so made, and that there be one year at least to come of the said term, that then it shall be lawful to the lessee thereof, his executors or assigns, to hold and enjoy their said lease to the end of the same year, wherein he is so entered at the time of his said lessor's death, if his said lease do so long continue, bearing and paying unto the successor of every such lessor all such rent and services as for the remnant of the said year shall upon every such lease be due; for the recovery whereof the said successor shall and may have all such ways and advantages as before is limited and given to the successor, where his predecessor maketh such lease, and resigneth (2).

The successor shall have the parsonage-house and the glebe not sown.

“IX. Provided alway, that every successor, after the death of his predecessor, may and shall have, upon one month's warning after the time of his induction, the mansion-house of every such parsonage, vicarage, or other spiritual promotion aforesaid, with the glebe belonging to the same, not being sown at the time of his said predecessor's death, for maintenance of his household, deducting therefore in his rent, as heretofore hath been borne for the same, or as it is reasonably worth; any thing in this act contained to the contrary notwithstanding.

Provision for the curate who serves during the vacation.

“X. Provided alway, that if the fruits of the vacation of the said spiritual promotions be not sufficient to pay the curate's stipend and wages for serving the cure the vacation time, that then the same to be borne and paid by the next incumbent within fourteen days next after that he hath the possession of any of the said promotions spiritual.”

STAT. 28 HEN.
8, c. 13.

XLVIII. STAT. 28 HENRICI 8, c. 13 (3). A.D. 1536.

“The Bill for Non-residence of Spiritual Men and their Benefices.”

STAT. 28 HEN.
8, c. 13. [IR.]

XLIX. STAT. 28 HENRICI 8, c. 13. [IRELAND.] A.D. 1537.

“An Act against the Authority of the Bishop of Rome.”

The mischief attending the Pope's authority.

“Forasmuch, as notwithstanding the good and wholesome lawes, ordinances, and statutes heretofore made, and established by the king's highness our most gracious sovereign lord, and by the whole consent of this high court of parliament, for the extirpation, abolition, and extinguishment out of this land, of the pretended power, and usurped authority of the Bishop of Rome (by some called the Pope) used within the same, which did obfuscate and wrest God's holy word and testament a long season from the spiritual and true meaning thereof, to his worldly and carnal affection, as pompe, glorie, avarice, ambition, and tyranny, covering and shadoing the same with his humane and craftie devises, traditions, and inventions set forth under the cloke of vertue, only to promote and establish his domi-

(1) This section was altered by Stat. 1 & 2. P. & M. c. 17

(2) Ibid.

(3) Repealed by Stat. 57 Geo. 3, c. 99. and Stat. 1 & 2 Vict. c. 106.

nion, as well both upon the soules and bodies, as also upon the temporal goods of all Christian people, excluding not only Christ out of his kingdom and rule of man's soule as much as they might, but also other temporal kings and princes out of their dominions, which they ought to have by God's law, upon the bodies and goods of their subjects, whereby he did not only robbe the king's majestie, being onely the supreme head of the realm of England, and of this his land of Ireland immediately under God, of his honor, right, and pre-eminence due unto him by the law of God, but also spoyled this his land of Ireland yearly of innumerable treasure, and besides the losses of the same, deceived the king's loving and obedient subjects, perswading to them by his lawes, bulls, and other his deceivable meanes, such drames, vanities, and fantasies, as by the same many of them were seduced and conveyed unto superstitious and erroneous opinions, so that the king's majestie, the lords spiritual and temporal, and the commons in this his land, being over-wearied and fatigued with the experience of the infinit abominations, and mischiefe proceeding of his impostures and craftie coloured deceits, to the great damages of soules, bodies, and goods, were forced of necessity for the publike weale of this land to exclude that foreine pretended power, jurisdiction, and authority used and usurped within this said land, and to devise such remedies for their reliefe in the same, as doth not onely redound to the honour of God, the high praise and advancement of the king's majestie, and of this his land, but also to the great and inestimable utilitie of the same: which said good and holosome lawes, notwithstanding so made and heretofore established, it is come to the knowledge of the king's highness, and also to diverse and many his loving, faithfull, and obedient subjects, how that divers seditious and contentious persons, being impes of the said Bishop of Rome, and of his see, and in heart members of his pretended monarchy, doe in covers and elsewhere, as they dare, whisper, inculce, preach, and perswade, and from time to time instil, into the eares and heads of the poore, simple, and unlearned people, the advancement and continuance of the said bishop's fained and pretended authority, pretending the same to have his ground and originall of God's law, whereby the opinions of many be suspended, their judgments corrupted and deceived, and diversitie in opinions augmented and increased, to the great displeasure of Almighty God, the high discontentation of our said most dread sovereign lord, and the interruption of the unitie, love, charity, concord, and agreement, that ought to be in a Christian region and congregation: for avoyding whereof, and of all such seditious persons as be the meanes and authors of such inconveniences, be it enacted, ordained, and established, by the king our soveraigne lord, and the lords spiritual and temporal, and the commons in this present parliament assembled, and by authority of the same, that if any person or persons, dwelling, demurring, inhabiting, or resiant within this land, of what estate, dignitie, pre-eminence, order, degree, or condition soever he or they be, after the first day of November which shall be in the yeare of our Lord God a thousand five hundred seven and thirty, shall by writing, cyphering, printing, preaching, or teaching, or by any deed or act, obstinately or maliciously hold or stand with to extoll, set forth, maintain, or defend the authority, jurisdiction, or power of the Bishop of Rome, or of his see, heretofore claimed, used, or usurped within this land, or by any pretence obstinately or maliciously invent any thing for the extolling, advancement, setting forth, maintenance, or defence of the same, or any part thereof, or by any pretence obstinately or maliciously attribute any manner of jurisdiction, authority, or pre-eminence to the said see of Rome, or to any bishop of the same see for the time being, within this land, that then every such person or persons, so doing or offending, their aydors, assistants, comforters, abettors, procurers, maintainers, faulters, concealors, counsellors, and every of them, being thereof lawfully convicted according to the laws of this land, for every such default and offence shall incur and run into the dangers, penalties, pains, and forfeitures, ordained and provided by the Statute of Provision and Premunire, made in the xvi. year of the reign of the noble and valiant prince King Richard the Second, against such as attempt, procure, or make provision to the see of Rome, or

STAT. 28 HEN.
8, c. 13. [1R.]

Necessity of
excluding such
foreign pre-
tended power.

Enacting part.

To extoll or
maintain by
writing, or any
act, the au-
thority of the
Bishops of
Rome hereto-
fore used in
this kingdom,
forbidden on
pain of *præ-
munire*, in
16 Rich. 2.

STAT. 28 HEN. elsewhere, by any thing or things, to the derogation or contrary to the prerogative royal, or jurisdiction of the crown and dignitie of the realm of England, the lawes, customes, and usages of this land.

Justices of assize and peace shall inquire of offences against this act, as of other offences against the king's peace, and certify every presentment into B. R. in forty days after; if term open: if not, the first of the next term after forty days, on pain of 40*l*.

The justices of B. R. to hear and determine.

"II. And to the intent that this act at all times may be well and truly executed, and the offenders thereof have and receive condigne punishment according to their demerits; it is enacted by the authority aforesaid, that as well justices of assises in their circuits, as justices of peace within the limits of their commission and authorities, or two of every such justiciars of peace at the least, whereof one to be of the quorum, shall have full power and authoritie to inquire of all offences, contempts, and transgressions, perpetrated, committed, or done, contrary to this act, in like maner and form, as they may of other offences against the king's peace, and shall certifie every presentment afore them, or any of them, had or made concerning this act, or any part thereof, before the king in his bench of this land within fortie daies next after any such presentment had or made, if the term be then open, and if not, then at the first day of the term next following the said fortie daies, upon pain that every of the justices of assise or justices of peace, before whom such presentment shall be made, making default of such certificate contrary to this act, shall lose and forfeit fortie pounds to the king's highness.

"III. And it is enacted by the authoritie aforesaid, that the justices of the King's Bench, as well upon every such certificate as by enquire before themselves within the limits of their authorities, shall have full power and authoritie to hear, ordain, and determine every such offence, done or committed contrary to this act, according to the lawes of the realm of England, and of this land, in such like maner and form to all intents and purposes as if the person or persons, against whom any presentment shall be had upon this statute, had been presented upon any matter or offence expressed in the said statute, made in the said xvi. year of King Richard the Second.

"IV. And it is also enacted by the authority aforesaid, that all and every archbishops, bishops, and archdeacons within this land, their commissaries, vicars general, and other their ministers, in every their visitations and seanes shall make diligent enserche, enquire, and examination of all and every ecclesiastical and religious persons within and of their jurisdiction, which shall be suspected, accused, or deemed to be a transgressor or offender of this act; and if upon such search, enquire, and examination, any ecclesiastical or religious person shall be presented, suspected, accused, or found culpable by witness or confession of any offence contrarie to this act, and be present at the time of such presentment, examination, or accusation, that then every the archbishops, bishops, and archdeacons, their commissaries, vicars general, and other their ministers, afore or to whom any such person shall be presented, suspected, accused, or found culpable as is aforesaid, shall commit every such person so presented, accused, or found culpable, if he be presented as is aforesaid, to the next common gaole of the shire, where such enquire, examination, or accusation shall be had or made, or else by good and sufficient sureties, to be bound by obligation to the king's use, shall let everie such person to bayle by their discretions, to appear before the king and his councaile, or his grace's deputie of this land, in the castle of Dublin, within xv. days next after such enquire, presentment, or accusation, if the term be then open and kept, or else in the first day of the term next following after the said enquire, presentment, or accusation, and at the said day limited for such appearance, they shall certifie into the said castle of Dublin by writing under their seales, as well the said bond, and the obligation taken for such appearance, as the presentment, examination, accusation, or conviction of every such person, and all depositions, and circumstances thereof, and the name of the gaole whereunto they have committed the said person; and if any such ecclesiastical or religious person, being presented, suspected, or accused, in any seane or visitation, be not present all the time of the said seane or visitation, as is aforesaid, that then nevertheless every the said archbishops, bishops, and archdeacons, their commissaries, vicars

Inquiry to be made at the visitation, of such ecclesiastical persons as offend; who, if found culpable, shall be committed to the next gaol, or else let to bail, on sureties to appear before the king and council, &c.

On the day of appearance the obligation, presentment, &c. shall be certified into the castle of Dublin.

general, and all other their ministers, afore or to whom any such presentment, suspection, or accusation shall be had or made, shall certifie every such presentment, suspection, or accusation, and all circumstances thereof, as is aforesaid, unto the castle of Dublin, within fiftene daies next after such presentment, suspection, or accusation, had or made, or in the first day of the terme next following after such presentment, suspection, or accusation, in such maner and forme as is afore rehearsed: and in case any ecclesiastical or religious person, being presented, suspected, or accused of any offence done or attempted contrary to this statute, be thereof convicted by confession or witness before any archbishop, bishop, or archdeacon, or before any the commissaries, vicars general, or other their ministers in their seanes or visitations, or before the king's counsaile in the castle of Dublin, that then every such spiritual and religious person, so being convict, shall suffer such paines, penalties, and forfeitures, as be expressed in the said estatute, made in the sixteenth yere of King Richard the Second.

STAT. 28 HEN.
8, c. 13. [Ir.]

Upon conviction, penalty as in Stat. 16 Rich. 2.

“V. It is also enacted by the authority aforesaid, that if any ecclesiastical judge or visitour doe voluntarily conceale, cloake, hide, or colour any presentment, accusation, or confession, that shall be made to him concerning this statute, and do not certifie every such accusation, presentment, or confession, before the king or his deputie, and his counsaile in the castle of Dublin, in such maner and forme as is above specified in this statute; that then every such ecclesiastical judge and visitour, so wilfully offending, for every such default shall forfeit *xl. li.*, the one half thereof to the king's highness, the other half to such person as will sue for the same by original writ, bill, plaint, or information, in any of the king's courts, in which suit no essoigne, protection, or wager of law, shall be admitted or allowed.

Penalty of 40*l.* upon visitor, &c. not certifying.

“VI. And for stronger defence and maintenance of this act, it is ordained and enacted by authority aforesaid, that all and every ecclesiastical judge, ordinary, chancellor, commissarie, official, vicar general, and other ecclesiasticall officer and minister, of what dignitie, pre-eminence, or degree soever they shall be, and all and every temporal judge, justiciar, maior, bayliffe, sheriffe, undersheriffe, escheator, alderman, jurate, constable, headborough, thirdborough, borsolder, and every lay officer and minister, to be made, created, elected, or admitted into this land, of what estate, order, degree, or condition soever he shall be, from and after the said first day of November shall, before he take upon him the execution of such office, make, take, and receive, a corporall oath upon the Evangelists before such person or persons, as have or shall have authority to admit him, ‘That he from henceforth shall utterly renounce, refuse, relinquish, and forsake the Bishop of Rome, and his authority, power, and jurisdiction; and that he shall never consent ne agree, that the Bishop of Rome shall practice, exercise, or have any maner of authority, jurisdiction, or power, within this land, but that he shall resist the same at all times to the uttermost of his power; and that from henceforth he shall accept, repute, and take the king's majestie to be onely suprem head in earth of the church of England and of Ireland; and that to his cunning, wit, and uttermost of his power, and without guile, fraud, or other undue meane, he shall observe, keep, maintain, and defend the whole effects and contents of all and singular acts and statutes, made and to be made within this land, in derogation, extirpation, or extinguishment of the Bishop of Rome and his authority, and all other acts and statutes, made and to be made in reformation and corroboration of the king's power, or supreme head in earth of the church of England and of Ireland: and this he shall doe against all maner of persons, of what estate, dignitie, degree, or condition they be, and in no wise doe nor attempt, nor to his power suffer to be done or attempted, directly or indirectly, any thing or things privily or apertly, to the let, hinderance, damage, or derogation thereof, or of any part thereof, by any maner of meanes, or for any maner of pretence; and in case any oath be made, or hath been made, by him to any person or persons in maintenance, defence, or favour of the Bishop of Rome, or his authority, jurisdiction, or power, hee repute the same as vaine and adnihilate, so him help God, and all saints, and the holy evangelists.’

Oath of supremacy.

STAT. 28 HEN.
8, c. 13. [Ir.]
Persons to
take said oath.

“VII. And it is also enacted by authority aforesaid, that all and every person and persons spiritual and temporal, suing livery, restitutions, or any ousterlemaine out of the king's, his heyres or successors' hands, or which shall be sworn to the king, his heyres or successors, or that shall have any office, fee, or rume, of his most gracious gift, or of his majesty's heyres or successors, or shall be reteyned in service with his grace, his heyres, or successors, shall make, take, and receive the said oath, and that also all and every religious person, at the time of his or their profession or entry into religion, and every other ecclesiasticall person at the time of his taking of orders, and all and every other person which shall be promoted or preferred to any degree of learning in any universitie within this land at the time of his promotion or preferment, and every of them shall make, take, and receive the said oath before his or their chancellor, ordinary, or their commissarie of such universitie.

Refusing to
take said oath,
high treason.

“VIII. And it is also enacted by authority aforesaid, that if any person or persons, limited or commaunded by authority of this act to make the said oath, or commaunded by any other person or persons authorised by the king's highness' commission under his great seale, previe seale, or his seale ordeyned for causes ecclesiastical, to make the said oath, obstinately refuse that to doe, that then every such offence and contempt shall be high treason, and the offendor, thereof being lawfully convicted, shall suffer paines of death, and other forfeitures, penalties, and losses, as is limited and accustomed in cases of high treason by any lawes or statutes of this land heretofore made.

The ceremonies
and decent
order used in
the church, not
prejudiced by
this act.

“IX. Provided alwayes, and be it enacted, that this act, ne any thing or things in the same rehearsed, mentioned, or comprised, be in any wise prejudicial, hurtful, or derogatorie to the ceremonies, uses, and other laudable and politike ordinances for a tranquillitie, discipline, concord, devotion, unitie, and the decent order heretofore in the church of Ireland used, instituted, taken, and accepted, nor to any person or persons accordingly using the same, or any of them.

Such canons,
&c. as not
repugnant to
the laws or the
prerogative,
may be used
still in name of
the king only,
till order to
the contrary.

“X. Provided, that notwithstanding this act or any other act made for the taking away of the said Bishop of Rome's usurped power, authority, pre-eminence, and jurisdiction, or any thing or things in the same comprised, that all and every archbishop, bishop, archdeacon, commissarie, and official, and every of them, shall and may use and exercise in the name of the king only all such canons, constitutions, ordinances, and sinodalls provincial, being already made for the direction and order of spiritual and ecclesiastical causes, which be not contrariant nor repugnant to the king's lawes, statutes, and customes of this land, nor to the damage and hurt of the king's prerogative royal, in such manner and forme as they were used and executed before the making of this act, till such time as the king's highness shall order and determin according his lawes of England, and such order and determination as shall be requisite for the same, and the same to be certified hither under the king's great seale, or otherwise ordered by parliament.

Dispensations,
&c. before
granted, not
repugnant to
the laws or the
prerogative, to
be still in
force.

“XI. Provided also, that this act, or any thing therein contained, be not intended, ne meant, nor shall be expounded nor interpreted, that any dispensations, licences, or confirmations for marriages, or otherwise graunted to any the king's subjects of this land, at any time before the making of this act, which were not repugnant to the lawes of God, the king's lawes, or the prerogative royal, shall be appeyred, or of any lesse value, strength, force, or effect, than they were before the making of this act.”

STAT. 28 HEN.
8, c. 14. [Ir.]

L. STAT. 28 HENRICI 8, c. 14(1). [IRELAND.] A.D. 1537.

“An Act for the Twentieth Part.”

II. STAT. 28 HENRICI 8, c. 16 (1). A.D. 1536.

STAT. 28 HEN.
8, c. 16.

"A Provision for Dispensations and Licences heretofore obtained from the See of Rome."

"Where the Bishop of Rome and his predecessors, of his and their covetous and ambitious minds, to the intent to advance and enrich themselves and the see of Rome, to the great impoverishing of this realm of England, and other the king's dominions, contrary to God's laws, the laws and statutes of this realm, and in derogation of the imperial crown of this said realm, have heretofore wrongfully pretended, extorted, used, and exercised within the same divers and many usurped powers, jurisdictions, and authorities, during and by the which time the said bishop and his predecessors arrogantly and unjustly have taken upon them, for great sums of money, and other profits to them given, to grant unto the king's subjects, and other inhabitants within this realm and other the king's dominions, many, divers, and sundry authorities, immunities, faculties, privileges, licences, indulgences, and pre-eminences of divers kinds, natures, and qualities, which, although they proceeded by an unjust and usurped authority, have been until now of late, by the subjects of this realm, timorously and ignorantly accepted, received, used, and erroneously put in exercise and execution; the which usurped authority, jurisdiction, and power, is now justly, truly, and ought to be clearly and absolutely extinguished, extirped, and abolished, within this realm, and other the king's dominions; and forasmuch as all and every such person and persons, bodies politick and corporate, which unlawfully, and without any manner of authority or just ground, heretofore have timorously and ignorantly accepted, received, used, and erroneously put in execution, and exercised the said faculties, immunities, authorities, privileges, licences, indulgences, and pre-eminences, have now sincere, pure, and perfect intelligence and knowledge of the said usurped authority, jurisdiction, and power; and that the said faculties, authorities, privileges, licences, and indulgences, so as is aforesaid accepted, received, used, and erroneously exercised, were and been to all intents and purposes clearly void, frustrate, and of none effect; albeit, if they should be impeached or interrupted of such privileges, liberties, pre-eminences, authorities, jurisdictions, profits, and other commodities, which they now have, use, and exercise, by colour of such vain and void licences, dispensations, and faculties, it should be to their intolerable inquietations and utter undoing.

2 Roll. 451.

"II. Wherefore be it enacted by authority of this present parliament, that all bulls, breves, faculties, and dispensations, of what names, natures, or qualities soever they be of, heretofore had or obtained of the Bishop of Rome, or any of his predecessors, or by the authority of the see of Rome, by or to any subjects, resiants, or bodies politick or corporate, of or in this realm, or of or in any other the king's dominions, shall from henceforth be clearly void and of no value, force, strength, nor virtue; and shall never hereafter be used, admitted, allowed, *pleaded*, or *allegded*(2), in any places or courts of this realm, or of any other the king's dominions, upon the pains contained in the Statute of Provision and Premunire, made in the sixteenth year of the reign of King Richard the Second: yet notwithstanding, at the most humble petition and intercession of the lords spiritual and temporal, and the commons, in this present parliament assembled, it may please the king's majesty, of his most gracious benignity, goodness, and blessed disposition, that it may be enacted by authority of this parliament, that all mar-

All bulls and dispensations from the bishop or see of Rome to any subjects of this realm shall be void.
1 Roll. 92.

(1) Repealed by Stat. 1 & 2 P. & M. c. 8. Revived by Stat. 1 Eliz. c. 1, s. 10.

(2) *Pleaded, or alleged*:—The Archbishop of York was libelled in the spiritual court against Ethrington, for a pension, setting forth, that a church (there named) was appropriated by the Pope to the abbey of Belland; and that, upon such appropriation, the abbot granted such pension to the archbishop. Hereupon a prohibition was prayed,

on suggestion, that the matter of this libel was contrary to the statute. But it was replied, that the title to the pension was founded upon the grant of the abbot, and not upon the bull or appropriation; which was produced only, as an appropriation, by way of inducement to the grant, and that, without which, no grant had been made: and, accordingly, a prohibition was denied. *Ethrington v. York (Archbishop of)*, 2 Lev. 251.

STAT. 28 HEN.
8, c. 16.

A confirmation
of former law-
ful marriages.

riages had and solemnized within this realm, or in any other the king's dominions, before the third day of November in the twenty-sixth year of the king's most gracious reign, whereof there is no divorce or separation had by the ecclesiastical laws of this realm, and which marriages be not prohibited by God's laws, limited and declared in the act made in this present parliament for the establishment of the king's succession, or otherwise by Holy Scripture, shall be by authority of this present parliament, good, lawful, and effectual, and shall be from the beginning of such marriages reputed, esteemed, taken, adjudged, received, approved, and allowed, by the authority of this present parliament, to all and singular purposes, effects, and intents, as good, as sufficient, and as available, as though no impediment of matrimony had ever been between them that have contracted and solemnized such marriages; and that all children procreated and to be procreated in and under such marriages, shall be lawful to all intents and purposes.

A confirmation
of all arch-
bishops and
bishops, and
their authority,
and other
ecclesiastical
persons and
orders.

“III. And that it may be also enacted by the authority of this present parliament, that all archbishops and bishops of this realm, or of any the king's dominions, consecrated, and at this present time taken and reputed for archbishops and bishops, may by authority of this present parliament, and not by virtue of any provision or other foreign authority, licence, faculty, or dispensation, keep, enjoy, and retain their archbishopricks and bishopricks, in as large and ample manner, as if they had been promoted, elected, confirmed, and consecrated according to the due course of the laws of this realm; and that every archbishop and bishop of this realm, and of other the king's dominions, may minister, use, and exercise all and every thing and things pertaining to the office or order of an archbishop and bishop, with all tokens, ensigns, and ceremonies thereunto lawfully belonging.

“IV. And that all ecclesiastical persons of the king's realm and dominions, which at this time be taken, had, and reputed for abbots, priors, abbesses, prioresses, and other heads of religion, (which be not, neither shall be excluded from their dignities by the late Act of Suppression,) and the religious persons living under their obedience, and all persons now taken and reputed as masters, presidents, provost, and wardens of cathedral churches and colleges, with the companies and fellowships of the same, all priests and clerks which have received any of the ecclesiastical orders, all archdeacons and deans, and other having offices, cures, and dignities spiritual, may by authority of this act, and not by the virtue of any foreign power or authority, administer, use, and exercise all things pertaining to their dignities, offices, orders, cures, religions, and fellowships, and may lawfully hereafter use all tokens, ensigns, and ceremonies, which they have been accustomed to use in times past, so it be not expressly against the laws of God and this realm; any thing or things contained in any act or acts made sithen the beginning of this present parliament to the contrary of any of the premises in any wise notwithstanding.

“V. And where divers and many of the king's said subjects have purchased and obtained many dispensations, bulls, breves, and faculties of the Bishop of Rome for the time being, or by authority of the see of Rome, as pluralities, unions, trialities, appropriations, commendams, exemptions, and other bulls, breves, and faculties, for divers causes and matters, other than be afore expressed, which be of no strength or virtue: it may therefore please the king's majesty, that it may be enacted by authority aforesaid, that all and every his said subjects, during the time of one whole year next after the feast of St. Michael the Archangel next coming, may enjoy, use, and have, by authority of this present act, and not by the virtue of the said bulls, breves, and faculties, all and every of the effects contained and specified in such bulls, breves, and faculties, in all such cases only as may be dispensed with by the Archbishop of Canterbury, by authority of the laws and statutes of this realm.

The effect and
contents of
bulls, breves,

“VI. And that it may be further enacted by authority aforesaid, that all and every the king's said subjects, bringing, rendering, and delivering to such persons of his council, or of the masters of his chancery, as the king's highness shall name

and appoint, any *bulls*, breves, or any other *faculties* (1) concerning any the premises, that then, if it shall appear to such persons as the king's highness shall so name and appoint to receive such bulls, faculties, and breves, after due examination thereof had, that the effects contained and specified in such bulls, faculties, and breves, or any part thereof, may be lawfully granted by the said Archbishop of Canterbury, by authority of the laws and statutes of this realm; that then and in every such case, the king's said subjects making humble suit to have the effects contained in the said bulls, breves, and faculties to be granted unto them, shall have, receive, and obtain of the chancellor of England, or keeper of the great seal for the time being, by sufficient writing in due form to be made, and to be sealed under the king's great seal, all and every such effects contained and specified in such bulls, breves, and faculties, as may be lawfully granted by the said Archbishop of Canterbury, by authority of the laws and statutes of this realm, paying only for sealing of every such writing xx. s. iv. d., and over that, for the reasonable costs for pains of the writing thereof, iij. s. iv. d. and not above; and for the pain taken for due examination of every such bulls, breves, and faculties, iij. s. iv. d. and not above. And that this present act shall be sufficient and immediate warrant to the chancellor or keeper of the great seal, for en sealing and delivery of such licences, faculties, dispensations, and other writings, which shall be made, granted, and sealed under the king's great seal, by virtue and authority of this act.

"VII. And it is also enacted by authority aforesaid, that all and every such licence, dispensation, faculty, confirmation, or other writing, to be had, made, or granted under the king's great seal out of the said court of chancery by authority of this act, in form as is above rehearsed, shall be good and effectual to the said parties suing for the same, according the tenor and effects thereof, and shall be admitted, accepted, and allowed in all courts and places of this realm, and in all other the king's dominions; any usage, prescription, foreign laws, customs, or ordinance to the contrary thereof notwithstanding."

LII. STAT. 28 HENRICI 8, c. 16. [IRELAND.] A.D. 1537.

"An Act for the Suppression of Abbeys."

"Most humbly desire the king's highness, his humble subjects, that it may be enacted by authority of this present parliament, that his majesty shall have and enjoy to him and to his heires for ever, the monasteries and religious houses of the Bectif, Saint Peter's, besides Trim, Duske, Duleke, Holmepatricke, Baltinglas, Grane, Taghmolin, Dunbrodie, Tenterne, the priorie of Ballibogane, and the abbey of the Hogges and Fernes, and in like manner shall have and enjoy all the sites and circuits of every such religious house, and all and singular the manours, granges, and meases, lands, tenements, reversions, rents, services, tithes, pensions, portions, churches, chapels, advowsons, parsonages, annuities, rights, interests, conditions, and other hereditaments, appertayning or belonging to every of the said monasteries, or religious houses, in as ample and large maner as the abbots, priors, abbesses, prioresses, or other governors of the said monasteries and religious houses, at any time within the whole yeare next before the making of this act, had, ought, or might, or have had, possessed, and enjoyed in the right of their said houses, and also that his highness shall have to him and to his heyres, all and singular such monasteries and religious houses, not being already by his grace given to any person or persons, by letters patents, which at any time within two yeares next before the making of this act, hath been given to his majestie by any abbot, prior, abbess, or prioress, under their covent seales, or by any other meane, or that otherwise hath beene suppressed or dissolved, and all and singular the manors, lands, tenements, rents, services, reversions, tythes, pensions, portions,

STAT. 28 HEN. 8, c. 16.

faculties, &c. Dyer, f. 233, 345, 352.

Repealed by 1 & 2 P. & M. c. 8, and revived by 1 Eliz. c. 1.

STAT. 28 HEN. 8, c. 16. [IR.]

Eng. 27 Hen. 8, c. 28. Several monasteries and religious houses vested in the king in as ample manner as the abbots, &c. within a year enjoyed them. 33 Hen. 8, c. 5.

(1) *Bulls*, . . . *faculties*:—It was said in *Ethrington & York (Archbishop of)*, (2 Lev. 251.) that the archbishop could not take a new grant of the pension from the King, (pursuant to this clause,) because it

was not granted to him by the Pope; nor was it necessary for him to produce a confirmation made by the King, because the appropriation was not his title but only an inducement to the grant.

STAT. 28 HEN.
8, c. 16. [1R.]

churches, chappels, advowsons, patronages, rights, interests, conditions, and other interests and hereditaments, to the same monasteries, or religious houses, or to any of them belonging or appertayning, which before the making of this act, his highness hath not given and graunted to any person or persons, by his letters patents as is aforesaid, to have and to hold all and singular the premises, with all their rights, profitcs, jurisdictions, and commodities, unto the king's majestie, and to his heyres and successors for ever knit and united to the imperial crowne of England, to doe and use therewith his or their owne wills, to the pleasure of Almighty God, and to the honour and profite of this land.

The king's
patentee shall
enjoy accord-
ing to the tenor
of their letters
patent, and
have like
remedies as
the abbots, &c.
might have
had.

“II. And it is ordeyned and enacted by authority aforesaid, that all and every person and persons, and bodies politique, which now have, or hereafter shall have any letters patents of the king's highness, of any the sites, circuitcs, manours, lands, tenements, rents, reversions, services, tythes, pensions, portions, churches, chappels, advowsons, patronages, tythes, interests, conditions, interests and other hereditaments, which appertayneth to any monasteries, abbeyes, priories, or religious houses heretofore given or granted to the king's highness, or otherwise suppressed or dissolved, or which appertain to any of the said monasteries or religious houses, that is or shall be suppressed or dissolved by authority of this present act, shall have and enjoy the said sites, circuits, mannors, lands, tenements, rents, reversions, services, tythes, pensions, portions, churches, chappels, advowsons, patronages, tythes, interests, and all other hereditaments, contained and specified in their letters patents, now being thereof made and to be contained and expressed in any letters patents hereafter to be made according to the tenors, purports, and effects of every such letters patents. And shall also have all such actions, suits, entries, and remedies, to all intents and purposes, for any thing and things contained in any such letters patents now made, or to be contained in any such letters patents hereafter to be made in like manner, form, and condition, as the abbots, priors, abbesses, prioresses, and chief governors of every religious house, which had the same, might or ought to have had, if they had not been suppressed nor dissolved. Saving to every person and persons, and bodies politique, their heirs and successors: other than the abbots, priors, abbesses, prioresses, and chief governors of the said religious houses, specified in this act, and the convents of the same and their successours, and such as pretended to be founders, patrons, or donors to the said monasteries or religious houses, or of any lands, tenements, or hereditaments belonging to the same, or their heirs and successors, all such right, title, interest, possession, leases of years, rents, services, annuities, commons, fees, offices, liveries and livings, pensions, portions, corrodies, synods, proxies, and all other profits, as they or any of them have, ought or might have had, in or to any of the said monasteries or religious houses, or in or by any mannors, lands, tenements, rents, reversions, services, tythes, pencions, portions, and other hereditaments appertaining or belonging, or that appertaineth to any of the said monasteries or religious houses, as if the said monasteries or religious houses had not been suppressed by this act or by any other mean, but had continued in their essential bodies and estates, that they now be or were in.

Saving the
rights of others,
except the
abbots, &c.

“III. Provided always and be it enacted, that forasmuch as divers the chief governours of the said religious houses, determining the utter spoiling and destruction of their houses, and dreading the suppression thereof, for the maintenance of their detestable lives have lately fraudulently and craftly made feoffments, gifts, estates, graunts, and leases under their convent seals, or suffered recoveries of their manors, lands, tenements, and hereditaments, in fee simple, fee tail, for term of life or lives, or for years, or chargeth the same with rent or corrodies, to the great decay and dismynyshes of their houses; that all such craftie and fraudulent recoveries, feoffments, gifts, estates, graunts, and leases, and every of them, made by any of the said chief governours of the said religious houses under convent seals within two years next before the making hereof, shall be utterly void and of none effect.

Feoffments,
&c. within two
years, void.

All ornaments,
jewels, &c.

“III. And it is also enacted by authority aforesaid, that the king's highness shall have and enjoy to his own proper use all such ornaments, jewels, goods,

cattails, and debts, which appertaineth or belongeth to any of the chief governours of the said monasteries or religious houses in the right of the said monasteries or religious houses at the first day of June in the year of our Lord God one thousand five hundred thirty-six, or any time sithence, not given ne granted by the king's majesty at any time before the making of this act to any person or persons by his letters patents, wheresoever and to whosoever possession they shall come or be found, except onely such beasts, grain, and woods, and such other like cattle and revenues, as hath been sold in the said first day of June or sithence, for the necessary and reasonable expences or charges of any of the said monasteries and houses. And in consideration of which premises, to be had to his highness and to his heyres as is aforesaid, his majesty is pleased and contented of his most excellent charity to provide to every chief head and governour of every such religious house, during their lives, such yearly pension or benefices as to their degree and qualities shall be reasonable and convenient, wherein his highness will have most tender respect to such of the said chief governours, as well and truly conserve and keep the goods and ornaments of their houses to the use of his grace, without spoil, waste, or embesilling of the same: and for the due fulfilling and accomplishing of the same his highness doth ordain and depute his trustie and right well beloved counsailors, his grace's deputy, chancelour, thesaurer, underthesaurer, chief justices of the king's bench and common place, and chief baron of his grace's exchequer, of this his land for the time being, or any six, five, four, three, or two of them, at the least, so that the said underthesaurer be one, to assigne and depute to such chief governour the certainty of such pension or other living: and that any such pension or living, so to be limited or given to any the said chief governours, shall be as good and effectual to all intents and purposes, as though the king's highness had given the same under his letters patents: and that none of the said chief governours shall pay any thing in the hanaper for the ensealing of any such pensions to be limited, as is aforesaid; and also his majesty will ordain and provide, that the convents of every such religious house shall have their capacities, if they will, to live honestly or virtuously abroad, and some convenient charity disposed to them towards their living, or else shall be committed to such honourable great monasteries of this land, wherein good religion is observed, as shall be limited by his highness, or his grace's said counsailors, or any six, five, four, three, or two at the least, there to live religiously during their lives.

"IV. And it is ordained by authority aforesaid, that the chief governours and convents of such great monasteries shall take and accept into their houses from time to time such number of persons of the said convents, as shall be assigned and appointed by the king's highness, or his said counsailors, or any six, five, four, three, or two of them at the least, and keep them religiouslie during their lives within the said monasteries, in like manner and form as the convents of such great monasteries be ordered and kept.

"V. And also the king's majesty is pleased, that it be enacted by authority aforesaid, that his highness shall satisfie, content, and pay all and singular such just and true debts, which been owing to any person or persons, by the chief governours of any of the said religious houses, in as large and ample manner as the said chief governours should or ought to have done, if this act had never been made.

"VI. Provided always, that the king's highness, his heirs and successors, at any time after the making of this act may at their pleasures ordain and declare by their letters patents under their great seal, that such of the said monasteries or religious houses, not before this time given by his grace to any person or persons by his letters patents, as is aforesaid, which his majesty shall not be disposed to have suppressed nor dissolved by authority of this act, shall still continue and be of the same body corporate, and in the said essentiall estate, qualitie, and condition, as well in possession as otherwise, as they were before the making of this act, without any suppression or dissolution thereof, or any part of the same, by authority of this act; and that every such ordinance and declaration, so to be made by the king's highness, shall be good and effectual to the chiefe governours of the said

STAT. 28 HEN.
8, c. 16. [1R.]

given to the
king.

A yearly pen-
sion for life to
every chief
head.

All their just
debts to be
paid by the
king

STAT. 28 HEN.
8, c. 16. [1R.]

The rights of
founders,
patrons, or
donors, saved.

The king's
lessees of the
sites, &c. to
keep an honest
farmer's house
therein ac-
cording to the
quantity of the
demains, on
pain of 100s.
every quarter.

Justices of
peace to in-
quire of such
offences;
impose and
estreat said
fines.

religious houses, which his majestie will not have suppressed, and to their succes-
sours, according to the tenors and purports of the letters patents thereof to be made;
any thing or things contained in this act to the contrary hereof notwithstanding.
Saving alwayes and reserved to every person and persons, being founders, patrons, or
donours, of any the said monasteries or religious houses, that is or shall be sup-
pressed by this act, or otherwise by any other meanes, their heyres, and successors,
all such right, title, and interest, possession, rents, annuities, fees, offices, leases,
commons, proxies, pensions, and sinodals, and all other profites, whatsoever they bee,
which any of them have or should have had without fraud or covin, by any maner
of meanes, otherwise then by reason or occasion of the dissolution of the said
monasteries or religious houses, into or upon any the said monasteries or religious
houses, whereof they be founders, patrons, or donours, or in, to, or upon any the
lands, tenements, or other hereditaments, appertayning or belonging to the same,
in like maner, forme, and condition, as other persons and bodies politique, be saved
by this act, as is before rehearsed, and as if the said monasteries or religious
houses had not been suppressed or dissolved by this act, or otherwise by any other
meane, but had continued still in their essentiall bodies and estates, as they be now
or were in; any thing in this act to the contrary hereof notwithstanding.

“VII. And further be it enacted, ordained, and established by authority afore-
said, that all and singular persons, bodies politique and corporate, to whom the
king's majestie, his heyres or successors, have given, letten, or demised, or here-
after shall give, grant, let, or demise, any sites, circuits, or precincts, with the
houses thereupon builded, together with all the demaines of any the said monas-
teries or religious houses, that is, or have been, or shall be, dissolved or given to the
king's highness by this act, or otherwise by any other meanes, and their succes-
sours, executors, and assignes, of every such person, bodie politique and corporate,
shall be bounden by authority of this act, under the penaltie hereafter ensuing, to
keepe, or cause to be kept, an honest farmour's house or houshold in the same site,
circuit, or precinct, according to the quantitie of the demains of the same: and if
any person or persons, bodies politique or corporate, that shall be bounden by this
act, doe not keepe or cause to be kept such an honest farmour's house or houshold,
that then he or they so offending shall forfeit to the king's highness, for every
quarter of a yere doing the contrarie, an hundred shillings; to be recovered to his
use in every of his courts of record.

“VIII. And over that it is enacted by authority aforesaid, that all justices of
peace in every shire, where any such offence shall be committed or done contrary
to the true meaning or intent of this present act, shall in every quarter and
general sessions within the limits of their commission enquire of the premises, and
shall have full power and authority to hear and determine the same, and to tax
and cesse no lesse fine for every of the said offences, than is afore limited for the
same offences, and the estreats thereof to be made and certified in the king's
exchequer of this land according and at such time and fourme, as other estreats of
fines, issues, and amerciaments, been made by the said justices.

“IX. Provided that this act, ne any thing therein containned, shall extend, or
any wise be meant, to the rectories, parsonages, vicarages, or churches of the
Norragh and Taghmolynbegge, or to any dismes, tythes, offerings, alterages, landes,
tenements, and other profites, whatsoever they be, belonging to them or any of
them, during the lives of Sir John Derthicke, parson of the Norragh aforesaid, and
Sir Thomas Festame, parson of Taghmolyn aforesaid.

“X. Provided that this act, ne any thing therein comprised, shall extend or in
any wise be meant to the rectories, parsonages, vicarages, or churches of Holywood,
Dullardeston, and the free chappel of Arnakrenan, and Kyluskie, and the par-
sonage of Uske, or to any dismes, tythes, offerings, alterages, lands, tenements, and
other profits, whatsoever they be, belonging to them, or any of them, during the
lives of Sir Robert Luttrell, parson of Holywood aforesaid, Sir John Connyl, vicar
of Holywood aforesaid, Sir John Lawles, vicar of Taghmolynbegge aforesaid, Sir
Alexander Baron, parson of Dullardeston aforesaid, Sir Eustace Browne, master or
governour of the said free chappel of Arnakrenan and Kiluskie, and Sir Edmonde

Eustace, parson of Uske; but that they, and every of them, shall have and enjoy their said benefices with the issues and profites of the same during their lives. STAT. 28 HEN. 8, c. 16. [IR.]

“XI. Provided also by authority aforesaid, that any article, provision, matter, thing, or things, whatsoever it be, comprised or mentioned in this present act, shall extend, or in any wise be prejudiciall or hurtfull to the most reverend father in God, George Archbishop of Dublin, or any his successors, in, to, or for any right, possession, or title, that the said most reverend father in God, or any his predecessors, hath or shall have to any advowson, parsonage, vicarage, patronage, presentation, or collation to or of any benefice or promotion spiritual, whatsoever it be, lately belonging or in any wise appertayning to the said house or monastery of Taghmolynbegge; any thing or things in this present act notwithstanding.

“XII. Provided that this act, neyther anything therein containd, be prejudiciall or hurtfull to the vicars choralls of St. Patricke’s church of Dublin, neyther to their successors, for their right, title, interest, possession, and entree, into and for the benefice, pension, and tythes of Kynnegh, within the countie of Catherlaghe.”

LIII. STAT. 28 HENRICI 8, c. 18 (1). A.D. 1536.

STAT. 28 HEN. 8, c. 18.

“It shall be High Treason for any Man to espouse, marry, or take to his Wife, any of the King’s Children being lawfully born, or otherwise commonly reputed for his Children, or any of the King’s Sisters, or Aunts of the part of the Father, or any of the lawful Children of the King’s Brethren or Sisters, or to contract Matrimony with any of them, without the King’s Licence first had under the Great Seal, or to deflower any of them being unmarried: and the Woman so offending shall incur the like Danger.”

LIV. STAT. 28 HENRICI 8, c. 18. [IRELAND.] A.D. 1537.

STAT. 28 HEN. 8, c. 18. [IR.]

“An Act for the Proove of Testaments.”

“Forasmuch as in a parliament holden at Westminster in the one and thirtieth yeare of the noble prince, King Edward the Third, upon the complaint of his people, for the outrageous and grievous fines and summes of money, taken by the ministers of bishops and other ordinaries of holy church, for the probate of testaments, and for the acquittance by the said ordinaries of the same to be made concerning the same, the said noble king, in the same parliament openly charged and commaunded the Archbishop of Canterbury, and other ordinaries for that time being, that amendment thereof should be had, and if none amendement thereof be had, it was by authority of the same parliament accorded, that the king should thereof make enquiry by his justices of such misdemeanors, and that the same justices should heare and determine them as well at the suit of the king as the partie, as of old time hath been used, as by the same estatute more plainly it appeareth; and after for further avoiding of the same divers good and wholesome estatutes and lawes thereof was made, as well in the third yeare of the raigne of King Henry the Fifth, as in the one and twentieth yeare of our most dread sovereign lord King Henry the Eighth, as by the said statutes more plainly it appeareth; and considering the great povertie that resteth amongst the king’s subjects of this land of Ireland by many and divers occasions, and that the taking of the said exactions in no part be diminished, but from time to time increased, to the impoverishing and hinderance of the king’s true subjects, the said estatutes and lawes notwithstanding; for remedie whereof be it enacted, ordeyned, and established by authority of this present parliament, that from the first day of Februarie, in the yeare of our Lord God, one thousand five hundred thirty-seven, nothing shall be demanded, received, ne taken by any archbishop, bishop, ordinary, archdeacon, chancellor, commissary, officiall, or any other maner person or persons whatsoever he or they be, which now have or hereafter shall have authority or power to take or receive probation, insinuation, or approbation of testament

Recital of
31 Edw. 3,
c. 4. Eng.

Eng. 3 Hen. 5.
21 Hen. 8,
c. 5.

Enacting part.

Fees for probate or administration where the goods exceed not

STAT. 28 HEN.
8, c. 18. [In.]

3*l.* 6*s.* 8*d.*, to
the scribe or
notary, 12*d.*,
to the ordinary,
&c. for the
seal, 8*d.*

The ordinary,
&c. not to
refuse to prove
such testament,
or grant such
commission,
when exhibited
in writing
ready to be
sealed, and the
testament law-
fully proved.

When the
goods exceed
not 10*l.*, the
ordinary, &c.
shall have 2*s.*,
the register,
&c. 1*s.* 4*d.*

When not
above 20*l.*, to
the ordinary,
&c. 5*s.*, to the
register, &c.
1*s.* 8*d.*

or testaments, by himselfe or themselves, nor by his or their registers, notaries, scribes, praisers, sumpnors, apparitors, or by any other of their ministers, farmors, or servants; for the probaton, insinuation, and approbation of any testament or testaments, or for the commission of administration of the goods or cattells of any person dying intestate, or for writing, sealing, praysing, registering, fines, making of inventories, giving of acquittances, or for any costes and charges, or any other maner of cause concerning the same, where the goods of the testator of the said testament, or the person so dying intestate or otherwise, doe not amount cleerly over and above the value of iii. *li.* vi. *s.* viii. *d.* Irish money, except to the scribe or notarie to have for the writing of the probat of the testament of him deceased, whose goods shall not be above the same cleere value of iii. *li.* vi. *s.* viii. *d.* Irish, xii. *d.* Irish; and except to the ordinary, his commissary, official, or other minister having the custodie of his seale usuall accustomed for the sealing of testaments, for the wax, sealing, and deliverie of the probate of the testament of him deceased, whose goods shall not be above the same cleere value of iii. *li.* vi. *s.* viii. *d.* Irish, and to the scribe for the writing of the commission of administration of the goods of any man dying or deceasing intestate, not being above like value of iii. *li.* vi. *s.* viii. *d.* xii. *d.* and to the ordinarie, his commissarie, official, or other minister, having the custody of his said seale, for wax, sealing, and deliverie of the same commission viii. *d.* Irish; and that nevertheless the archbishop, bishop, ordinary, or other person or persons, having power or authority to take or receive the probaton, insinuation, or approbation of testaments, refuse not to approve or make any such testament, or make any such commission being lawfully desired, tendered, or offered to them to be proved, approved, or made, then whereof the goods of the testator or person so dying intestate, or otherwise, amount not above the value of three pounds, sixe shillings, eight pence, Irish, so that the said testament or commission, be exhibited to him or them in writing, readie to be sealed, and that the same testament be lawfully proved before the same ordinary, before the sealing, to be the true, whole, and last testament of the same testatour, in such forme as hath been commonly accustomed in that behalfe, and when the goods of the testatour, doth amount over and above the cleere value of iii. *li.* vi. *s.* viii. *d.* and do not exceed the summe of ten pound Irish, that then no archbishop, bishop, ordinarie, nor other maner person or persons whatsoever he or they be, now having, or that hereafter shall have authority to take probaton or approbation of any testament or testaments, as is aforesaid by themselves, or any of their said registers, scribes, notaries, prayours, sumners, apparitors, nor any other ministers, for the probaton, insinuation, and approbation of any testament or testaments, or for the commission of administration of the goods and cattells of any person dying intestate, or for writing, registering, sealing, praysing, making inventories, giving of acquittances, fines, or for any costs or charges, or for any other maner of cause concerning the same, shall take or cause to be taken of any person or persons, but only three shillings four pence Irish, and not above; whereof to be to the ordinarie, or to other person or persons, having power and authority to take any probaton of any testament or testaments, for him and his ministers, ii. *s.* and not above; and xvi. *d.* residue of the said iii. *s.* iii. *d.* to be to the scribe, notarie, or register, for the writing and registering of the same. And where the goods of the testator, or person or persons so dying intestate or otherwise, doe amount over and above the cleere value of x. *li.* Irish, and do not exceed the summe of xx. *li.* Irish, that then the archbishop, bishop, ordinary, nor other person or persons now having, or which hereafter shall have authority or power to take probate of testaments as is aforesaid, by him or himselfe, or any of his or their said registers, scribes, notaries, prayours, sumners, apparitors, or any other their ministers, for the probaton, insinuation, and approbation of any testament, or testaments, or for the commission of administration of the goods or cattalls of any person dying intestate, or for writing, registering, sealing, praysing, making of inventories, giving of acquittances, fines, or for any costes or charges, or for any maner of cause concerning the same, shall take or cause to be taken, of any person or persons, but onely vi. *s.* viii. *d.* Irish, and not above; whereof to be to the ordinarie or to other person or persons, having power

or authority to take probation of any testament or testaments, for him and his ministers, v. s. Irish, and not above; and xviii. *d.* residue of the vi. s. viii. *d.* to be to the scribe, notary, or register, for the writing and registering of the same. And when the goods of the testator, or person or persons so dying intestate, or otherwise, do amount to the clear value of xx. pounds Irish, and do not exceed the sum of xl. *li.* Irish, that then the archbishop, bishop, nor ordinary, nor other person or persons, now having, or which hereafter shall have, authority or power to take probate of testaments, as is aforesaid, by him or themselves, or any of his or their registers, notaries, praisers, sumners, apparators, or any other their ministers, for the probation, insinuation, and approbation of any testament or testaments, or for the commission of administration of the goods or cattals of any person dying intestate, or for writing, registering, sealing, praising, making of inventories, giving of acquittances, fines, or for any costs or charges, or for any manner of cause concerning the same, shall take, or cause to be taken, of any person or persons, but only x. s. Irish, and not above; whereof to be to the ordinary, or to other person or persons having power or authority to take any probation of any testament or testaments, for him and his ministers viii. s. Irish, and not above, and ii. s. residue of the said x. s. to be to the scribe, notary, or register, for the writing or registering of the same; and when the goods of the testator, or person or persons so dying intestate or otherwise, do amount to the clear value of xl. pounds Irish, and not exceed the sum of c. *li.* Irish, that then the archbishops, bishops, nor ordinaries, nor other person or persons now having, or which shall have hereafter authority or power to take probate of testaments, as is aforesaid, by him or himself, or any of his or their registers, notaries, praisers, sumners, apparators, or any other their ministers, for the probation, insinuation, and approbation of any testament or testaments, or for the commission of administration of the goods and cattles of any person dying intestate, or for writing, registering, sealing, praising, making of inventories, giving of acquittances, fines, or for any costs or charges, or for any manner of cause concerning the same, shall take, or cause to be taken, of any person or persons, but only xvi. s. viii. *d.* Irish, and not above; whereof to be to the ordinary, or to other person or persons having power or authority to take any probation of any testament or testaments, for him and his ministers xiv. s. Irish, and not above, and ii. s. viii. *d.* residue of the said xvi. s. viii. *d.* to the scribe, notary, or register, for the writing and registering of the same. And when the goods of the testator, or person or persons so dying intestate or otherwise, do amount to the clear value of one hundred pounds Irish, and above, whatsoever the sum or quantity thereof be, that then the archbishops, bishops, or ordinaries, or other person or persons now having, or which hereafter shall have authority or power to take probate of testament as is aforesaid, by him or himself, or any of his or their registers, notaries, praisers, sumners, apparators, or any other their ministers, for the probation, insinuation, and approbation of any testament or testaments, or for the commission of administration of the goods and cattals of any person dying intestate, or for writing, registering, sealing, praising, making of inventories, giving of acquittances, fines, or for any costs or charges, or for any other manner of cause concerning the same probate of testament, shall take, or cause to be taken, of any person or persons but only xx. s. Irish, and not above; whereof to be to the ordinary, or to any other person or persons having power or authority to take any probation of testament or testaments for him and his ministers, xvi. s. viii. *d.* Irish, and not above; and iii. s. iv. *d.* residue of the said xx. s. to be to the scribe, notary, or register, for the writing and registering of the same. And that every such archbishop, ordinary, or other person or persons so having, or which hereafter shall have authority or power to take or receive the probations or approbations of any testament or testaments, or to make any commission of any person dying intestate, their registers, scribes, notaries, and ministers, shall approve, ordain, make, insinuate, seal, and register from time to time, the said testaments and commissions, and deliver the same, sealed with the seal of their office, to the executor or executors, administrator or administrators, named or appointed for the same; and

STAT. 28 HEN.
8, c. 18. [1r.]

When not
above 40*l.*, to
the ordinary,
&c. 8*s.*, to the
register, 2*s.*

When not
above 100*l.*, to
the ordinary,
&c. 14*s.*, the
register, 2*s.* 8*d.*

When above
100*l.*, to the
ordinary, &c.
16*s.* 8*d.*, to
the register,
3*s.* 4*d.*

STAT. 28 HEN.
8, c. 18. [IR.]

The probate or
commission to
be delivered
without delay.

In case of
intestacy, or
executors
refusing to
prove, the
ordinary, &c.
to grant admin-
istration to
the widow, or
next of kin, or
both, by his
discretion,
taking surety
for the true
administration.
Eng. 21 Hen.
8, c. 5.

Where in equal
degree, the
ordinary has
election.

Executors or
administrators
taking two
creditors or
legatees, or on
their refusal or
absence two
next of kin, or
in their default
two other
honest persons,
to make a true
inventory; to
be indented,
one part upon
the oath of the
executor or
administrator
delivered to
the ordinary,
&c. the other
to remain with
them.

The ordinary,
&c. not to
refuse the
inventory, or
to procure any
other.

All corn and
cattle to be
valued as used
in the diocese
of Meath.

Lands, &c.
devised to be
sold, or the
money raised,
or the profits
not accounted
part of the
goods.

The ordinary,
&c. to deface
the seal, and

that for the said sum or sums abovesaid, and in manner and form as is above rehearsed, to deliver it with convenient speed without any frustratory delay. And in case any die intestate, or that the executors so named refuse to prove the said testament, then the said ordinary, or other person or persons, having authority to take probate of testaments, as is above said, shall graunt the administration of the goods of the testatour or person deceased to the widow of the person deceased, or to the next of his kin, or to both as by the discretion of the same ordinary shall be thought good; taking surety of him or them, to whom shall be made such commission, for true administration of the goods, cattals, and debts, which he or they shall be so authorised to minister; and in case where diverse persons claim the administration as next of kin, the which be equal in degree of kindred to the testatour, or person deceased, and where any person onely desireth the administration as next of kin, where indeed diverse persons be in equality of kindred, as is aforesaid; then, in every such case, the ordinary to be at his election and liberty to accept any one or moe making request: where diverse do require the administration, or where but one or moe of them, and not all being of equality of degree, do make request, then the ordinary to admit the widow, and him or them onely making request, or any one of them at his pleasure, taking nothing for the same but the said sum, and that in manner and form as is abovesaid. And that the executor and executors, named by the testatour or person deceased, or such other person or persons to whom such administration shall be admitted, where any person dyed intestate, or by way of intestate, calling or taking to him or them such person or persons, two at the least, to whom the said person so dying was indebted, or made any legacy, and upon their refusal or absence two other honest persons, being next of kin to the person so dying, and in their default or absence two other honest persons, and in their presence and by their discretions shall make or cause to be made a true and perfect inventory of all the goods, cattals, wares, merchandises, as well moveable as not moveable, whatsoever, that were of the said person so deceased, and the same shall cause to be indented, whereof the one part shall be by the said executor or executors, administrator or administrators, upon his or their oath or oathes, to be taken before the said archbishop, bishop, ordinaries, their officiall or commissaries, or other person having power to take probate of testaments, upon the holy evangelist to be good and true; and the same one part indented shall be presented and delivered into the keeping of the said archbishop, bishop, ordinarie, or ordinaries, or other person or persons having power to take probate of testaments, and the other part thereof to remain with the executor or executors, administrator or administrators. And that no archbishop, bishop, ordinarie, or other person having authority to take probate of testaments, as is abovesaide, upon the paine in this estatute hereafter contayned refuse to take any such inventorie or inventories, to him or them presented or tendered to be delivered, as is aforesaid, and that they, ne none of them, shall procure, or cause to be procured, any other inventorie for the probation or approbation of any testament, or making any letters or commission of administration, if the said inventorie or inventories be presented to him or them, or tended to be delivered in manner and forme as is aforesaid; in which inventorie or inventories, to be made in manner and form as is aforesaid, all corne and cattell to be rated and valued to the same price and value, as hath been used and accustomed to be valued and praised within the diocese of Meithe in every inventorie before this time made for the probation of any testament, or making of any commission of administration. Provided alway, if the person or persons so deceased will by his or their testaments or last will any lands, tenements, or hereditaments to be sold, that the money thereof comming, nor the profites of the said lands for any time to be taken, shall not be accompted as any of the goods or cattels of the said person so deceased. And that the said archbishop, bishop, ordinarie, or other person or persons having authority to take probate of testament or testaments, as is aforesaid, upon the delivery of the seale and signe of the testator doe cause the same seale to be defaced, and thereupon incontinent to redeliver the said seale unto the said executor or executors, administrator or administrators, without claime or challenge

thereunto to be made. And in case any person or persons at any time hereafter require a copie or copies of the said testaments so proved, or of the said inventorie so made, that then the said ordinarie or ordinaries, and the other persons having authority to take probate of testaments, or their ministers, shall, from time to time, with convenient speed, without any frustratorie delay, deliver, or cause to be delivered, a true copie or copies of the same, to the said person or persons so demanding them, or any of them, taking for the search, and for the making and writing of everie of the said testaments or inventories but only such fee as is before rehearsed, for the writing and registering of the same.

inventories to any persons; taking for the search and writing only such fee as above for writing and registering.

“VI. Provided alway, that where any person or persons having power or authority to take probate of testaments, have used to take lesse summes of money than is abovesaid, for the probate of testaments, or commissions of administrations, and other cause concerning the same, shall take and receive such summe or summes of money for the probate of testaments and commissions of administrations, and other cause concerning the same, as they before the making of this act have used to take, and not above.

“VII. Be it further enacted by authoritie aforesaid, that no archbishop, bishop, ordinarie, or other person having any power or authoritie to prove or approve any testament, shall compell the husband or friend of any woman covert to prove or approve any testament of her husband's goods, or shall take or receive, or cause to be taken or received, any money or other thing, for the probation or approbation of any testament of any woman covert, or making of any commission of administration, for or concerning the pretended goods of any such woman covert, unless the said woman covert be executor or administrator to any testator deceased, or otherwise have cause or title of action, whereof her husband, after her death, have no remedy by course of the common law, upon pain hereafter limited.

cutrix, or administratrix, or have cause of action, whereof husband has no

“VIII. And it is enacted, that every archbishop, bishop, ordinarie, archdeacon, chauncellour, commissarie, official, and other person or persons having, or the which hereafter shall have, authority to take any probate of testaments, their ministers, farmours, registers, scribes, praisors, sumners, apparators, and all other their officers or servants, whatsoever they be, that shall doe, or attempt, or cause to be done or attempted, against this act or ordinance in any thing, shall forfeit and lose, for every time so offending, to the party grieved in that behalf, so much money as any such person abovesaid shall take, contrary to this present act, and over that, shall forfeit *x. li.* Irish, whereof the one moietie shall be to the king our sovereign lord, and the other moietie to be to the person so grieved in that behalf, that will sue by action of debt, bill, plaint, information, or otherwise, in any of the king's courts, for the recoverie of the same, in which action no essoine, protection, ne wager of law shall be admitted or allowed. And that every of the said archbishops, bishops, and other persons, which hereafter shall incurr, or fall into the daunger of such penalty or forfeiture, shall be charged onely for himself, and none of them to be chargeable to that penalty for other offences.

“IX. Provided alway, that this present act be not prejudicial to any ordinarie or other person, which now have, or hereafter shall have authority to take probate of testaments, but that every of them shall and may convent before them, all and every person and persons made and named executor or executors of any testament, to the intent to prove or refuse the testament or testaments of their testatour or testatours, and to bring inventories, and to doe every other thing concerning the same, as they might doe before the making of this act, so that alwayes any such ordinarie, or other person or persons having such authority by themselves, their commissaries, scribes, registers, or other ministers aforesaid, shall not in any wise take for the same above the fees limited by this act, ne in any wise attempt any thing contrary to any part of the same act.”

STAT. 28 HEN. 8, c. 18. [IR.]

immediately re-deliver it to the executors, &c. and shall, upon request, deliver, without delay, true copies of wills or

Where less sums used to be taken for the probate, &c. more shall not be taken than before.

Ordinary, &c. not to compel the husband or friend of feme covert to prove a testament of her husband's goods, or receive any thing for probate or administration thereof; unless she be an ex-remedy by law.

Offenders to forfeit so much as they take contrary to this act, and also 10*l.*

But every offender to be charged only for himself.

Ordinaries, &c. may still convene executors before them to prove or refuse, and to bring inventories, &c.

STAT. 28 HEN.
8, c. 19. [IR.]

LV. STAT. 28 HENRICI 8, c. 19. [IRELAND.] A.D. 1537.

"The Act of Faculties."

Rep. 3 & 4
P. & M.
Rev. 2 Eliz.
c. 1.
Eng. 25 Hen.
8, c. 21.
Explained
17 & 18 Geo.
3, c. 25.

Recital of the
English Stat.

Subjects im-
poverished by
great sums
sent to Rome.

Laws made
within the
realm alone
binding, save
by sufferance,
consent, and
custom.

The parliament
may dispense
with, annul,
&c. the law;
or authorize
others so to do.

"Whereas at a parliament begun at London, in the realme of England, the third day of November, in the xxi. yeare of the reign of our most dread sovereign lord King Henry the Eighth, King of England and of Fraunce, defendour of the faith, Lord of Ireland, and supreme head in earth of the church of England, and from thence adjourned to Westminster, and by divers prorogations there holden and continued, it was and is enacted amongst other things, in maner and forme as followeth: Most humbly beseechen your most royal majestie, your obedient and faithful subjects, the commons in this present parliament assembled by your most dread commandement, that where your subjects of this your realme, and of other countries and dominions being under your obeysance by many yeares past, have bene and yet be greatly decayed and impoverished by such intollerable exactions of great summes of money as hath been claymed and taken, and yet continually be claymed to be taken out of this your realme, and other your said countreys and dominions, by the Bishop of Rome, called the Pope, and the see of Rome, as well in pensions, cences, Peter-pence, procurations, fruits, suits for provisions, and expeditions of bulls for archbishoprickes and bishoprickes, and for delegacies and rescrips in causes of contentions and appeales, jurisdictions legative, and also for dispensations, licences, faculties, graunts, relaxations, writs called *perinde valere*, rehabilitations, abolitions, and other infinite sorts of bulls, breeves, and instruments of sundry natures, names, and kinds, in great numbers, heretofore practised and obtayned, otherwise than by the lawes, laudable uses and customes of this realme should be permitted, the specialties whereof been over long, large in number, and tedious here particularly to be inserted, wherein the Bishop of Rome aforesaid hath not bene only to be blamed for his usurpation in the premises, but also for his abusion and beguiling your subjects; pretending and perswading to them that he hath full power to dispence with all human lawes, uses, and customes of all realmes in all causes, which be called spiritual; which matter hath bene usurped and practised by him and his predecessors by many yeares in great derogation of your imperial crown, and authority royal, contrarie to the right and conscience; for where this your grace's realme, recognising no superior under God but onely your grace, hath bene and yet is free from subjection to any man's lawes, but onely to such as have been devised, made, and ordained within this realme for the wealth of the same, or to such other as by sufferance of your grace and your progenitors the people of this realme have taken at their free liberty, by their own consent, to be used among them, and have bound themselves by long use and custome to the observance of the same, not as to the observance of the lawes of any forreigne prince, potentate, or prelate, but as to the accustomed and auncient lawes of this realme, originally established as lawes of the same by the said sufferance, consent, and customes, and none otherwise. It standeth therefore with natural equitie and good reason, that in all and every such lawes human, made within this realme, or induced into this realme by the said sufferance, consentes, and custome, your royall majestie, and your lawes spiritual and temporal, and commons representing the whole state of your realme, and this your most high court of parliament, have full power and authority not onely to dispence, but also to authorise some elect person or persons to dispence, with those and all other human lawes of this your realme, and with every one of them, as the qualitie of the persons and matters shall require, and also the said lawes, and every of them, to abrogate, adnull, amplifie, or diminish, as it shall be seene to your majestie, and the nobles and commons of your realme, present in your parliament, meet and convenient for the wealth of your realme, as by divers good and wholesome acts of parliament, made and established as well in your time, as in the time of your most noble progenitors, it may plainly and evidently appeare. And because it is now in these present days seen, that estate, dignitie, superioritie, reputation, and authoritie of the said imperial crown of this realme, by the long sufferance of the said unreasonable and uncharitable usurpations and exactions, practised in the times of

your most noble progenitors, is much and sore decayed and diminished, and the people of this realme thereby impoverished, and so or worse be like to continue, if remedie be not therefore shortly provided: it may therefore please your most noble majestie for the honour of Almighty God, and for the tender love, zeale, and affection that ye beare and alwayes have borne to the wealth of this your realme and subjects of the same, for as much as your majestie is supreme head of the church of England, as the prelates and clergie of your realme, representing your said church in their synodes and convocations have recognised, in whom consisteth full power and authority upon all such lawes as have been made and used within this realme, to ordeyne and enact by the assent of your lords spiritual and temporal, and the commons in this your present parliament assembled, and by authority of the same, that no person or persons of this your realme, or of any other your dominions, shall from henceforth pay any pensions, cences, portions, Peter-pence, or any other impositions, to the use of the said bishop or of the see of Rome, like as heretofore they have used by usurpation of the said Bishop of Rome and his predecessors, and sufferance of your highness, and your most noble progenitors to doe; but that all such pensions, cences, portions, and Peter-pence, which the said Bishop of Rome, otherwise called Pope, hath heretofore taken and perceived, or caused to be taken and perceived, to his use, and his chambers, which he calleth apostolique, by usurpation and sufferance, as is above said, within this your realme or any other your dominions, shall from henceforth cleerely surcease, and never more be levied, taken, perceived, nor payed to any person or persons in any maner of wise; any constitution, use, prescription, or custome to the contrary thereof notwithstanding.

“II. And be it further enacted by the authority aforesaid, that neyther your highness, your heyres nor successors, kings of this realme, nor any your subjects of this realm, nor any of any other your dominions, shall from henceforth sue to the said Bishop of Rome, called the Pope, or to the see of Rome, or to any person or persons, having or pretending any authority by the same, for licences, dispensations, impositions, faculties, graunts, rescripts, delegacies, or any other instruments, or writings, of what kind, name, nature, or qualitie soever they be of, for any cause or matter, for the which any licence, dispensation, composition, facultie, graunt, rescript, delegacie, instrument, or other writing heretofore hath been used and accustomed to be had and obtained at the see of Rome, or by authority thereof, or of any prelate of this realme, nor for any maner of other licences, dispensations, compositions, faculties, graunts, rescripts, delegacies, or any other instruments or writings, that in causes of necessity may lawfully be graunted without offending of holy scriptures and lawes of God; but that from henceforth every such licence, dispensation, composition, facultie, graunt, rescript, delegacy, instrument, and other writing aforementioned and mentioned, necessary for your highness, your heyres and successours, and your and their people and subjects, upon the due examinations of the causes and qualities of the persons procuring such dispensations, licences, compositions, faculties, graunts, rescripts, delegacies, instruments, or other writings, shall be graunted, had, and obtained, from time to time, within this your realme and other your dominions, and not elsewhere, in manner and form following, and none otherwise, that is to say, the Archbishop of Canterbury, for the time being, and his successors, shall have power and authority, from time to time, by their discretions, to give, graunt, and dispose, by an instrument under the seale of the said archbishop, unto your majestie, and to your heyres and successours, kings of this realme, as well all manner such licences, dispensations, compositions, faculties, graunts, rescripts, delegacies, instruments, and all other writings, for causes not being contrary, or repugnant to the holy scriptures and lawes of God, as heretofore hath been used and accustomed to be had and obtained by your highness, or any your most noble progenitors, or any of your or their subjects, at the see of Rome, or any person or persons, by authority of the same. And all other licences, dispensations, faculties, compositions, graunts, rescripts, delegacies, instruments, and other writings, in, for, and upon all such causes and matters, as shall be convenient and necessarie to be had, for the honour and

STAT. 28 HEN.
8, c. 19. [1R.]

No Peter-
pence, pen-
sions, &c. to be
paid to Rome.

Neither the
king nor any
subject to sue
to Rome for
any licence,
dispensation,
&c.

granted by the
Archbishop of
Canterbury, as
formerly, from
Rome.

STAT. 28 HEN. 8, c. 19. [1R.] suretie of your highness, your heyres and successours, and the wealth and profit of this your realme, so that the said archbishop, or any his successours, in no maner wise, shall graunt any dispensation, licence, rescript, or any other writing afore rehearsed, for any cause or matter repugnant to the lawes of Almighty God.

“III. Be it also enacted, by authority aforesaid, that the said archbishop and his successours, after good and due examinations by them had, of the causes and qualities of the persons procuring for licences, dispensations, compositions, faculties, delegacies, rescripts, instruments, or other writings, shall have full power and authority, by themselves, or by their sufficient and substantial commissary or deputie, by their discretions, from time to time, to graunt and dispose, by an instrument under the name and seale of the said archbishop, as well to any of your subjects, as to the subjects of your heyres and successours, all maner licences, dispensations, faculties, compositions, delegacies, rescripts, instruments, or other writings, for any such cause or matter, whereof heretofore such licences, dispensations, compositions, faculties, delegacies, rescripts, instruments, or writings, have bin accustomed to be had at the see of Rome, or by authority thereof, or of any prelate of this realme. And that the said archbishop and his commissarie shall not graunt any other licence, dispensation, composition, facultie, writing, or instrument, in causes unwont, and not accustomed to be had or obtained at the court of Rome, nor by authority thereof, nor by any prelate of this realme, untill your grace, your heyres or successours, or your or their counsaile shall first be advertised thereof, and determine whether such licences, dispensations, compositions, faculties, or other writings, in such cases unwont, and not accustomed to be dispensed withall, or obtained, shall commonly pass as other dispensations, faculties, or other writings, shall or may, upon pain that the graunters of every such licence, dispensation, or writing in such causes unwont, contrary to this act, shall make fine at the will and pleasure of your grace, your heyres and successours. And if it be thought and determined by your grace, your heyres and successours, or your or their counsaile, that dispensations, faculties, licences, or other writings, in any such causes unwont, shall pass; then the said archbishop or his commissarie, having licence of your highness, your heyres and successours, for the same, by your or their bill assigned, shall dispence with them accordingly.

But in unusual cases, not till the king or council first be advertised thereof, and determine that the same shall pass, on pain of fine by the grantors.

Dispensations, &c. where the tax to Rome on them amounted to four pound, must be first confirmed under the great seal, and inrolled in Chancery, and so may others be, if the procurers require it, paying five shillings.

“IV. Provided always, that no maner of dispensations, licences, faculties, or other rescripts or writings, hereafter to be graunted to any person or persons, by virtue or authority of this act, by the said archbishop or his commissarie, being of such importance, that the taxe for the expedition thereof at Rome, extended to the summe of four pound or above, shall in any wise be put in execution, till the same licence, dispensation, facultie, rescript, or other writing, of what name or nature soever it bee, be first confirmed by your highness, your heyres and successours, kings of this realme, under the great seale, and enrolled in your chauncerie, in a roll by a clerk, to be appointed for the same. And that this act shall be a sufficient warrant to the chancellour of England, for the time being, or to him whom your grace, your heyres or successours, shall depute to be keeper of the great seale, to confirme in your name, your heyres or successours, the aforesaid writings, passed under the said archbishop's seale, by letters patents, in due forme thereof, to be made under your great seale, remitting as well the said writing under the archbishop's seale, as the said confirmation under the great seale, to the parties from time to time procuring for the same. And that all such licences, dispensations, faculties, and other rescriptes and writings, for the expedition of the which, the said taxes to be paid at Rome, was under foure pound, which be matters of no great importance, shall pass only by the archbishop's seale, and shall not of any necessitie be confirmed by the great seale, unless the procurers of such licence, facultie, or dispensation, desire to have them so confirmed, in which case they shall pay for the said great seale, to the use of your highness, your heyres and successours, five shillings sterling, and not above, over and beside such taxes as shall be hereafter limited, for the making, writing, registering, confirming, and enrolling of such licences, confirmations, and writings, under the said tax of foure pound. And that every such licence, dispensation, composition, facultie, rescript,

and writing, of what name or nature so ever it be, for such causes, as the tax was wont to be foure pound or above, so graunted by the archbishop, and confirmed under the great seale, and all other licences, dispensations, faculties, rescripts, and writings, hereafter to be graunted by the archbishop, by vertue and authority of this act, whereunto the great seale is not limited of necessity to be put to, by reason that the tax of them is under foure pounds, shall be accepted, approved, allowed, and admitted good and effectuell in the law in all places, courts, and jurisdictions, as well spirituall as temporall, within this realme, and elsewhere within your dominions; and as beneficial to the persons obtayning the same, as they should have been, if they had been obtayned with all things requisite of the see of Rome, or of any other person by authoritie thereof, without any revocation or repeale hereafter to be had of any such licences, dispensations, faculties, rescripts, or writings, of what nature soever they be. And that all children procreated after solemnization of any marriages, to be had or done by vertue of such licences or dispensations, shall be admitted, reputed, and taken legitimate in all courts, as well spirituall as temporall, and in all other places, and inherit the inheritance of their parents and auncestors, within this your realme, and all other your dominions, according to the lawes and customes of the same. And all acts to be done, had, or executed according to the tenour of such licences, dispensations, faculties, writings, or other instruments, to be made or graunted by authority of this act, shall be firme, permanent, and remaine in force; any foreign lawes, constitutions, decrees, canons, decretalls, inhibitions, use, custome, prescription, or any other thing had or hereafter to be made to the contrary notwithstanding.

“V. And be it further enacted, that the said archbishop and his successours shall have power and authority to ordeyne, make, and constitute a clerke, which shall write and register every such licence, dispensation, facultie, writing, or other instrument to be graunted by the said archbishop, and shall finde parchment, wax, and silken laces convenient for the same; and shall have for his paines such summes of money, as shall be hereafter in this present act to him limited in that behalfe for the same. And that likewise your grace, your heyres and successours, shall by your letters patents under your great seal ordeine, depute, and constitute one sufficient clerke, being learned in the course of chauncery, which alwayes shall be attendant upon the lord chancellour or the lord keeper of the great seal for the time being, and shall make, write, and inroll the confirmations of all such licences, dispensations, instruments, and other writings, as shall be thither brought under the archbishop's seal, there to be confirmed and inrolled; and shall also entitle in his bookes and inroll of record such other writings, as thither shall be brought under the archbishop's seale, not to be confirmed, taking for his paines such reasonable summes of money as hereafter by this act to him shall be limited for the same. And that as well the said clerke appointed by the said archbishop, as the said clerke to be appointed by your highness, your heyres or successours, shall subscribe their names to every such licence, dispensation, facultie, or other writing that shall come to their hands, to be written, made, graunted, sealed, confirmed, registered, and enrolled by authority of this act in forme as is before rehearsed.

“VI. And forasmuch as the charges of the obtayning of the said licences, dispensations, faculties, and other rescripts, or writings aforementioned, at the court of Rome, by the losses, exchanges, and in conducting of curours, and waging solicitors to sue for any such licences, dispensations, faculties, instruments, and other rescripts or writings, have bene grievous and excessive to your people; and many times greater summes have bene demaunded for the speedie expedition in the court of Rome, than be expressed in the old tax limited to be payed for the said expeditions, whereby your people have been brought to an uncertainty upon the payment for expeditions of such things, and by reason thereof have been constrained to pay more, than they were wont to doe, to the great impoverishing of this realm as is aforesaid; and sometimes the speeding of such dispensations, faculties, licences, and other writings at Rome, have been so long deferred, that the parties labouring for the same have suffered great inconveniences and losses for

STAT. 28 HEN.
8, c. 19. [I.R.]

All dispensations, &c. so granted, to be as effectual as if obtained from Rome.

Children of such marriages legitimate.

A clerk appointed by the archbishop for writing and registering such licences, &c.

Another by the king to write and inroll them.

Both clerks to subscribe their names thereto.

STAT. 28 HEN.
8, c. 19. [1A.]

To avoid all fraud, two bookes to be made, containing the taxes of dispensations, &c. Every leaf subscribed on both sides, by the archbishop, &c.; one to remain with each of the clerks. All suitors may have recourse thereto. The clerk in chancery to note daily in his book the number and quality of the dispensations, &c.

None to pay more than as taxed in said bookes, on pain of ten times as much as extorted; except for compositions, which shall be taxed by discretion of the said archbishop and the lord chancellor.

How the taxes, to be paid for dispensations, &c. shall be divided and disposed.

lacke of quick speede, which hereafter may be had within this your realme to the great commoditie of your people, whereby the charges of making exchanges, conducting of currours and solicitours for the said dispensations, shall be abated, and your people so much relieved and eased; to the intent that all ambiguitie and uncertaintie of payments for dispensations, faculties, licences, and other rescripts and writings, may be taken away, that no fraud or exaction shall be exercised upon your people by such officers, as shall be appointed by this act to take paines in speeding such dispensations, faculties, and licences, but that your people may be sure and certaine, what they be appointed to pay for the same: be it enacted by this present parliament, and by the authority of the same, that there shall be two bookes drawn and made of one tenour, in which shall be conteyned the taxes of all customable dispensations, faculties, licences, and other writings, wont to be sped at Rome, which bookes, and every leafe of those bookes, and both sides of every leafe, shall be subscribed by the Archbishop of Canterbury, the lord chauncellour of England, the lord thesaurer of England, and the two chief justices of both the benches for the time being; to the which bookes all sutors for dispensations, faculties, licences, and other writings afore rehearsed, shall have recourse, if they require it; and one of the said bookes shall remaine in the hands of him, which shall be appointed to be register and scribe of the said dispensations, faculties, and licences under the said Archbishop of Canterburie, in forme as is before said; and the other booke shall remain with the clerke of the chauncerie, which by your grace, your heyres, or successours, shall be appointed, as is before rehearsed; which clerk of the chauncerie shall also entitle and note particularly and daily in his booke, ordeyned for that purpose, the number and qualitie of the dispensations, faculties, licences, and other rescripts and writings, which shall be sealed only with the seal of the said archbishop, and also which shall be sealed with the said seale, and confirmed with the great seal in forme as is aforesaid, that all fraude and concealment in this behalfe may be avoided.

“VII. And be it enacted by this present parliament, and by authority of the same, that no man suing for dispensations, faculties, licences, or other rescripts or writings, which were wont to be sped at Rome, shall pay no more for their dispensations, faculties, licences, or rescripts, than shall be conteyned, taxed, and limited in the said duplicate booke of taxes, (onely compositions excepted,) of which being arbitrarie, no tax can be made, wherefore the taxe thereof shall beset and limited by the discretion of the said Archbishop of Canterbury, and the lord chauncellor of England, or the lord keeper of the great seal for the time being. And that such as shall exact or receive of any sutour more for any dispensation, facultie, or licence, than shall be conteyned in the said booke of taxes, shall forfeit ten times as much as he shall so extorciously exact and receive, the one halfe of the which forfeiture to be to the use of your grace, your heyres or successours, and the other halfe thereof to be to such of your subjects as will sue for the same by action, bill, or plaint, in any of your grace's courts, wherein the defendant shall have no essoine or protection allowed, neither shall be admitted to wage his law.

“VIII. Be it also enacted by this present parliament, and authority of the same, that the taxe or summe appointed to be paid for every such dispensation, licence, facultie, instrument, rescript, or other writing to be graunted by authority of this act, shall be employed and ordered as hereafter ensueth, that is to say, if the taxe extend to four pound, or above, by reason whereof the dispefisation, licence, facultie, rescript, or writing, which shall pass by the said archbishop's seale must be confirmed by the appencion of the great seal, then the saide taxe so extending to foure pounds, or above, shall be divided into three parts, whereof two shall be perceived by the said clerke of the chauncerie, to be appointed as is aforesaid to the use of your highness, your heyres and successors, and to the use of the lord chauncellour, or the keeper of the great seal for the time being, and to the use of the said clerke, in such wise as hereafter shall be declared, and the third part shall be taken by the said clerke of the archbishop, to the use of the same archbishop, and his commissarie, and the said clerke and register, in such wise as hereafter shall be ordered and limited by this act: that is to say, the

said two partes shall be divided into four parts, of which three parts shall be taken to the onely use of your highnesse, your heyres and successours, and the fourth part shall be divided into three parts, whereof the chauncellor of England, or lord keeper of the great seal for the time being, shall have two parts, and the said clerke of the chauncerie the third part for his pains, travailes, and labours, that he is limited to write and doe by virtue of this act, and the third part of the whole tax appointed to the said archbishop and his officers, as is aforesaid, shall be divided in three parts, whereof the archbishop shall have to his use two parts, and his officers shall have the third part thereof, of which third part to be divided, two parts the said clerke or register, which shall finde parchement, wax, and silke, and shall devise and write the said dispensations, licences, faculties, rescripts, or other writings, and register the same, shall have for his said labour, and for receiving, and for repaying of the summes of money that shall come to his hands for dispensations, faculties, licences, and other rescripts aforesaid, the one moitie thereof, and the commissary of the said archbishop appointed to seale the same dispensations, faculties, licences, and rescripts, shall have the other part; and if the taxe be under foure pound and not under fortie shillings, then the said taxe shall be divided into three parts, as is aforesaid, whereof the king's highnesse, his heyres and successors, shall have two parts, whereof abating three shillings four pence, which shall bee to the said clerke of the chauncerie, for subscribing, entitling, and enrolling the said dispensations, licences, faculties, rescripts, and other writings aforesaid, and receiving of the king's money so taxed, and the archbishop and his officers shall have the third part, which third part shall be divided into two parts, whereof the archbishop shall have the one entirely to himselfe, his scribe and commissarie the other part thereof, egally to be divided amongst them, for their costs and paines in that behalfe; and if the taxe be under fortie shillings, and not under twentie-sixe shillings eight pence, the same tax shall be divided into two partes, whereof the one part shall be unto your grace, your heyres and successors, deducting thereof for the clerke of the chancery two shillings for his paines, as is aforesaid, and the other part shall be to the archbishop and his officers, which other part shall be divided into two parts, whereof the archbishop shall have the one, and his commissarie and scribe shall have the other, egally divided amongst them; and if the taxe be under xxvi. s. viii. d. and not under twentie shillings, the same shall be divided into two parts, whereof your grace, your heyres and successors, shall have the one part entirely, abating two shillings thereof to the said clerke of the chauncerie, and the archbishop and his officers shall have the other part, and the same other part shall be divided into three parts, whereof the archbishop shall have one, his commissarie the second, and his scribe or register the third; and in case the taxe be under twentie shillings, the same shall be perceived to the use of the said commissary, clerke of the said archbishop, and clerke of the chauncery, to be egally divided amongst them, for their paines and labours by them to be susteyned by authoritie of this act, as is aforesaid.

“IX. Provided alway, that this act shall not be prejudiciall to the Archbishop of Yorke, or to any bishop or prelate of this realm, but that they may lawfully, notwithstanding this act, dispense in all causes in which they were wont to dispense by the common law or custome of this realme, afore the making of this act.

“X. Provided also, and be it enacted by authoritie aforesaid, that if it happen the see of the archbishopricke of Canterbury to be void, that then all such maner of licences, dispensations, faculties, instruments, rescripts, and other writings, which may be graunted by vertue and authoritie of this act, shall during the vacation of the same see be had, done, and graunted under the name and seal of the guardian of the spiritualities of the said archbishoprick for the time being, according to the tenour and forme of this act; and shall be of like force, value, and effect, as if they had been graunted under the name and seal of the archbishop for the time being.

“XI. And be it further enacted, that if the foresaid Archbishoppe of Canterbury for the time being, or the said guardian of the spiritualities for the time being,

STAT. 28 HEN.
8, c. 19. [1R.]

Other bishops may, notwithstanding, dispense as usua before.

Guardian of the spiritualities to grant dispensations, &c. during vacancy of the see.

If grants of dispensation,

STAT. 28 HEN.
8, c. 19. [1r.]
&c. refused,
the chancellor
to issue injunc-
tion unless
cause.

If cause not
allowed, the
king by injunc-
tion under
great seal to
order the grant
be made, on a
penalty.

On default of
said archbishop
or guardian,
the king may
by commission
impower two
spiritual per-
sons to grant
dispensations,
&c.

hereafter refuse or denie to graunt any licences, faculties, dispensations, instruments, or other writings which they be authorised to doe by virtue and authoritie of this act, in such manner and forme as is afore remembered, to any person or persons that hath a good, just, and reasonable cause to have the same, by reason whereof this present act by their wilfulnesse, negligence, or default, should take none effect, then the chauncellour of England, or the lord keeper of the great seal for the time being, upon any complaint thereof made, shall direct the king's writt to the said archbishop or guardian denying or refusing to grant such licences, dispensations, faculties, or other writings, enjoyning him by the said writt, upon a certaine payne therein to be limited by the discretion of the said lord chauncellour or keeper of the great seal, that he shall in due fourme grant such licence, dispensation, facultie, or other writing, according to the request of the procurers of the same, or else signifie unto your highness, your heyres and successours, in the court of chancerie at a certaine day, for what occasion or cause he refused and denied to graunt such licences, faculties, or dispensations; and if it shall appeare unto the said lord chauncellor or lord keeper of the great seal upon such certificate, that the cause of refusal or denial of granting such licences, faculties, or dispensations was reasonable, just, and good, that then so being proved by due search and examination of the said chauncellor or lord keeper of the great seal to be admitted and allowed; and if it shall appeare upon the said certificate, that the said archbishop or guardian of spiritualties for the time being of wilfulness in contemning the due execution of this act without a just and reasonable cause refused or denied to grant such licences, faculties, or dispensations, that then your highnesse, your heyres, and successours, being thereof informed after due examination had, that such licences, faculties, or dispensations may be graunted without offending the Holy Scriptures and laws of God, shall have power and authoritie in everie such cause for the default, negligence, and wilfulnesse of the said archbishop or guardian to send your writ of injunction under your great seale out of your said court of chauncerie, commaunding the said archbishop or guardian, that so shall denie or refuse to graunt such licence, facultie, or dispensation, to make sufficient graunt thereof, according to the tenour and effect of this act by a certain day, and under a certaine paine in the said writt to be conteyned and to be limited by your highnesse, your heyres and successours, kings of this realm; and if the said archbishop or guardian after the receipt of the said writt refuse or denie to graunt such licences, faculties, or dispensations, as shall be enjoyned him by virtue of the said writ, and shew and prove before your majestie, your heyres or successours, no just or reasonable cause why hee should so doe, then the said archbishop or guardian, that so shall refuse to put this act in execution according to the said writ of injunction, shall suffer, lose, and forfeit to your highnesse, your heyres and successours, such pain and penaltie, as shall be limited and expressed in the said writ of injunction; and over that it shall be lawfull to your highness, your heyres and successours, for every such default and wilfulnesse of the said archbishop or guardian for the time being, to give power and authoritie by commission under the great seal to such two spirituall prelates or persons to be named by your highness, your heyres or successours, as will doe and graunt such licences, faculties, and dispensations, refused or denied to bee graunted by the said archbishop or guardian in contempt of this act.

“XII. And be it further enacted by authoritie aforesaid, that the said two spiritual prelates or persons to whom in such cases anie such commission shall be directed, shall have power and authoritie to graunt every such licence, facultie, dispensation, instrument, and other writings so refused to be graunted by the said archbishop or guardian for the time being, by an instrument under their seales; taking like fees and charges for the same as is before rehearsed, and not above under the pain above remembered. And that every such licence, facultie, and dispensation, so graunted for any causes or matters whereunto any confirmation under the king's great seal is appointed by this act to be had in manner and forme above declared, shall be had and obtayned accordingly; and such licences and confirmations shall be had for like fees and charges, as they are above specified,

and not above, under the paines above mentioned. And that every such licence, facultie, dispensation, and other writing to be graunted by the said prelates or persons to be assigned by the king's highnesse, his heyres and successors, as is aforesaid, shall be of as good value, strength, and effect, and as beneficiall and profitable to the persons procuring the same, as if they had been made, graunted, and obtayned under the name and seal of the said archbishop.

"XIII. Provided always, that this act, nor any thing or things therein mentioned, shall be hereafter interpreted or expounded, that your grace, your nobles, and subjects, intend by the same to decline or varie from the congregation of Christ's Church in any things concerning the veraie articles of the Catholicke faith of Christendome, or in any other things declared by Holy Scriptures and the Word of God necessarie for your and their salvations; but onely to make an ordinance by policies necessarie and convenient to repress vice, and for good conservation of this realme in peace, unitie, and tranquillitie, from ravyn and spoyl, ensuing much the olde auncient customes of this realm in that behalfe, not minding to seeke for any reliefes, succours, or remedies for any worldly things and humane lawes in any cause of necessity, but within this realm, at the hands of your highnesse, your heyres, and successors, kings of this realm, which have and ought to have an imperiall power and authority in the same, and not obliged in anie worldly causes to anie other superior. Provided alway, that the said Archbishop of Canterbury, or any other person or persons, shall have no power or authoritie by reason of this act to visite or vexe any monasterie, abbeyes, priories, colledges, hospitals, houses, or other places religious, which be or were exempt before the making of this act; any thing in this act to the contrary thereof mentioned notwithstanding: but that redress, visitation, and confirmation, shall be had by the king's highnesse, his heyres, and successors, by commission under the great seal, to be directed to such persons as shall bee appointed requisite for the same, in such monasteries, colledges, hospitals, priories, houses, and places religious exempt; so that no visitation nor confirmation shall from henceforth be had or made in or at any such monasteries, colledges, hospitals, priories, houses, and places religious exempted, by the said Bishopp of Rome, nor by anie of his authoritie, ne by anie out of the king's dominions; nor that any person religious, or other resiant in any the king's dominions, shall from henceforth depart out of the king's dominions to or for any visitation, congregation, or assembly for religion; but that all such visitations, congregations, and assemblies shall be within the king's dominions.

"XIII. (1) Provided also, that this present act, or anything therein contayned, or any licence or dispensation hereafter to be made by vertue and authoritie thereof, shall not extend to the repeal or derogation of the late act, made sithence the beginning of this present parliament for the reformation of pluralities of benefices, and for non-residence of spirituall persons upon their dignities or benefices, nor to any things contained or mentioned in the said act; nor that this act, nor any thing to be done by authoritie thereof, shall not be taken, expounded, nor interpreted, to give licence to any person or persons to have any more number of benefices, than is limitted in the said act; and that the same act for pluralities and non-residence of benefices, and every thing therein conteyned, shall stand good and effectuell in all intents according to the true meaning thereof; any thing in this present act, or any licence or dispensation to be had by authority thereof, in any wise notwithstanding.

"XIV. And be it further enacted by authority aforesaid, that if any person or persons subject or resiant within this realm, or within any the king's dominions, at any time hereafter sue to the court of Rome, or the see of Rome, or to any person clayming to have his authoritie by the same, for any licence, facultie, dispensation, or other thing or things contrarie to this act, or put in execution any licence, facultie, or dispensation, or any other thing or things hereafter to be obtayned from Rome, or the see of Rome, or from any clayming authority by the

STAT. 28 HEN.
8, c. 19. [1r.]

Said arch-
bishop not to
visit religious
houses exempt
before.

But the king
to appoint
commissioners
to visit.

All visitations
to be within
the king's
dominions.

This act, or
any dispensa-
tion, &c. not
to repeal the
statute as to
pluralities and
non-residence,
viz. 21 Hen.
8, c. 13. Eng.

Offenders incur
a *præmunire*
in 16 Rich. 2,
c. 5.

STAT. 28 HEN.
8, c. 19. [1R.]

same, for any of the causes above mentioned in this act, or for any other causes that may be graunted by authority of this act, or attempt or doe any thing or things contrarie to this act, or maintain, allow, admit, or obey anie maner of censures, excommunications, interdictions, or any other processe from Rome, of what name or nature soever it be, to the derogation or let of the execution of this act, or of any thing or things to be done by reason of the said act; that then every such person or persons so doing, offending, and being thereof convict, their ayders, counsailers, and abbettors shall incur and run into the payne, losse, and penaltie, comprised and specified in the Act of Provision and Premunire, made in the sixteenth yeaue of your most noble progenitour King Richard the Second, against such, as sued to the court of Rome against your crowne and dignitie royall.

Places exempt
remain as
before.

“XV. Provided alway, that this act, or any thing therein conteyned, shall not hereafter be taken nor expounded to the derogation or taking away of any graunts or confirmations of any liberties, privilegedes, or jurisdiction of any monasteries, abbeyes, priories, or other houses, or places exempt, which heretofore the making of this act hath been obtained at the see of Rome, or by authority thereof; but that every such graunt and confirmation shall be of the same value, force, and effect, as they were afore the making of this act, and as if this act had never bin made.

But not to pay
pension to
Rome, &c.

“XVI. Provided always, that the abbots, priors, and other chiefe rulers and governors of such monasteries, abbeyes, priories, and other houses and places exempt, shall not hereafter pay any pension, portion, or other cense to the see of Rome, nor admit nor accepte any visitation, nor any confirmation from or by the said see of Rome, or by authoritie thereof, or for any person to be elect, named, or presented to be heads of any such monasteries, abbeyes, priories, places, or houses exempt; nor shall make any corporal oath to the Bishop of Rome, otherwise called the Pope, upon paines limitted in this act; but that every such visitation and confirmation of such heads elect in any such monasteries, abbeyes, priories, houses or places exempt, where after election they were bounden to have and obtain any confirmation of their election, or of the person named, presented, or elect, shall be from henceforth had, made, and done within this realme, at and within every such abbeyes, monasteries, priories, and other houses and places exempt by such person or persons as shall be appointed by authoritie of the king's commission from time to time, as the case shall require, and not by the see of Rome, nor by the authoritie thereof; any thing in this next proviso above specified to the contrarie thereof notwithstanding.

“XVII. Provided always, that in such monasteries, abbeyes, priories, and houses exempt, where after election, presentation, or nomination of their heads, no such confirmation is requisite to be had, nor hath been used to be taken by reason of such privilegedes as they have concerning the same, that in every such monasteries, abbeyes, priories, and places exempt, they shall not be bounden to obtain, have, or take any confirmation for the same within this realm by authority of this act, but use their privilegedes therein, as they have done before the making of this act; any thing in this act, or any the provisoes next above rehearsed, to the contrary thereof notwithstanding.

Dispensations,
&c. heretofore
obtained from
Rome, not
contrary to the
laws and sta-
tutes, to re-
main in force.

“XVIII. Provided also and be it enacted, that this act, or any thing or things, word or wordes, therein, or in the preamble thereof mentioned or conteyned, is not extended or meant, nor shall be expounded nor interpreted, that any dispensations, licences, or confirmations, for marriages graunted to any the king's subjects, born under his obeysance at any time before the twelfth day of March, in the year of our Lord God, a thousand five hundred thirty three, shall be appeyred, or of any lesse value, strength, force, or effect, than they were at the said twelfth day of March, nor that this act, or any thing therein conteyned, shall not extend to the derogation, appeyryng, or adnullation of any licences, dispensations, confirmations, faculties, or indulgences, at any time before the said twelfth day of March, in the year of our Lord God, a thousand five hundred thirtie three, had or obtained at the see of Rome, or by authoritie thereof, to or for any subjects born in this realm, or in any the king's dominions, or to or for the Hospitall of

the Priour of St. John's Jerusalem in England, or any commaundryes or members thereof, or to or for any cathedral churches, hospitals, monasteries, abbeyes, priories, colledges, conventual churches, parochiall churches, chappels, fraternities, brotherhoods, or bodies politique within this realm, or in any other the king's dominions, but that everie such licence, dispensation, confirmation, facultie, and indulgence graunted before the said twelfth day of March, to any such subject, or to the said Hospitall of the Priour of St. John's Jerusalem in England, and commaundries or members thereof, or to any other cathedral church, hospitall, abbey, priory, colledge, church conventuall, parochiall church, chappell, fraternity, brotherhood, or body politique, or to their predecessors or auncestors within this realm, or in anie other the king's dominions, shall be of the same force, strength, value, and effect, and may be from time to time put in execution, at all times hereafter, by and to them that will have the same as they mought have bin afore the making of this act, and as if this act had never been had or made, any thing in the said act to the contrary hereof notwithstanding. Provided alwayes, that such licences, dispensations, confirmations, or faculties, heretofore obtained at the see of Rome, or by authoritie thereof, contrary to the expresse provisions of the lawes and statutes of this realm heretofore made, shall not at any time hereafter be used or put in execution in any place, to the derogation or contrarie to the said lawes and statutes of this realm, and the provisions of the same; any thing in this proviso to the contrary thereof notwithstanding.

STAT. 23 HEN.
8, c. 19. [I.R.]

“XIX. And be it enacted by authority of this present parliament, that the king our sovereign lord, by the advice of his honourable counsaile, shall have power and authority from time to time, for the ordning, redresse, and reformation of all maner of indulgences and priviledges thereof, within this realm, or within any the king's dominions heretofore obtained at the see of Rome, or by authoritie thereof, and if the abuses of such indulgences and priviledges thereof, as shall seem good, wholesome, and reasonable, for the honour of God and weale of his people, and that such order and redresse as shall be taken by his highnesse in that behalfe, shall be observed and firmly kept, upon the paines limited in this act for the offending of the contents of the same.

The king may reform indulgences heretofore obtained, and the abuses thereof.

“XX. For as much as it is mentioned in the said act, that the effects thereof should not onely extend into the realm of England, and to the commoditie thereof, and of the subjects of the same, but also to all other the king's dominions, and his subjects, and that this the king's land of Ireland is his proper dominion, and a member appending and rightfully belonging to the imperial crown of the said realm of England, and united to the same; and also like inconveniences hath ensued within this land of Ireland, as hath been within the said realm of England, by reason of the usurpation of the Bishop of Rome, like as is mentioned in the said act. Be it therefore enacted by authoritie of this present parliament, that the said act, and every thing and things therein containned, shall be established, affirmed, taken, obeyed, and accepted, within this land of Ireland, as a good and perfect law, and shall be within the said land of the same force, effect, qualitie, condition, strength, and vertue, to all purposes and intents, as it is within the realm of England, and that all subjects and resiants within this said land of Ireland, shall observe, keepe, obey, accomplish, and execute, the effects and contents specified in the said act, in like maner and forme, as the subjects of the said realm of England been bounden by authoritie of the same act, and shall have and enjoy the profit and commoditie thereof, after like maner, forme, and condition, as the king's subjects of the said realm of England, use, doe, and have the same, and upon like paines and penalties as be comprised in the said act, and that all maner licences, dispensations, faculties, or other writings obtained by any subject or resiant within this land, by authoritie of the said act, shall be obeyed and executed within this land, and be good and effectual to all intents and purposes, according to the tenor and effects thereof.

This act extending not only to England but all the king's dominions, and Ireland being his proper dominion, and a member of the crown of England, and the like inconveniences ensuing from the Pope's usurpation, the said act to be of the same force in Ireland.

“XXI. Provided alway, that this act shall not be prejudiciall to any archbishop, bishop, or prelate of this land, but that they may lawfully, notwithstanding this act, dispencc in all causes in which they were wont to dispencc, by reason

Not to prejudice the power of dispensation in the bishops,

STAT. 28 HEN. 8, c. 19. [IR.] onely of their owne proper offices and dignities, by the common law or custome of this land, before the making of this act.

&c. of Ireland, as usual.

Commissioners for ecclesiastical jurisdiction, granting faculties, &c. to have the same authority as the Archbishop of Canterbury hath.

The chancellor of Ireland, &c. to have the same authority as the chancellor of England, &c.

“XXII. And be it further enacted by authoritie aforesaid, that all and every person and persons authorised and appointed, or to be hereafter authorised and appointed by the king’s highnesse, his heyres and successours, by commission under his great seal, for the using, exercising, and occupying of any jurisdiction ecclesiasticall, or giving or graunting of any faculties, licences, dispensations, or other thing or things mentioned or comprised in this act, or any part thereof, shall have the same and like authoritie to every purpose, meaning, and intent, for the using, exercising, occupying, giving, and graunting of the same, and everie part thereof, as the Archbishop of Canterbury and his successours for the time being, hath or shall have, by any maner authoritie, either within the said realm of England, or this land of Ireland. And that the chauncellour of this land for the time being, and all other persons required and appointed by the forme of this act to execute any thing for the perfection of the same, shall have like and same authority that the chauncellour of England, and all other persons have by authoritie of this act within the realm of England: any forrein law, authoritie, usage, or prescription, or any thing in this act mentioned to the contrarie notwithstanding.”

STAT. 28 HEN. 8, c. 23. [IR.]

LVI. STAT. 28 HENRICI 8, c. 23. [IRELAND.] A.D. 1537.

“The Act for the Parsonage of Dongarvane.”

STAT. 28 HEN. 8, c. 25. [IR.]

LVII. STAT. 28 HENRICI 8, c. 25 (1). [IRELAND.] A.D. 1537.

“The Act of Leases.”

STAT. 28 HEN. 8, c. 26. [IR.]

LVIII. STAT. 28 HENRICI 8, c. 26 (2). [IRELAND.] A.D. 1537.

“An Act for the First-fruities of Abbeyes, Priories, and Colledges.”

STAT. 31 HEN. 8, c. 6.

LIX. STAT. 31 HENRICI 8, c. 6 (3). A.D. 1539.

“Religious Persons are enabled to sue and be sued. Religious Persons dereigned shall not sue for any former Right descended unto them. Religious Persons being Priests, or that have vowed Religion at Twenty-one Years of Age, shall not marry.”

STAT. 31 HEN. 8, c. 8.

LX. STAT. 31 HENRICI 8, c. 8 (4). A.D. 1539.

[An Act that Proclamations made by the King’s Highness, with the Advice of his Honorable Council, shall be obeyed and kept, as though they were made by Act of Parliament.]

[This statute was not to be prejudicial to any person’s inheritance, offices, liberties, goods, chattels, or life, except such person should offend any proclamation to be made by the king’s highness, his heirs or successors, for and concerning any kind of heresy against the Christian religion.]

STAT. 31 HEN. 8, c. 9.

LXI. STAT. 31 HENRICI 8, c. 9 (5). A.D. 1539.

“An Act authorizing the King’s Highness to make Bishops by his Letters Patents.”

(1) Expired.

(2) Expired.

(3) Expired. Vide Stat. 33 Hen. 8, c. 29.

Stat. 5 & 6 Edw. 6, c. 13.

(4) Repealed by Stat. 1 Edw. 6, c. 12.

(5) Repealed by Stat. 1 Edw. 6, c. 2. Stat. 1 & 2 P. & M. c. 8. Stat. 8 Eliz. c. 1.

From this statute it is evident, that the great design was to make cathedrals nurseries of young divines for the service of the

church; who, being trained up in the study of divinity, under the immediate inspection of the bishops, deans, and chapters, might be by them employed in the cures of the respective dioceses as they became vacant. Gibson’s Codex, 180.

It appears by a scheme for new cathedrals and bishopricks, under the hand of King Henry 8, that his design was to erect many more, pursuant to the powers given by this

LXII. STAT. 31 HENRICI 8, c. 10. A.D. 1539.

STAT. 31 HEN.
8, c. 10.

"For placing of the Lords."

"III. And it is also enacted, that next to the said vicegerent shall sit the Archbishop of Canterbury; and then next to him, on the same form and side, shall sit the Archbishop of York; and next to him, on the same form and side, the Bishop of London; and next to him, on the same side and form, the Bishop of Durham; and next to him, on the same side and form, the Bishop of Winchester; and then all the other *bishops* (1) of both provinces of Canterbury and York shall sit and be placed on the same side *after their ancienties* (2), as it hath been accustomed."

How bishops
shall be placed
in the parlia-
ment house.

statute, than were erected. The form of the foundation charters is specified by Bishop Burnet, in that of Westminster, which he has printed at large, and to which, as he observes, the rest are conformable. 1 Burn. 263. Ibid. App. 246.

(1) *Bishops*.—Bishops of the Anglican church are not peers; they are only lords of parliament. The dignity of a bishop, as a bishop simply, is merely personal; but bishops, as lords of parliament, are incapacitated from exercising the parliamentary elective franchise; and when the Bishop of Carlisle interfered in a parliamentary election, "the House" resolved, that "he had infringed their liberties."

The blood of a temporal lord is considered as ennobled by a writ of summons to parliament, and taking his seat under that writ; and unless the terms of the writ, or of the patent under the authority of which it issues, provide to the contrary, he now gains, by the writ and his seat in parliament thereupon, an hereditary honour descendible to the heirs of his body, whatever may have been formerly the law on this subject. If created by letters patent, he becomes ennobled, and a peer of the realm, by virtue of the letters patent; and the writ summoning him to parliament, is a mere consequence of the right given by the letters patent, and depending on the construction of that instrument. On the contrary, a bishop, though by the writ issued to summon him to parliament, and by his seat in parliament, founded on that writ, becomes a lord of parliament, yet he is not ennobled in blood: he gains no title of honour except that of lord of parliament, even in his life-time; for the title of bishop belonged to him before the issue of the writ, and that title is merely personal; and the writ and the seat in parliament founded on it, convey nothing to his heirs, and give him nothing but the character of a lord of parliament; they do not render him noble; they do not make him a peer of the realm. The reason is manifest; the writ, and all its consequences, are mere incidents to the franchise which he claims in right of the temporalities of his see; and if he ceases to be a bishop of that see, though he may again be entitled to be a lord of parliament, by a new writ of summons, as a franchise appurtenant to the temporalities of a see to which he may be translated, his right to exercise the franchise belonging to the temporalities of his former see, by demanding a writ of summons, and

sitting in parliament as a lord of parliament, is at an end, and his subsequent writ and seat in parliament, are the consequences of a new title gained by obtaining possession of the temporalities of a different see, to which a similar franchise belongs. 1 Stephens on the Law of Parliamentary Elections, 299, 365, 366; *et vide etiam*, 1 Rep. Dig. Peer. 393, div. xiii. 1 De Lolme on the English Constitution, by Stephens, 109, 113, 127. Williams on the Clergy, 72. 1 Black. Comm. 157. 2 Inst. 585. 4 Ibid. 25. Selden's Baron. p. 1, c. 6.

(2) *After their ancienties*.—So is the rule of the canon law: "Episcopos secundum ordinationis suæ tempus, sive ad considendum in concilio, sive ad subscribendum, vel in qualibet aliâ re, sua attendere loca decernimus, et suorum sibi prærogativam ordinum vindicare." Dist. 17. 7. Which was also the rule of the church of England, as appears by the 8th Constitution of the council of Hertford, A.D. 673: "Omnes episcopi agnoscant tempus et ordinem consecrationis suæ." 1 Spel. 153. But in William the Conqueror's time, at the council of London, the general rule was thus qualified (as it had been before in the council of Toledo): "Præter eos, qui ex antiquâ consuetudine, sive suarum ecclesiarum privilegiis, digniores sedes habent;" and in the same council, the Bishops of London and Winton, had their places assigned next to the two archbishops; the first as dean, the second as chancellor, to the see of Canterbury. After an enumeration of the archbishops and bishops present at this council, this note is added, concerning the Bishop of Durham: "Lindisfarnensis, qui et dunelmensis, episcopus, &c., canonicam excusationem habens, concilio interesse non poterat." 2 Ibid. 8.

The offices of the suffragans under the Archbishop of Canterbury, are thus set forth by Lyndwood: "Habet Archiepiscopus Cantuariensis in collegio episcoporum, Episcopos, London Decanum, Winton Cancellarium, Lincoln Vice-cancellarium, Sarisbur' Præcentorem, Wigorn' Capellanum, Roffen' Cruciferarium." Lyndw. de Pæn. c. Æternæ, v. *Tanquam*, Gloss. Accordingly, there was a mandate directed to the Bishop of Winchester, "ad quem executio presentis mandati, ecclesiâ London, Episcopo carente, hac vice pertinere dignoscitur." Islip. 184 (a). And, at another time, the sees of London and Winchester being vacant, the writ for summoning a convocation was directed to the Bishop of Lincoln. Arund. 516 (a).

STAT. 31 HEN.
8, cap. xii.

LXIII. STAT. 31 HENRICI 8, cap. xii. A.D. 1539.

[*An Act for an Exchange between the Bishops of Rochester and Carlisle, and Lord Russell* (1).]

[The Bishop of Carlisle to exercise peculiar jurisdiction in his palace at Lambeth, and the Bishop of Rochester in his palace of Cheswick.]

STAT. 31 HEN.
8, c. 13.

LXIV. STAT. 31 HENRICI 8, c. 13(2). A.D. 1539.

[*An Act for Dissolution of Monasteries and Abbies.*"]

3 Bulst. 152.
Lea, 15.

"Where divers and sundry abbots, priors, abbesses, prioresses, and other ecclesiastical governors and governesses of divers monasteries, abbies, priories, nunneries, colleges, hospitals, houses of friars and other religious and ecclesiastical houses and places within this our sovereign lord the king's realm of England and Wales, of their own free and voluntary minds, good wills and assents, without constraint, coercion, or compulsion of any manner of person or persons, sithen the fourth day of February, the twenty-seventh year of the reign of our now most dread sovereign lord, by the due order and course of the common laws of this his realm of England, and by their sufficient writings of record, under their covent and common seals, have severally given, granted, and by the same their writings, severally confirmed all their said monasteries, abbies, priories, nunneries, colleges, hospitals, houses of friars, and other religious and ecclesiastical houses and places, and all their sites, circuits, and precincts of the same, and all and singular their manors, lordships, granges, meases, lands, tenements, meadows, pastures, rents, reversions, services, woods, tithes, pensions, portions, churches, chapels, advowsons, patronages, annuities, rights, entries, conditions, commons, leets, courts, liberties, privileges, and franchises, appertaining or in any wise belonging to any such monastery, abbey, priory, nunnery, college, hospital, house of friars, and other religious and ecclesiastical houses and places, or to any of them, by whatsoever name or corporation they or any of them were then named or called, and of what order, habit, religion, or other kind or quality soever they or any of them were then reputed, known, or taken; to have and to hold all the said monasteries, abbies, priories, nunneries, colleges, hospitals, houses of friars, and other religious and ecclesiastical houses and places, sites, circuits, precincts, manors, lands, tenements, meadows, pastures, rents, reversions, services, and all other the premises, to our said sovereign lord, his heirs and successors, for ever, and the same their said monasteries, abbies, priories, nunneries, colleges, hospitals, houses of friars, and other religious and ecclesiastical houses and places, sites, circuits, precincts, manors, lands, tenements, meadows, pastures, rents, reversions, services, and all other the premises, to our said sovereign lord, his heirs and successors, for ever, and the same their said monasteries, abbies, priories, nunneries, colleges, hospitals, houses of friars, and other religious and ecclesiastical houses and places, sites, circuits, precincts, manors, lordships, granges, meases, lands, tenements, meadows, pastures, rents, reversions, services, and other the premises, voluntarily as is aforesaid, have renounced, left and forsaken, and every of them hath renounced, left, and forsaken.

Monasteries
and their lands
before surren-
dered or dis-
solved, given
to the king.

"II. Be it therefore enacted by the king our sovereign lord, and the lords spiritual and temporal, and the commons, in this present parliament assembled, and by authority of the same, that the king our sovereign lord shall have, hold, possess, and enjoy to him, his heirs and successors, for ever, all and singular *such late monasteries* (3), abbies, priories, nunneries, colleges, *hospitals* (4), houses of friars, and other religious and ecclesiastical houses and places, of what kinds,

(1) In a licence to consecrate in the archbishop's chapel at Lambeth, it is said, "Non obstante quod dicta capella est nostre jurisdictionis immediate, et nulli alii inferiori subjecta." Reyn. 17 (a).

(2) *Vide* Stat. 34 & 35 Hen. 8, c. 19.

(3) *Such late monasteries*:—By reason of the discharge from tithes, of lands which were given to the king by this act, and which were discharged in the hands of the religious, (as it is expressed at large in s. 21,) it hath been more strictly inquired, what houses

were dissolved by *this* act, than by any other of the Acts of Dissolution.

(4) *Hospitals*:—It is said to have been resolved in the case of the Lord Cheney, That as no hospital was given to the crown by Stat. 27 Hen. 8, c. 28, so no lay hospitals, but only religious and ecclesiastical hospitals, were within Stat. 31 Hen. 8, c. 13. 1 Inst. 342 (a).

"That if, upon the foundation of any lay-hospital, or after, it was ordained, that one or divers priests should be maintained within

natures, qualities, or diversities of habits, rules, professions, or orders, they or any of them were named, known, or called, which sith the said fourth day of February the twenty-seventh year of the reign of our said sovereign lord, have been dissolved, suppressed, renounced, relinquished, forfeited, given up, or by any other mean come to his highness; and by the same authority, and in like manner shall have, hold, possess, and enjoy all the sites, circuits, precincts, manors, lordships, granges, meases, lands, tenements, meadows, pastures, rents, reversions, services, woods, tithes, pensions, portions, parsonages appropriated, vicarages, churches, chapels, advowsons, nominations, patronages, annuities, rights, interests, entries, conditions, commons, leets, courts, liberties, privileges, franchises, and other whatsoever hereditaments, which appertained or belonged to the said late monasteries, abbies, priories, nunneries, colleges, hospitals, houses of friars, and other religious and ecclesiastical houses and places, or to any of them, in as large and ample manner and form, as the late abbots, priors, abbesses, prioresses, and other ecclesiastical governors and governesses of such late monasteries, abbies, priories, nunneries, colleges, hospitals, houses of friars, and other religious and ecclesiastical houses and places, had, held, or occupied, or of right ought to have had, holden, or occupied, in the rights of their said late monasteries, abbies, priories, nunneries, colleges, hospitals, houses of friars, or other religious and ecclesiastical houses and places, at the time of the said dissolution, suppression, renouncing, relinquishing, forfeiting, giving up, or by any other manner of mean coming of the same to the king's highness sithen the fourth day of February above specified.

“III. And it is further enacted by the authority aforesaid, that not only all the said late monasteries, abbies, priories, nunneries, colleges, hospitals, houses of friars, and other religious and ecclesiastical houses and places, sites, circuits, precincts, manors, lordships, granges, meases, lands, tenements, meadows, pastures, rents, reversions, services, and all other the premises, forthwith, immediately and presently, but also all other monasteries, abbies, priories, nunneries, colleges, hospitals, houses of friars, and all other religious and ecclesiastical houses and places, which hereafter shall happen to be dissolved, suppressed, renounced, relinquished, forfeited, given up, or by any other mean come to the king's highness; and also all the sites, circuits, precincts, manors, lordships, granges, meases, lands, tenements, meadows, pastures, rents, reversions, services, woods, tithes, pensions, portions, parsonages appropriate, vicarages, churches, chapels, advowsons, nominations, patronages, annuities, rights, interests, entries, conditions, commons, leets, courts, liberties, privileges, franchises, and other hereditaments whatsoever they be, belonging or appertaining to the same or any of them, whensoever and as soon as they shall be dissolved, suppressed, renounced, relinquished, forfeited, given up, or by any other mean come unto the king's highness, shall be vested, deemed, and adjudged by authority of this present parliament, in the very actual and real seisin and possession of the king our sovereign lord, his heirs and successors for ever, in the state and condition as they now be, and as though all the said late monasteries, abbies, priories, nunneries, colleges, hospitals, houses of friars, and all other religious and ecclesiastical houses and places so dissolved, suppressed,

the hospital to celebrate divine service to the poor, and to pray for the soul of the founder and all Christians' souls, or the like, and that the poor of such hospital should make the like orisons; yet such an hospital is not within the said statutes, for the hospital is lay and not religious, and all, or the most part of ancient lay-hospitals, were founded or ordained after the like sort; and the makers of those statutes never intended to overthrow works of charity, but only to take away the abuse.” 1 Inst. 342 (a).

“That no hospital was given to the king by the Stat. 37 Hen. 8, c. 4, but in two cases, viz., where the donors, founders, or patrons, &c., had entered and expulsed the priests, wardens, &c., or where King Henry the

Eighth, by commission, according to that act, should enter and seize the same, but that was determined by the death of that king.”

And finally, it was resolved, “That the Stat. 1 Edw. 6, c. 14, extended not to any hospital whatsoever, either lay or religious.” Ibid.

But in *Pitts v. James*, (Hob. 121; Mo. (Sir F.), 865; 1 Brownl. 178,) it was resolved, that a hospital founded for certain poor persons to serve God, and to pray for the souls of the king and the founder, with their progenitors, ancestors, and heirs, was a superstitious foundation, and (as such) was given to the king by the design and intention of Stat. 1 Edw. 6, c. 14, though hospitals are not particularly mentioned in that statute.

STAT. 31 HEN. 8, c. 13.

27 Hen. 8, f. 10.
Bro. Chose en Action, 14.

Co. pl. 445.
Other houses to be dissolved, and their lands given to the king.
2 Roll. 100.

Co. pl. f. 187, 546.

10 Co. 55.
Plow. f. 193.

STAT. 31 HEN.
8, c. 13.

The sites and
lands of the
monasteries
shall be in the
actual posses-
sion of the
king.

All abbey
lands shall be
within the
survey of the
court of aug-
mentations,
except such
which come by
attainder.

Explained by
32 Hen. 8,
c. 20, s. 1.

Other men's
titles saved.

Rent service,
rents seek, and
other services
and suits
excepted out
of the saving.

renounced, relinquished, forfeited, given up, or come unto the king's highness as is aforesaid, as also the said monasteries, abbies, priories, nunneries, colleges, hospitals, houses of friars, and other religious and ecclesiastical houses and places, which hereafter shall happen to be dissolved, suppressed, renounced, relinquished, forfeited, given up, or come unto the king's highness, sites, circuits, precincts, manors, lordships, granges, lands, tenements, and other the premises, whatsoever they be, and every of them, were in this present act specially and particularly rehearsed, named, and expressed by express words, names, titles, and faculties, and in their natures, kinds, and qualities.

"IV. And be it also enacted by the authority aforesaid, that all the said late monasteries, abbies, priories, nunneries, colleges, hospitals, houses of friars, and other religious and ecclesiastical houses and places, which being dissolved, suppressed, renounced, relinquished, given up, or come to the king's highness by any manner of means as is aforesaid, and all the manors, lordships, granges, lands, tenements, and other the premises, (except such thereof as become to the king's hands by attainder, or attainders of treason,) and all the said monasteries, abbies, priories, nunneries, colleges, hospitals, houses of friars, and other religious and ecclesiastical houses or places, which hereafter shall happen to be dissolved, suppressed, renounced, relinquished, forfeited, given up, or come unto the king's highness, and all the manors, lordships, granges, lands, tenements, meadows, pastures, rents, reversions, services, woods, tithes, portions, pensions, parsonages appropriate, vicarages, churches, chapels, advowsons, nominations, patronages, annuities, rights, interests, entries, conditions, commons, leets, courts, liberties, privileges, franchises, and other hereditaments, whatsoever they be, belonging to the same, or to any of them, (except such thereof which shall happen to come to the king's highness by attainder or attainders of treason,) shall be in the order, survey, and governance of our said sovereign lord the king's court of augmentations of the revenues of his crown, and of the chancellor, officers, and ministers of the same; and all the farms, issues, revenues, and profits, coming and growing of the premises, and of every part thereof, (except before except,) shall be ordered, taken, and received for the king's use by the said chancellor, ministers, and officers, of the same court, in such and like manner and form, as the monasteries, priories, sites, circuits, manors, granges, meases, lands, tenements, rents, reversions, services, tithes, pensions, portions, advowsons, patronages, rights, entries, conditions, and other hereditaments, late appertaining or belonging unto the monasteries, abbies, priories, or other religious houses, late by authority of parliament suppressed, been ordered, surveyed, and governed; saving to all and every person and persons, and bodies politick, and their heirs and successors, and the heirs and successors of all and every of them, (other than the said late abbots, priors, abbesses, prioresses, and other ecclesiastical governors and governesses of the said late monasteries, abbies, priories, nunneries, colleges, hospitals, houses of friars, and other religious and ecclesiastical houses and places, and their successors, and the successors of every of them, and such as pretend to be founders, patrons, or donors of such monasteries, abbies, priories, nunneries, colleges, hospitals, houses of friars, and other ecclesiastical houses and places, or of any manors, messuages, lands, tenements, or other hereditaments belonging to the same, or to any of them, their heirs and successors, and the heirs and successors of every such founder, patron, or donor, and the now abbots, priors, abbesses, prioresses, and other ecclesiastical governors and governesses of such monasteries, abbies, priories, nunneries, colleges, hospitals, houses of friars, and other religious and ecclesiastical houses and places, which hereafter shall happen to be dissolved, suppressed, renounced, relinquished, forfeited, given up, or come to the king's highness, and such as pretend to be founders, patrons, or donors, of such monasteries, abbies, priories, nunneries, colleges, hospitals, houses of friars, and other ecclesiastical houses and places, or of any manors, messuages, lands, tenements, or other hereditaments to the same belonging, or to any of them, their heirs and successors, and the heirs and successors of every of them, all such right, title, claim, interest, possession, rents, charges, annuities, leases, farms, offices,

fees, liveries and livings, portions, pensions, corrodiess, commons, synods, proxies, and other profits, which they or any of them have, claim, ought, may or might have had, in or to the premises, or to any part or parcel thereof, in such like manner, form, and condition, to all intents, respects, constructions, and purposes, as if this act had never been had ne made, (rents services, rents seck, and all other services and suits only except.)

“V. Provided always, and be it enacted by the authority aforesaid, that if any late abbot, prior, prioress, abbess, or other ecclesiastical governor or governess abovesaid, within one year next before the dissolution, suppression, renouncing, relinquishing, forfeiting, giving up, or coming to the king's highness, of his late monastery, abbey, priory, nunnery, college, hospital, house of friars, or other religious or ecclesiastical house or place, hath made any lease or grant under his covent or common seal, or otherwise, for term of life, or for term of years, of the site, circuit, and precinct of his said late monastery, abbey, priory, nunnery, college, hospital, house of friars, or other religious or ecclesiastical house or place, or of any part thereof, or of any manors, messuages, granges, lands, tenements, parsonages appropriate, tithes, pensions, portions, or other hereditaments, which belonged or appertained to his said late monastery, abbey, priory, nunnery, college, hospital, house of friars, or other religious or ecclesiastical house or place, which manors, messuages, granges, lands, tenements, parsonages appropriate, tithes, pensions, portions, or other hereditaments, were not before the same lease commonly used to be set nor let to ferm, but kept and reserved in the manurance, tillage, or occupation, of the said governor or governess, for the maintenance of hospitality and good housekeeping; or within one year, as is above said, hath made any lease or grant for term of life, or for term of years, of any manors, messuages, lands, tenements, meadows, pastures, woods, parsonages appropriate, tithes, pensions, portions, churches, chapels, or other hereditaments, whatsoever they be, whereof or in the which any estate or interest for term of life, year or years, at the time of the making of any such grant or lease, then had its being or continuance, and then was not determined, finished, or expired, or within the time of one year, as is abovesaid, hath made any lease or grant for term of life, or for term of years, of any manors, messuages, lands, tenements, meadows, pastures, woods, parsonages appropriate, tithes, pensions, portions, churches, chapels, or other hereditaments, whatsoever they be, upon the which leases and grants, the usual and old rents and farms, accustomed to be yielded and reserved by the space of twenty years next before the first day of this present parliament, is and be not thereupon reserved and holden; or if any such governor or governess hath made any bargain or sale of his woods within one year, as is afore limited, which woods be yet growing and standing, that then all and every such lease, grant, bargain, and sale of wood or woods, shall be utterly void and of none effect.

“VI. And it is also enacted by the authority aforesaid, that all feoffments, fines, and recoveries, had, made, acknowledged, or suffered by any governor or governess, without the king's licence under his great seal, within one year next before the dissolution, renouncing, relinquishing, forfeiting, giving up, or coming unto the king's highness, of his said monastery, abbey, priory, nunnery, college, hospital, house of friars, or other religious or ecclesiastical house or place, or any manors, meases, lands, tenements, or other hereditaments whatsoever they be, which the said late abbot, prior, abbess, prioress, and other ecclesiastical governor and governess, or any of them, or any of their predecessors had or held, of the gift, grant, or confirmation of our said sovereign lord, or of any of his highness' progenitors, or of the which monasteries, abbies, priories, nunneries, colleges, hospitals, houses of friars, or other religious or ecclesiastical houses or places, our said sovereign lord was founder or patron, or which manors, meases, lands, tenements, or other hereditaments, were of the ancient or old foundation or possession of the said late monasteries, abbies, priories, nunneries, colleges, hospitals, houses of friars, or other religious or ecclesiastical houses or places, shall be utterly void and of none effect.

“VII. And it is further enacted by the authority aforesaid, that if any abbot,

Leases or grants made within a year of lands not used to be let to ferm.
Savil. 66.
Dyer, 77, 207, 231.

Dyer, 280.
Leases made in reversion within one year before the dissolution.
Hob. 248, 298.

Dyer, 123.
Leases made not reserving the old rent.

Wood sales within one year before the dissolution.

Feoffments, fines, and recoveries, knowledge by abbots of lands of the king's gift, or of their ancient foundation.

Leases of lands

STAT. 31 HEN.
8, c. 13.

not usually let
of such monas-
teries as here-
after shall be
suppressed.

Leases of lands
in lease.
Moor, 60,
pl. 169, 128,
pl. 276.
3 Co. 7.

2 Roll. 171.
Leases of
abbey lands
which are to be
dissolved, not
reserving the
old rent.

Wood-sales
made or to be
made within
one year before
the dissolution.

Assurances
made by go-
vernors of
houses of reli-
gion sup-
pressed, of any
of their lands
within one
year before.

prior, abbess, prioress, or other ecclesiastical governor or governess of any monastery, abbey, priory, nunnery, college, hospital, house of friars, or other religious or ecclesiastical house or place, which hereafter shall happen to be dissolved, suppressed, renounced, relinquished, forfeited, given up, or come to the king's highness, within one year next before the first day of this present parliament, have made, or hereafter do make, any lease or grant under his covent or common seal, or otherwise for term of years, or life or lives, of the site, circuit, and precinct of his said monastery, abbey, priory, nunnery, college, hospital, house of friars, or other religious or ecclesiastical house or place, or of any part thereof, or of any manors, messuages, lands, tenements, parsonages appropriate, tithes, pensions, portions, and other hereditaments belonging or appertaining to his said monastery, abbey, priory, nunnery, college, hospital, house of friars, or other religious or ecclesiastical house or place, which manors, meases, granges, lands, tenements, parsonages appropriate, tithes, pensions, portions, and other hereditaments, whatsoever they be, were not, before the same lease, commonly used to be set nor let to ferm, but kept and reserved in the manurance, tillage, or occupation of the said governor or governess, for the maintenance of hospitality and good house-keeping, or now be in the manurance, tillage, or occupation of the said governor or governess, for the maintenance of hospitality and good house-keeping; or within one year next before the first day of this present parliament, hath made or hereafter shall make any lease or grant for term of life, or for term of years, of any manors, meases, lands, tenements, meadows, pastures, woods, parsonages appropriate, tithes, pensions, portions, churches, chapels, or other hereditaments, whatsoever they be, whereof and in the which any estate or interest for term of life, year or years, at the time of the making of any such grant or lease, then had his being or continuance, or hereafter shall have his being or continuance, and then was not determined, finished, or expired, or at any time of any such lease to be made, shall not be determined, finished, or expired; or within one year next before the first day of this present parliament hath made, or hereafter shall make, any lease or grant for term of life, or for term of years, of any manors, messuages, lands, tenements, meadows, pastures, woods, parsonages appropriate, tithes, pensions, portions, churches, chapels, or other hereditaments, whatsoever they be, upon which leases and grants the usual and old rents and fermes accustomed to be yelded and reserved by the space of twenty years next before the said first day of this present parliament, is or be not, or hereafter shall not be thereupon reserved and yelded; or if any such governor or governess of any such monastery, abbey, priory, nunnery, college, hospital, house of friars, or other religious or ecclesiastical house or place, which hereafter shall happen to be dissolved, suppressed, renounced, relinquished, forfeited, given up, or come to the king's highness, within one year next before the first day of this present parliament, hath made, or hereafter shall make, any bargain or sale of his woods, which woods be yet growing and standing; that then all and every such lease, grant, bargain, and sale of wood or woods, shall be utterly void and of none effect.

"VIII. And it is also enacted by the authority aforesaid, that all feoffments, fines, and recoveries, had, made, knowledged, or suffered, within one year next before the first day of this present parliament, or hereafter to be had, made, knowledged, or suffered by any governor or governess of any monastery, abbey, priory, nunnery, college, hospital, house of friars, or other religious or ecclesiastical house or place, which hereafter shall happen to be dissolved, suppressed, renounced, relinquished, forfeited, given up, or come to the king's highness, without the king's licence under his great seal, of any manors, meases, lands, tenements, or other hereditaments, whatsoever they be, which the said abbots, priors, abbesses, prioresses, and other ecclesiastical governors and governesses, which hereafter shall happen to be dissolved, suppressed, relinquished, forfeited, given up, or come unto the king's highness, as is afore said, or any of them, or any of their predecessors had or held, or have and hold, of the gift, grant, or confirmation of our said sovereign lord, or of any of his highness' progenitors, or of the which monasteries, abbies, priories, nunneries, colleges, hospitals, houses of friars, or other religious

and ecclesiastical houses and places our said sovereign lord is founder or patron, or which manors, meases, lands, tenements, or other hereditaments, were or be of the ancient or old foundation or possession of the said monasteries, abbies, priories, nunneries, colleges, hospitals, houses of friars, or other religious or ecclesiastical houses or places, shall be utterly void and of none effect. STAT. 31 HEN. 8, c. 13.

“IX. Provided alway, and be it enacted by authority aforesaid, that if any abbot, prior, abbess, or prioress, or other governor or governess abovesaid, within one year next before the first day of this present parliament; or if any late abbot, prior, abbess, prioress, or other late governor or governess abovesaid, within one year next before any such dissolution, suppression, renouncing, relinquishing, forfeiting, giving up, or coming to the king's highness, of the premises, or of any parcel thereof, as is aforesaid, have made any demise, lease, or grant to any person or persons for term of years, of any manors, meases, lands, tenements, parsonages appropriate, tithes, pensions, portions, or other hereditaments aforesaid, which person or persons, at the time of the said demise, lease, or grant, had and held the same to term for term of years then not expired; that then the said person or persons, to whom any such demise, lease, or grant hath been so made, shall have and hold the same for the term of one and twenty years only from the time of the making of the said demise, lease, or grant, if so many years be by the same demise, lease, or grant specified, limited, and expressed, or else for so many years as in such demise, lease, or grant been expressed, so that the old rent be thereupon reserved, and so that the same lease or leases exceed not twenty-one years; this act or any thing therein contained to the contrary notwithstanding. 2 Roll. 402.
A lease for years made to the old lessee for years within a year before the dissolution, or of this parliament. Co. pl. f. 188.
2 Leonard, 55.
3 Leonard, 164.
Plow. 102.
Dyer, 102, 352.

“X. Provided also, and be it enacted by the authority aforesaid, that if any abbot, prior, abbess, prioress, or other late governor or governess, within one year next before any such dissolution, suppression, renouncing, relinquishing, forfeiting, giving up, or coming unto the king's highness, of the premises, or any parcel thereof, as is aforesaid, have made any demise, lease, or grant to any person or persons, for term of life or lives, of any manors, meases, lands, tenements, parsonages appropriate, tithes, pensions, portions, or other hereditaments aforesaid, which person or persons, or any of them, at the time of the said demise, lease, or grant, had and held the same for term of life or lives, or for term of years then not expired; that then the said person or persons, to whom any such lease or grant hath been so made, shall have and hold the same for term of their life or lives, so that the old rent be thereupon reserved; this act or any other thing therein contained to the contrary thereof notwithstanding. A lease for life made to the old lessee for life or years.

“XI. Provided also, and be it enacted by the authority aforesaid, that all and singular leases and grants, made by copy to any person or persons, of any of the said messuages, lands, tenements, parsonages appropriate, tithes, pensions, portions, or other hereditaments aforesaid, for term of life or lives, which by the custom of the country hath been used to be demised, letten, or granted by copy of court-roll, shall be good and effectual in the law, so that the old rent be reserved by and upon every such lease and leases; this act or any thing therein contained to the contrary in any wise notwithstanding. All copies for life granted according to the custom shall be good.

“XII. Provided alway, and be it further enacted by the authority aforesaid, that all leases heretofore made of any of the premises by authority of our sovereign lord the king's court of augmentations of the revenues of his crown, and all such leases, feoffments, and wood sales, made by the said governors and governesses, or any of them, under their covent seals, or under the covent or common seal of any of them, within one year next before the dissolution, suppression, renouncing, relinquishing, forfeiting, giving up, or coming to the king's highness, of the said monasteries, abbies, priories, nunneries, colleges, hospitals, houses of friars, or other religious or ecclesiastical houses or places, which said leases, grants, feoffments, and wood sales, have been examined, enrolled, decreed, or affirmed in our said sovereign lord the king's court of augmentations, and the decree of the same put in writing, sealed with the seal of the said court of augmentations, shall be good and effectual according to the same decree; any clause or act heretofore in this present act to the contrary notwithstanding. Leases allowed in the court of augmentations. Dyer, f. 80.

STAT. 31 HEN.
8, c. 13.

How they shall
be relieved
who have truly
paid money for
wood to any
ecclesiastical
governor.

“XIII. Provided alway, and be it also further enacted by the authority aforesaid, that if any person or persons have justly and truly, without fraud or covin, paid or given any sum or sums of money to any of the said late governors and governesses, for the bargain and sale of any woods, being or growing in or upon any manors, lands, tenements, or hereditaments, which appertained or belonged to the said late monasteries, abbies, priories, nunneries, colleges, hospitals, houses of friars, or other religious or ecclesiastical places, or unto any of them, which bargain and sale by authority of this act is made void, and of none effect, and by mean thereof the king's highness may have and take the commodity and profit of such woods so bargained and sold; that then the chancellor and other officers of our said sovereign lord the king's court of augmentations, or three of them, whereof the chancellor for the time being shall be one, of our said sovereign lord the king's treasure remaining in the treasury of the same court, shall satisfy and recompense every such person or persons such sum of money, or other recompence, as the same chancellor and officers, or three of them, whereof the said chancellor shall be one, shall think meet and convenient. And if any other person or persons shall happen to take profit and commodity, by reason of avoiding of such wood sales by authority of this act, that then every person and persons, which may or shall take such profit, shall be ordered for satisfaction to be made to the parties that shall happen to be grieved by this act, by the said chancellor and other the officers of the same court.

Assurance to
others by the
king's licence
of any abbey
lands.

“XIV. Provided also, and be it further enacted by the authority aforesaid, that all and every person and persons, their heirs and assigns, which sithen the said fourth day of February, by licence, pardon, confirmation, release, assent, or consent of our said sovereign lord the king, under his great seal heretofore given, had, or made, or hereafter to be had or made, have obtained or purchased by indenture, fine, feoffment, recovery, or otherwise, of the said late abbots, priors, abbesses, prioresses, or other governors or governesses of any such monasteries, abbies, priories, nunneries, colleges, hospitals, houses of friars, or other religious and ecclesiastical houses or places, any monasteries, priories, colleges, hospitals, manors, lands, tenements, meadows, pastures, woods, churches, chapels, parsonages, tithes, pensions, portions, or other hereditaments, shall have and enjoy the same, according to such writings and assurances, as been thereof before the first day of this present parliament, or hereafter shall be had or made:

A saving of the
right of others
accrued unto
them before the
said purchase.
12 Co. 45.

“XV. Saving to all and every person and persons, and bodies politick, their heirs and successors, and to the heirs and successors of every of them, (other than the said late abbots, abbesses, priors, prioresses, and other governors and governesses, and their successors, and the successors of every of them, and such as pretend to be founders, patrons, or donors of the said monasteries, abbies, priories, nunneries, colleges, hospitals, and other religious or ecclesiastical houses or places, or of any of them, or of any manors, messuages, lands, tenements, or other hereditaments late belonging to the same, or to any of them, and their heirs and successors, and the heirs and successors of every such founder, patron, or donor,) all such right, title, interest, possession, rents, annuities, commodities, offices, fees, liveries, and livings, portions, pensions, corodies, synods, proxies, and other profits, which they or any of them have, ought, or might have had, in or to any of the said monasteries, abbies, priories, colleges, hospitals, manors, lands, tenements, rents, services, reversions, tithes, pensions, portions, or other hereditaments, at any time before any such purchase, indentures, fines, feoffments, recoveries, or other lawful mean between any such parties had or made, as is abovesaid; this act or any thing therein contained to the contrary notwithstanding.

“XVI. And where our said sovereign lord, sith the fourth day of February, the said twenty-seventh year of the reign of our said sovereign lord, hath obtained and purchased, as well by exchanges, as by gifts, bargains, fines, feoffments, recoveries, deeds enrolled, and otherwise, of divers and sundry persons, many and divers honours, castles, manors, lands, tenements, meadows, pastures, woods, rents, reversions, services, and other hereditaments, and hath not only paid divers and sundry great sums of money for the same, but also hath given and granted for the same,

unto divers and sundry persons, divers and sundry manors, lands, tenements, and hereditaments, and other recompences, in and for full satisfaction of all such honours, castles, manors, lands, tenements, rents, reversions, services, and other his hereditaments, by his highness obtained or had, as is abovesaid: be it therefore enacted by the authority aforesaid, that our said sovereign lord the king, his heirs and successors, shall have, hold, possess, and enjoy all such honours, castles, manors, lands, tenements, and other hereditaments, as his highness, sith the said fourth day of February the twenty-seventh year abovesaid, hath obtained and had by way of exchange, bargain, purchase, or other whatsoever mean or means, according to the true meaning and intent of his highness' bargain, exchange, or purchase; misrecital, misnaming, or nonrecital, or not naming of the said honours, castles, manors, lands, tenements, and other hereditaments, comprised or mentioned in the bargains or writings made between the king's highness and any other party or parties, or of the towns or counties where the said honours, castles, manors, lands, tenements, and hereditaments lie and been, or any other matter or cause whatsoever it be, in any wise notwithstanding.

STAT. 31 HEN.
8, c. 13.

A confirmation
of the king's
purchases made
sithence 4 Feb.
ann. 27 Hen. 8.

“XVII. Saving to all and every person and persons, and to their heirs, bodies politick and corporate, and to their successors, and to every of them, (other than such person and persons, and their heirs, and their wives, and the wives of every of them, bodies politick and corporate, and their successors, and every of them, of whom the king's highness hath obtained by exchange, gift, bargain, fine, feoffment, recovery, deed enrolled or otherwise, any such honours, castles, manors, lands, tenements, and other hereditaments, as is aforesaid,) all such right, title, use, interest, possession, rents, charges, annuities, commodities, fees, and other profits, (rents services and rents seek only except,) which they or any of them have, might, or ought to have had, in or to the premises so obtained and had, or in or to any parcel thereof, if this act had never been had nor made; this present act or any thing therein contained to the contrary notwithstanding.

A saving of the
right of all
others, but of
the sellers,
their heirs and
wives.

An exception
of rents service,
rents seek.

“XVIII. And where it hath pleased the king's highness, of his most abundant grace and goodness, as well upon divers and sundry considerations his majesty specially moving, as also otherwise, to have bargained, sold, changed, or given and granted by his grace's several letters patents, indentures, or other writings, as well under his highness' great seal, as under the seal of his highness' duchy of Lancaster, and the seal of the office of the augmentations of his crown, unto divers and sundry of his loving and obedient subjects, divers and sundry honours, castles, manors, monasteries, abbies, priories, lands, tenements, rents, reversions, services, parsonages appropriate, advowsons, liberties, tithes, oblations, portions, pensions, franchises, privileges, liberties, and other hereditaments, commodities, and profits, in fee-simple, fee-tail, for term of life, or for term of years; for avoiding of which said letters patents, and of the contents of the same, divers, sundry, and many ambiguities, doubts, and questions might hereafter arise, be moved and stirred, as well for misrecital or nonrecital, as for divers other matters, things, or causes, to be alledged, objected, or invented against the said letters patents, as also for lack of finding of offices or inquisitions, whereby the title of his highness therein ought to have been found, before the making of the same letters patents, or for misrecital or nonrecital of leases, as well of record as not of record, or for lack of the certainty of the values, or by reason of misnaming of the honours, castles, manors, monasteries, abbies, priories, lands, tenements, and other hereditaments comprised and mentioned within the same letters patents, or of the towns and counties where the same honours, castles, manors, monasteries, abbies, priories, lands, tenements, rents, and other hereditaments lie and been, as for divers and sundry other suggestions and surmises, which hereafter might happen to be moved, surmised, and procured against the same letters patents, albeit the words in effect contained in the said letters patents be according to the true intent and meaning of his most royal majesty:

“XIX. Be it therefore enacted by the authority of this present parliament, that as well all and every the said letters patents, indentures, and other writings, and every of them, under the seal or seals abovesaid, or of any of them, made or

2 Roll. 277.
The king's pa-
tents sufficient,

STAT. 31 HEN.
8, c. 13.

notwithstanding
misrecital,
not finding of
offices, &c.

34 & 35 Hen.
8, c. 21.

Hob. 222, 227.

A saving of the
right of others
in the lands
assured by the
king.

Het. 145.
Latch, 89.
Bridgm. 32.
2 Roll. 142,
252.

Such abbey
lands as before
the dissolution
of them were
discharged of

granted by the king's highness sithen the said fourth day of February, the said twenty-seventh year of his most noble reign, as all and singular other his grace's letters patents, indentures, or other writings to be had, made, or granted to any person or persons, within three years next after the making of this present act, of any honours, castles, manors, monasteries, abbies, priories, nunneries, colleges, hospitals, houses of friars, or of other religious or ecclesiastical houses or places, sites, circuits, precincts, lands, tenements, parsonages, tithes, pensions, portions, advowsons, nominations, and all other hereditaments and possessions of what kind, nature, or quality soever they be, or by whatsoever name or names they or any of them be named, known, or reputed, shall stand and be good, effectual, and available in the law of this realm, to all respects, purposes, constructions, and intents, against his majesty, his heirs, and successors, without any other licence, dispensation, or tolerance of the king's highness, his heirs and successors, or of any other person or persons whatsoever they be, for any thing or things contained, or hereafter to be contained, in any such letters patents, indentures, or other writings; any cause, consideration, or thing material to the contrary in any wise notwithstanding.

"XX. Saving to all and singular persons, bodies politick and corporate, their heirs and successors, and the heirs and successors of every of them, (other than his highness, his heirs, and successors, and the said governors and governesses, and their successors, donors, founders, and patrons aforementioned, and their heirs and successors, and all other persons claiming in their rights or to their use, or in the right, or to the use of any of them,) all such right, title, claim, interest, possession, reversion, remainder, offices, annuities, rent charges, and commons, which they or any of them have, ought, or might have had, in or to any the said honours, castles, manors, monasteries, abbies, priories, lands, tenements, and other hereditaments in the said letters patents made, or hereafter to be made, comprised at any time before the making of the said or such letters patents; this act or any thing therein contained to the contrary notwithstanding.

"XXI. And where divers and sundry abbots, priors, abbesses, prioresses, and other ecclesiastical governors and governesses of the said late monasteries, abbies, priories, nunneries, colleges, hospitals, houses of friars, and other religious and ecclesiastical houses and places, have had, possessed, and enjoyed divers and sundry parsonages appropriated, tithes, pensions, and portions, and also were acquitted and discharged of and for the payment or payments of tithes, to be paid out or for their said monasteries, abbies, priories, nunneries, colleges, hospitals, houses of friars, and other religious and ecclesiastical houses and places, manors, messuages, lands, tenements, and hereditaments: *be it therefore* (1) enacted by the authority abovesaid, that as well the king our sovereign lord, his heirs and successors, as all and every such person and persons, their heirs and assigns, *which have* (2), or hereafter shall have, any monasteries, abbies, priories, nunneries, colleges, hospitals, houses of friars, or other ecclesiastical houses or places, sites, circuits,

(1) *Be it therefore*:—Before the dissolution of monasteries, the religious were discharged from payment of tithes by bull, or order, or composition; those discharges, and also all appropriations would have vanished and expired with the spiritual bodies whereunto they were annexed, if they had not been continued by this special clause of discharge,—as it happened to those that were dissolved by Stat. 27 Hen. 8, c. 28, and Stat. 1 Edw. 6, c. 14, for want of such a clause; neither of which, as hath been often declared, could be assisted, in point of discharge, by this act. By this clause was created a new discharge, which did not exist at the common law, that is, the unity of the possession of the parsonage and land titheable, in the same hand; so that although prescription *de non decimando* perisheth of course, when the spiritual corporation is dissolved, yet by this

clause it was made of such force, that where any lands of the monasteries dissolved by this act, were in parishes whose churches were appropriated thereunto, so as the monastery was seised both of the lands and rectory *simul et semel*, time out of mind, and paid no tithes within the memory of man for the lands; such land became discharged from the payment of tithes, by perpetual unity of possession. *Wright v. Gerard*, Hob. 306. *Sydowne v. Holme*, Cro. Car. 424. *Jones (Sir W.)*, 368. *Larchevesque de Canterb. case*, 2 Co. 49 (a).

(2) *Which have*:—By this clause, the right of acquittance is conveyed to the patentees of such lands, but with this limitation, that they be in their own occupation, for so only were they free in the hands of the religious, and they can be no further free in the hands of the patentees. It is therefore necessary

precincts of the same, or of any of them, or any manors, messuages, parsonages appropriate, tithes, pensions, portions, or other hereditaments, whatsoever they be, which belonged or appertained, or *which now belong* (1) or appertain unto the said monasteries, abbies, priories, nunneries, colleges, hospitals, houses of friars, or other *religious and ecclesiastical* (2) houses or places, or unto any of them, shall have, hold, retain, keep, and enjoy, as well the said parsonages appropriate, tithes, pensions, and portions of the said monasteries, abbies, priories, nunneries, colleges, hospitals, houses of friars, and other religious and ecclesiastical houses and places, *sites* (3), circuits, precincts, manors, meases, lands, tenements, and other hereditaments, whatsoever they be, and every of them, according to their estates and titles, *discharged* (4) and acquitted of *payment of tithes* (5), as freely,

STAT. 31 HEN. 8, c. 13.

tithes, shall so continue.

Cro. Eliz. 206.

Cro. Jac. 607.

Cro. Car. 265, 422.

Moor, 219,

pl. 356.

Dyer, f. 277,

pl. 60, 349,

pl. 16.

for him who would take the benefit of this privilege, to aver, not barely that he is seised of the land, but that it is in his own hands and manurance. *Weston's (Sir Richard) case*, Bend. 168, 169.

It hath been held also, that a tenant in tail who hath an estate of inheritance, shall be discharged in virtue of this clause, *quamdiu propriis manibus excolit*; but that unity of possession does not discharge a copyholder, (though a prior was seised in fee of the manor of which it is parcel, and was also parson imparsonnee,) much less a tenant for life or years. *Wilson v. Redman*, Hardr. 174. *Branches' case*, Mo. (Sir F.), 219. *Benton v. Trot*, Ibid. 534.

But it is otherwise with regard to the king, whose fermers shall be discharged of such tithes as the spiritual persons were, because the king cannot *excolere*. And so long as the king hath the freehold, his fermers shall have such privilege; but if he, after having leased them, shall sell them, or shall grant over the reversion, then the fermers shall pay tithes, and *Tanfield* would admit the privilege to extend no further, than to the king's tenants at will, and not to tenants for life or years. *Anon. Mo.* (Sir F.), 915.

It was held, in *Compost v. —*, (Hardr. 315,) that the king is not by virtue of his prerogative discharged of tithes for the ancient demesnes of the crown, but that, as *persona mixta*, he is capable of a discharge, *de non decimando*, by prescription, as well as a bishop. But if the king alien any of the lands for which he is so discharged of tithes, his patentee shall pay tithes, and not only so, but the prescription is destroyed for ever, though the same lands should afterwards come into the king's hands again by escheat or otherwise.

(1) *Which now belong*:—It is provided by this Act of Dissolution (s. 4), that all religious houses, &c., that should thereafter be dissolved, should be also vested in the king, which is the meaning of extending the discharges in like manner to houses, that were not yet dissolved or surrendered, but in time to come might be.

(2) *Religious and ecclesiastical*:—No corporation which was ecclesiastical, and not religious, as bishops, deans, and chapters, &c., are within this act, throughout which, the meaning of "religious," is, "regular," in opposition to "secular." *Larchevesque de Canterb. case*, 2 Co. 48 (b).

(3) *Sites*:—Where an abbot was parson imparsonnee of the church in which the site of

the monastery and the tithes were; the monastery having been dissolved, and the tithes of the monastery granted to one person, and afterwards the rectory and parsonage to another; it was held by *Brown and Weston*, (*Dyer* dissenting,) that the site of the monastery should be charged with tithes in the hands of the patentee, but otherwise, if it had ever been the glebe of the parsonage, or that the discharge in the hands of the abbot had been by composition real. *Anon. Mo.* (Sir F.), 46.

(4) *Discharged*:—It hath been already intimated, that the new discharge created by this act is unity of possession; which all agree, (*Anon. Dyer*, 43; *Whiskard v. Futter*, Sav. 62; *Anon. Mo.* (Sir F.), 50; *Benton v. Trot*, Ibid. 528,) is of itself no discharge, but only a suspension of tithes, for so long as such unity holds; and therefore it hath been often adjudged and declared, (*Larchevesque de Canterb. case*, 2 Co. 47 (b); *Priddle & Napper's case*, 11 Ibid. 14 (a, b),) that in this case, a general allegation of unity of possession was not sufficient, but that, to bring it within the act, it must be a lawful and perpetual unity of possession time out of mind; by reason of which, (as *Hobart*, in *Slade v. Drake*, 298, said,) a perfect discharge shall be supposed, though it cannot be found for the infiniteness and impossibility of search of things beyond memory: for this cause, if an appropriation had been made in the times of Edward 4, and Henry 6, and unity had continued from the time of the appropriation, till the dissolution, and tithes were never paid, neither by the abbots nor their fermers; such unity was not within the act, because it was not perpetual.

Where the unity was confessed from the foundation of the abbey, (*Gibson v. Holcraft*, Yelv. 31; *Priddle v. Napper*, 2 Brownl. 26,) but the foundation itself had been after the time of memory, this was judged a sufficient confessing and avoiding without traversing the prescription.

My Lord Coke (*Priddle & Napper's case*, 11 Co. 14 (b),) lays down four qualities of an unity within this act: 1. *Justa*, rightful, and not by wrong. 2. *Æqualis*, viz., free in the one and the other. 3. *Perpetua*, time out of mind. 4. *Libera*, free of payment of any tithes.

(5) *Payment of tithes*:—Not discharge of tithes, but discharge of payment of tithes, because the discharges of tithes which religious houses had before time of memory cannot be known. Ibid. *Larchevesque de Canterb. case*, 2 Ibid. 47 (b).

STAT. 31 HEN.
8, c. 13.

2 Co. 46.

11 Co. 8, 16.
Co. pl. f. 451,
454.

All rents,
services, &c.
reserved to the
king.

Monasteries,
&c. exempt
from visitation
and jurisdic-
tion of the
ordinary.

and in as large and *ample manner*(1), as the said late abbots, priors, abbesses, prioresses, and other ecclesiastical governors and governesses, or any of them had, held, occupied, possessed, used, retained, or enjoyed the same, or any parcel thereof, at the days of their dissolution, suppression, renouncing, relinquishing, forfeiting, giving up, or coming to the king's highness, of such monasteries, abbies, priories, nunneries, colleges, hospitals, houses of friars, or other religious or ecclesiastical houses or places, or at the day of the dissolution, suppression, renouncing, relinquishing, giving up, or coming to the king's highness of any of them; this act or any thing therein contained to the contrary notwithstanding.

"XXII. Saving to the king's highness, his heirs and successors, all and all manner of rents, services, and other duties, whatsoever they be, as if this act had never been had nor made.

"XXIII. And be it further enacted by authority of this present parliament, that such of the said late monasteries, abbies, priories, nunneries, colleges, hospitals, houses of friars, and other religious and ecclesiastical houses and places, and all churches and chapels to them, or any of them belonging, which before the dissolution, suppression, renouncing, relinquishing, forfeiting, giving up, or coming unto the king's highness, *were exempted* (2) from the visitation or visitations, and all jurisdiction of the ordinary or ordinaries, within whose diocese they were situate or set, shall from henceforth be *within the jurisdiction* (3) and visitation of

(1) *Ample manner*:—It hath been held, that an abbot's, &c., holding lands discharged of tithes, &c., was not good, without showing how, as, by composition, or order, &c., because a discharge of tithes being contrary to common right ought to be examined strictly; but yet it hath been held by others to be good without such specification. *Nash v. Molins*, Cro. Eliz. 206. *Congley & Hall*, 2 Roll. 125. *Slade v. Drake*, Noy, 97. Jones (Sir W.), 6, 7.

(2) *Were exempted*:—Such exemptions were commonly granted at Rome, to those who solicited for them, especially to the larger monasteries, and such who had wealth enough to solicit powerfully; but the right of visitation being, *de jure communi*, in the bishop, ("eo ipso quòd ecclesia sita est in diocesi alicujus, præsuntur sibi subesse . . . nisi ostendant se exemptos;" Extra. l. 2, t. 26, c. 12, v. *Suæ*, et t. 30, c. 4,) the religious who had obtained such exemptions, were liable to be cited, and were bound, upon pain of contumacy, either to submit to his visitation, or to exhibit their bulls of exemption, in order that they might be viewed and examined, and the bishop might see of what authority and extent they were. There is a process of this kind in the Register of Archbishop Warham, where, at the visitation of the archbishop, the abbot and convent of St. Austin's, in Canterbury, had alleged their exemption, and were afterwards cited in form to produce their instruments, (which they did by a proctor,) and the validity and invalidity of these having been solemnly debated, the archbishop pronounced for the validity of them by a formal sentence: "Per hanc nostram sententiam definitivam, quam in scriptis ferimus, pronunciamus, decernimus, et declaramus, &c.;" and as to the abbot and convent, "Ab officio nostro in hac parte dimittimus."

This statute vests a power in the king, to subject any of those religious houses which were heretofore made exempt, to such juris-

diction as he should appoint exclusive of the ordinary; and there can be no doubt but the persons who claim exemption from the visitation of the ordinary, in virtue of such appointment, are obliged, upon pain of ecclesiastical censures, (in like manner as the religious were,) to submit the evidences of their exemption to the examination of the ordinary, without which, it is impossible for him to know, how far his authority extends.

As to protections given by the Pope; the rule of the canon law is: "Per verbum protectionis non datur exemptio," and this whether it relate to person or place. Extra. l. 5, t. 33, c. 8, et c. 18.

(3) *Within the jurisdiction*:—There are now no places totally exempt from ordinary jurisdiction, but either such as enjoy their exemption under the common law as free chapels and donatives, (the first visitable only by commission from the king, and the second by commission from the donor,) or such as the crown may have exempted, pursuant to the powers granted by this statute. Concerning such exemptions, the following most wholesome and reasonable law was intended in the *Reformatio Legum*, under the title "*Privilegia locorum exemptorum moderanda*;" "*Quoniam libertates et immunitates ecclesiasticas licentiosam videmus sæpenuerò afferre peccandæ securitatem; volumus, ut episcopis liceat in omnia collegia, societates, et cætus, quæ quidem in eorum diocesisbus constiterint, quantumcunque privilegiis præmuniuntur, inspectare, penàsque peccatis illorum assignare, non solum communibus visitationum, sed omnibus aliis temporibus, cum magnitudo criminum, postulabit, et eandem archiepiscopus in suâ provinciâ potestatem habebit.*" Ref. Leg. 64 (a).

The *Reformatio Legum* not becoming the law, Archbishop Laud, preparatory to his metropolitanical visitation, obtained licence of the king to visit all royal exemptions as they came in his way; a similar authority having been

the ordinary or ordinaries within whose diocese they or any of them be situate and set, or within the jurisdiction and visitation of such person or persons, as by the

STAT. 31 HEN.
8, c. 13.

granted by the Pope to Archbishop Morton. "And, considering to what degree the discipline of the church is defeated by those exemptions, and how great irregularities are committed under the protection of them; it were to be wished, that the like favour were granted by the crown to archbishops and bishops in their visitations, or rather it were to be wished that an act of parliament were made, to subject to the ordinary visitation, all such exempt places as are not in the immediate possession of the crown." Reg. Laud, 85 (a). Mort. 5 (a). Gibson's Codex, 978.

Lyndwood, speaking of the deanery of St. Martin's le Grand, in London, and showing that it is not properly an ecclesiastical benefice, says, among other things, that it is visited "*per merè laicum, quia per regis cancellarium, qui de necessitate non erit clericus, sed potest esse vir in statu laicali constitutus.*" Lyndw. de Cohab. Cler. c. Ut Clericalis. v. *Beneficiati*, 125. And Archbishop Reynolds speaks of visiting a hospital *ratione officii cancellarii*, and commands the Bishop of Norwich, to see that the injunctions he made, *ratione officii cancellarii quam gerimus*, be observed. Reyn. 32 (b), 46 (b).

The exemptions hitherto noticed may be called total exemptions, as wholly exclusive of ordinary jurisdiction; but there are others, that are only partial exemptions, as exclusive of this or that ordinary, but not of all; and these, (which are commonly called peculiars,) are of several sorts.

i. *Peculiars of the archbishops, exclusive of the bishops and archdeacons; which sprung from a privilege they had, to enjoy jurisdiction in such places where their seats and possessions were.* Accordingly, among the cases which the Gloss. reckons up by way of provision for the ordinary jurisdiction of the archbishop in the dioceses of his suffragans, one is, "*Si habet prædium in diocesi suâ.*" And a privilege it was, no way unfit or unreasonable, where their palaces were, and they oft-times repaired to them in person; as ancient archbishops appear to have done, by the multitude of letters dated from their several seats. Extra. l. i., t. 31, c. 11, v. *Exceptis*.

In these peculiars, (which, within the province of Canterbury, amount to more than a hundred, in the several dioceses of London, Winchester, Rochester, Lincoln, Norwich, Oxford, and Chichester,) jurisdiction, as previously observed, (*antè* 130,) is administered by several commissaries; the chief of whom is the Dean of the Arches; so called from the thirteen peculiars within the city of London over which he has jurisdiction having always held their courts in Bow Church, or "*Ecclesiæ Sanctæ Mariæ de Arcubus.*" Beyond such thirteen peculiars the jurisdiction of the Dean of the Arches extendeth not; and therefore my Lord Coke, (4 Inst. 337,) had been misinformed, when he said the Dean of the Arches hath ordinary jurisdiction by appeal, through the whole province of Can-

terbury; since the receiving of appeals belongs to the official principal of the archbishop; and if these two offices are at any time united in the same person, it is accidental, and depends wholly upon the pleasure of the archbishop.

Concerning those persons who are appointed to exercise jurisdiction in the peculiars of the archbishop, Lyndwood observes, that their jurisdiction is archidiaconal: "*Tales in locis suis habent jurisdictionem archidiaconalem, nec alicui subsunt, nisi solum archiepiscopo eos deputanti.*" Lyndw. de Judiciis, c. In causa, v. *Committatur*, 79.

ii. *Peculiars of bishops, exclusive of the jurisdiction of the bishop of the diocese in which they are situated; of which sort, the Bishop of London has four parishes within the diocese of Lincoln; and every bishop who has a house in the diocese of another bishop, may therein exercise episcopal jurisdiction, independent of such bishop.* And therefore Lyndwood says, "*Largior est significatio episcopatus quam diocesis, quia episcopatus potest referri ad diocesin alterius episcopi, in quâ forsan alius episcopus habet jurisdictionem peculiarem.*" Lyndw. de Pœnis, c. *Æternæ*, v. *Suis*, 318.

Where the ancient Gloss. enumerates the cases in which the archbishop has ordinary jurisdiction in the dioceses of his suffragans, one, as previously observed, is, "*Si habet prædium in diocesi suâ;*" to which is immediately subjoined, "*Et ille casus pertinet etiam ad quemcunque alium.*" Extra. l. i., t. 31, c. 11, v. *Exceptis*.

iii. *Peculiars of bishops exclusive of archidiaconal jurisdiction; respecting which Lyndwood writes thus: "Sunt quædam ecclesiæ, licet infra ambitum alicujus archidiaconatus constitutæ, quæ tamen ipsi archidiacono non sunt subjectæ; ut putâ ecclesiæ regulares, quales sunt monasteria monachorum, canonicorum regularium, et monialium. Sic etiam, si archiepiscopus, aliquas ecclesias suæ jurisdictioni reservavit in specie, ita quod in eis archidiaconus nullam jurisdictionem exerceat, tales ecclesiæ non dicuntur ipso archidiacono subjectæ; sicut est videre in multis locis, ubi archiepiscopi et episcopi exercent jurisdictionem immediatam et peculiarem."* Lyndw. de Cens. c. Ut sing. v. *Ecclesiis*, 219.

The archdeacons were excluded from jurisdiction over religious houses, by the ancient canon law in the chapter which bears the title, "*Archidiaconi in monasteriis jurisdictionem non habent, nisi in quantum tribuit eis generalis vel specialis consuetudo;*" and it is there determined, that if the archdeacon could not make out such custom, "*præfatum monasterium ab ejus impetitione penitus absolvatis, perpetuum super hoc ipso archidiacono silentium imponentes;*" he could claim no authority "*de jure communi.*"

Respecting the exemption of particular parishes from archidiaconal jurisdiction; there are not only many instances of such exemptions, but the parishes themselves continue so exempt, and remain under the

STAT. 31 HEN. 8, c. 13. king's highness shall be limited or appointed; this act, or any other exemption, liberty, or jurisdiction, to the contrary notwithstanding.

Duke of Norfolk.

Sipton abbey.

Lord Cobham.

Cobham chantry.

"XXIV. And where before this time it hath pleased the king's majesty, at the contemplation and humble petition of the Right Noble Thomas Duke of Norfolk, to give his royal assent of licence by his grace's word, without any manner of letters patents, or other writing, to purchase and receive to him and to his heirs, for ever, of William Flatbury, late abbot of the monastery of Sipton, in the county of Suffolk, and covent of the same late monastery now being dissolved, all the same monastery, together with all and singular manors, lordships, lands, tenements, woods, waters, commons, courts, leets, advowsons, patronages, parsonages, vicarages, chantries, free chapels, tithes, portions of tithes, pensions, annuities, rents, suits, services, reversions, remainders, and all other things which were the hereditaments, or the possessions of the said late monastery, wheresoever they lay or were within the realm of England. And in like wise our said sovereign lord gave like licence, by his grace's word, unto the Right Honourable George Lord Cobham, to purchase and receive to him and to his heirs for ever, of the late master and brethren of the college or chantry of Cobham, in the county of Kent, now being utterly dissolved, the site of the same college or chantry, and all and singular their hereditaments and possessions, as well temporal as ecclesiastical, wheresoever they lay or were within the realm of England.

"XXV. Be it therefore enacted by the authority of this present parliament, that the act above written, or anything therein contained, shall not be in any wise prejudicial or hurtful to the said Duke and Lord Cobham, or to either of them, or to the heirs or assigns of either of them, but that the same Duke and Lord Cobham, and either of them sundrily, and the heirs and assigns of either of them, shall and may have, hold, receive, and enjoy the premises by them sundrily purchased or received, according to the purports and effects of such evidences, writings, and conveyances, as they or any of them sundrily have caused to be devised and made to them or to their uses for the same:

Saving of other men's rights in the monastery of Sipton, and Cobham chantry.

"XXVI. Saving alway, and reserving to all and singular persons and bodies politick, and to their heirs and successors, (other than the said late abbot and convent and their successors, and the said late master and brethren and their successors, and to the founders of the same monastery or of the said college or chantry and the heirs of either of them, and all donors, granters, or augmenters of them or either of them, and the heirs and assigns of either of them,) all such rights,

immediate jurisdiction of the archbishop. Extra. de Off. Archid. l. i., t. 23, c. 10.

iv. Peculiars of deans, and of deans and chapters, prebendaries, &c. These were first obtained and settled by the grants of the bishops; probably, because the possessions of the respective corporations, whether sole or aggregate, lay chiefly in those places. But though they have power to appoint commissaries for probate of wills, &c. and for the ordinary administration of justice; yet they are (in some instances at least,) subject to the visitation of the bishop in his triennial. Gibson's Codex, 978.

It seems that no exemptions granted to persons or bodies under the degree of bishop, extend to a power of employing any bishop, they please, to perform for them such acts as are merely episcopal, unless special words be found in their grants of exemption, empowering and warranting them so to do; but that all such acts are to be performed by the bishop of the diocese within which they are situated, after the exemption, as much as before; in other words, that the exemptions in which no such clause is found, are only exemptions from the exercise of such powers, as the persons or bodies are capable of exer-

cising. Thus it exists in the granting letters dimissory for orders, and it likewise seems to have been understood in the act of consecrating churches and churchyards, and reconciling them when polluted; by the licence which we find the Dean of Windsor had from the guardian of the spiritualities of Salisbury, to employ any catholic bishop to reconcile the cloister and yard of a free chapel, when they had been polluted by the shedding of blood. 2 Arund. 77 (a).

In the time of Archbishop Winchelsea, upon an appeal to Rome, in a controversy concerning Pagham, a peculiar of the Archbishops of Canterbury; it was said, in the representation to the Pope, to be of Canterbury diocese; which was objected against in the exceptions on the other side, "cūm, in veritate, et notorietate, dioceseos cicestrensis existat." Which was a just exception, in point of form; because the proper style of these peculiars, as oft as they are mentioned in any instruments, is, of or in such a diocese, [namely, the diocese in which they are situated,] and of the peculiar and immediate jurisdiction of the archbishop. Reg. Winch. f. 312 (a). *Vide etiam* Ecclesiastical Commissioners' Report, February 15, 1832, p. 21.

titles, possessions, rents, services, fees, offices, annuities, corrodies, liveries, leases, and all other such their interestes, profits, and commodities, as they or any of them had, should, or ought to have, of, to, or in any of the premises sundrily purchased or received by the said Duke or Lord Cobham, if this present act had never been had or made; any thing in the same act to the contrary being in any wise notwithstanding.”

STAT. 31 HEN. 8, c. 13.
See farther provisions concerning monasteries, 32 Hen. 8, c. 20; 34 & 35 Hen. 8, c. 19; 35 Hen. 8, c. 14; 37 Hen. 8, c. 20; 1 Edw. 6, c. 14; and 1 & 2 P. & M. c. 8.

LXV. STAT. 31 HENRICI 8, c. 14(1). A.D. 1539.

“An Act for abolishing of Diversity of Opinions in certain Articles concerning Christian Religion.”

STAT. 31 HEN. 8, c. 14.

LXVI. STAT. 32 HENRICI 8, c. 1(2). A.D. 1540.

“The Act of Wills, Wards, and Primer Seisins, whereby a Man may devise two Parts of his Land(3).”

STAT. 32 HEN. 8, c. 1.

LXVII. STAT. 32 HENRICI 8, c. 2(4). A.D. 1540.

“The Act of Limitation with a Proviso.”

STAT. 32 HEN. 8, c. 2.

LXVIII. STAT. 32 HENRICI 8, c. 3. A.D. 1540.

“For the Continuation of certain Acts.”

STAT. 32 HEN. 8, c. 3.

[Stat. 23 Hen. 8, c. 1. Stat. 25 Hen. 8, c. 3. Stat. 25 Hen. 8, c. 6. Stat. 28 Hen. 8, c. 1.]

LXIX. STAT. 32 HENRICI 8, c. 7. A.D. 1540.

“For the true Payment of Tithes and Offerings.”

STAT. 32 HEN. 8, c. 7.

“Where divers and many persons inhabiting in sundry counties and places of this realm, and other the king’s dominions, not regarding their duties to Almighty God, and to the king our sovereign lord, but in few years past more contemptuously and commonly presuming to offend and infringe the good and wholesome laws of this realm, and gracious commandments of our said sovereign lord, than in times past hath been seen or known, have not letted to subtract and withdraw the lawful and accustomed tithes of corn, hay, pasturages, and other sort of tithes and oblations commonly due to the owners, proprietors, and possessors of the parsonages, vicarages, and other ecclesiastical places of and within the said realm and dominions, being the more encouraged thereunto, for that divers of the king’s subjects, being lay persons, having parsonages, vicarages, and tithes to them, and to their heirs, or to them, and to their heirs of their bodies lawfully begotten, or for term of life or years, cannot by the order and course of the ecclesiastical laws of this realm, sue in any ecclesiastical court for the wrongful withholding and detaining of the said tithes or other duties, nor cannot by the order of the common laws of this realm have any due remedy against any person or persons, their heirs or assigns, that wrongfully detaineth or withholdeth the same; by occasion whereof much controversy, suit, variance, and discord, is like to insurg and ensue among the king’s subjects, to the great detriment, damage, and decay of many of them, if convenient and speedy remedy therefore be not had and provided.

STAT. 32 HEN. 8, c. 7.
This act is confirmed and enlarged by 2 & 3 Edw. 6, c. 13.
18 Edw. 3, St. III. c. 7.
45 Edw. 3, c. 3.
5 Hen. 4, c. 11.

“II. Wherefore it is ordained and enacted by our said sovereign lord the king, with the assent of the lords spiritual and temporal, and the commons, in this present parliament assembled, and by authority of the same, that all and singular persons of this his said realm, or other his dominions, of what estate, degree, or condition soever he or they be, shall fully, truly, and effectually divide, set out, yield, or pay all and singular tithes and offerings aforesaid, according to the lawful

2 Inst. 613.
Tithes shall be paid according to the custom of the parish where they be due.

(1) Repealed by Stat. 1 Edw. 6, c. 12, s. 3. *Vide etiam*, Stat. 32 Hen. 8, c. 10.

(2) Rep. by Stat. 7 Gul. 4 & 1 Vict. c. 26, s. 2.

(3) *Vide* Stat. 34 & 35 Hen. 8, c. 5; but which statute was repealed by Stat. 7 Gul.

4 & 1 Vict. c. 26, s. 2.

(4) *Vide* Stat. 1 Mar. sess. 2, c. 5.

STAT. 32 HEN.
8, c. 7.

Cro. Eliz. 607.
The offender
convented
before the
ordinary.

The appellant
shall pay costs
of suit to the
other party.
Cro. Eliz. 178.

The offender
shall be bound
by two justices
of peace to
obey the ordi-
nary's sen-
tence.
See 4 Bur.
2095.

Lands dis-
charged of
tithes.

customs and usages of the parishes and places where such tithes or duties shall grow, arise, come, or be due; and in case that it shall happen any person or persons, of his or their ungodly or perverse will and mind, to detain and withhold any of the said tithes or offerings, or any part or parcel thereof, then the person or party, being ecclesiastical or lay person, having cause to demand or have the said tithes or offerings, being thereby wronged or grieved, shall and may convent the person or persons so offending before the ordinary, his commissary, or other competent minister, or lawful judge of the place *where such wrong* (1) shall be done, according to the ecclesiastical laws; and in every such cause or matter of suit, the same ordinary, commissary, or other competent minister or lawful judge, having the parties or their lawful procurators before him or them, shall and may, by virtue of this act, proceed to the examination, hearing, and determination of every such cause or matter, ordinarily or summarily, according to the course and process of the said ecclesiastical laws, and thereupon may give sentence accordingly.

“III. And in case that any of the parties, for any cause or matter concerning that suit, do appeal from the sentence, order, and definitive judgment of the said ordinary, or other competent judge, as is aforesaid, then the same judge, by virtue of this act, forthwith upon such appellations made, shall adjudge to the other party the reasonable costs of his suit therein before expended; and *shall compel* (2) the same party appellant to satisfy and pay the same costs so adjudged by compulsory process, and censures of the said laws ecclesiastical, taking surety of the other party to whom such costs shall be adjudged and paid, to restore the same costs to the party appellant, if after the principal cause of that suit of appeal shall be adjudged against the same party to whom the same costs shall be yielded; and so every ordinary or other competent judge ecclesiastical, by virtue of this act, shall adjudge costs to the other party upon every appeal to be made in any suit or cause of subtraction or detention of any tithes or offerings, or in any other suit to be made for or concerning the duty of such tithes or offerings.

“IV. And further be it enacted by the authority aforesaid, that if any person or persons, after such sentence definitive given against them, obstinately and willfully refuse for to pay their tithes or duties, or such sums of money so adjudged, wherein they be condemned for the same, that then two justices of the peace for the same shire, whereof one to be of the quorum, shall have authority by this act, upon information, certificate, or complaint to them made in writing by the said ecclesiastical judge that gave the same sentence, to cause the same party so refusing to be attached and committed to the next gaol, and there to remain without bail or mainprise till he or they shall have found sufficient sureties to be bound by recognizance or otherwise, before the same justices, to the use of our said sovereign lord the king, to perform the said definitive sentence and judgment.

“V. Provided always, and be it enacted by the authority aforesaid, that no

(1) *Where such wrong*:—In the case of *Machin v. Maultin*, (2 Salk. 549; 1 Ld. Raym. 534,) it was adjudged, that by this statute, “the suit for the withholding of tithes in express words, is appointed to be before the ordinary of the place where the wrong was done; but if it had been in another case, it had been within Stat. 23 Hen. 8, c. 9, s. 2, and the prohibition should have continued.”

(2) *Shall compel*:—Noy (135) says, it was ruled in full court, that if a sentence be given in the spiritual court, and costs taxed, and the defendant brings an appeal; yet if the suit does not appertain originally or properly to them, (as tithes of trees spent in fuel, &c.,) a prohibition shall be awarded, as well to the costs, as to the principal suit; notwithstanding that Stat. 32 Hen. 8, c. 7, says, the ecclesiastical judge shall adjudge and compel the appellant to pay costs; (*Tran-*

sam's case, Cro. Eliz. 178;) but this statute only applies when the matter appertains properly to the spiritual court; in which case, consultation can be awarded.

In *Fife v. Blunt*, (2 Curt. 914,) a motion to enforce payment of costs in a suit for subtraction of tithes, notwithstanding an appeal under Stat. 32 Hen. 8, c. 7, was rejected, the proceeding in the cause being under the Stat. 2 & 3 Edw. 6, c. 13; Sir Herbert Jenner observing, “I agree with the counsel, that, looking at the circumstances of the case, the appeal is made merely for delay; and the court would feel inclined to direct the costs to be paid under the statute of Hen. 8; but, unfortunately, the proceeding in this case was not under that statute, but under Stat. 2 & 3 Edw. 6, c. 13: I therefore do not feel that I am authorized to enforce the costs under the former statute.”

person or persons shall be sued, or otherwise compelled to yield, give, or pay any manner of tithes for any manors, lands, tenements, or other hereditaments, which by the laws or statutes of this realm are discharged, or not chargeable with the payment of any such tithes.

“VI. Provided also, and be it enacted by authority aforesaid, that this act nor any thing therein contained shall in any wise bind the inhabitants of the city of London, and suburbs of the same, for to pay their tithes and offerings within the same city and suburbs otherwise than they ought or should have done before the making of this act; any thing in this act contained to the contrary notwithstanding.

“VII. And be it further enacted by the authority aforesaid, that in all cases where any person or persons which now have, or which hereafter shall have, any estate of inheritance, freehold, term, right, or interest, of, in, or to any parsonage, vicarage, portion, pension, tithes, oblations, or other ecclesiastical or spiritual profit, which now be, or hereafter shall be, made temporal, or admitted to be, abide, and go to or in temporal hands and lay uses and profits by the law or statutes of this realm, shall hereafter fortune to be disseised, deforced, wronged, or otherwise kept or put from their lawful inheritance, estate, seisin, possession, occupation, term, right, or interest of, in, or to the same, or of, in, or to any parcel thereof, by any other person or persons claiming or pretending to have interest or title in or to the same; that then in all and every such case or cases, the person or persons so disseised, deforced, or wrongfully kept or put from his or their right or possession as is afore rehearsed, their heirs, wives, and such other to whom such injury and wrong shall be done or committed, shall and may have their *remedy* (1) in the king's temporal courts, or other temporal courts, as the case shall require, for the recovery, getting, or obtaining of such inheritance, estate, freehold, seisin, possession, term, right, or interest, by writs original of *præc' quod reddat*, assise of *novel disseisin*, *mortdance'*, *quod ei deforeciat*, writs of dower, or other writs original, as the case shall require, to be devised and granted in the king's court of chancery, of every such parsonage, vicarage, portion, pension, or other profit called ecclesiastical or spiritual, so to be demanded, according to the nature and cause of the suit thereof, in like manner and form as they should, ought, or might have had, of or for lands, tenements, or other hereditaments, in such manner to be demanded. And that writs of covenant and other writs for fines to be levied, and all other assurances to be had, made, or conveyed, of any such parsonage, vicarage, portion, pension, or other profit called ecclesiastical or spiritual as is aforesaid, shall be hereafter devised and granted in the said chancery according as hath been used for fines to be levied, and assurance to be had, made, or conveyed, of lands, tenements, or other hereditaments; and that all judgments to be given upon any of the said writs original, so to be devised or granted of or for any the premises, or any of them, and all fines to be levied and knowledge in any of the king's said courts thereof, shall be of like force and effect in the law, to all intents and purposes, as judgments given, and fines levied of lands, tenements, and hereditaments in the same courts upon writs original therefore duly pursued and prosecuted, albeit no such form of writs original out of the said court of chancery have heretofore proceeded or been awarded.

(1) *Remedy*.—An action of debt lies against the assignee of lessee for years of tithes at common law. *Bally (Clerk) v. Wells*, 3 Wils. 25, and the cases therein cited; *Talentine v. Denton*, Cro. Jac. 111; *Dalston v. Reeve*, 1 Ld. Raym. 77; *Windsor (Dean and Chapter of) v. Gover*, 2 Saund. 296; *Bristol (case of the Dean and Chapter of)*, Dyer, 85 (a), 85 (b); *Tippin v. Grover*, Raym. (Sir T.), 18.

And it seems, also, that a lay impropriator may bring an action of debt against the assignee of a lessee for years, because Stat. 32 Hen. 8, c. 7, s. 7, puts tithes in the hands of lay impropriators upon the same

footing with their corporeal hereditaments, but it does not seem certain that he has the same remedy as to leases for life. 2 Saund. 304 (a). 2 Wood. Lect. 71.

Freehold leases of tithes are governed by the principles of the common law; and therefore, the maxim that no freehold interest can be granted, commencing *in futuro*, has been held applicable to a lease of tithes. *Brewer v. Hill*, 2 Anst. 414. *Edmonds v. Booth*, Yelv. 131. Gwillim, 228.

A disclaimer of title to tithes by a rector, has been held to bind his lessee. *Leathes v. Newitt*, 4 Price, 374. 2 Burn's E. L. by Phillimore, 368.

STAT. 32 HEN. 8, c. 7.

Co. pl. f. 454. 2 & 3 Edw. 6, c. 13, s. 4.

The inhabitants of London.

2 Co. 44.

See 37 Hen.

8, c. 12, for

payment of

tithes in

London.

Recoveries

may be had,

and convey-

ances made in

temporal

courts, of

tithes as of

lands.

Dyer, 83,

pl. 77.

Cro. Eliz. 607,

844.

Co. Lit. 159, 2.

11 Co. 25.

Judgments given, and fines levied in the king's courts, of tithes, shall be of like force as of lands.

STAT. 32 HEN.
8, c. 7.

Remedy shall
be had for
tithes and
offerings in
the spiritual
courts, and
not in the
temporal.
Dyer, 84, pl. 82.
27 Hen. 8, c. 20.
2 Co. 43.

"VIII. Provided always, that this last act shall not extend, nor be expounded to give any remedy, cause of action or suit in the courts temporal against any person or persons which shall refuse or deny to set out his or their tithes, or which shall detain, withhold, or refuse to pay his tithes or offerings, or any parcel thereof; but that in all such cases the person or party, being ecclesiastical or lay person, having cause to demand or have the said tithes or offerings, and thereby wronged or grieved, shall take and have their remedy for their said tithes or offerings in every such case in the spiritual courts, according to the ordinance in the first part of this act mentioned, and not otherwise; anything herein expressed to the contrary thereof notwithstanding."

STAT. 32 HEN.
8, c. 10

LXX. STAT. 32 HENRICI 8, c. 10 (1). A.D. 1540.

"A Repeal of the Punishment by Death of Priests, married or unmarried, and of Women offending with them by Incontinency, limited by the Statute of 31 Hen. 8, c. 14. A Priest offending by Incontinency, and convict according to the Laws mentioned in 31 Hen. 8, c. 14, shall the first time forfeit to the King all his Goods, Chattels, Debts, and all his Spiritual Promotions, saving one; and being the second time convict, he shall forfeit all his Goods, Chattels, Debts, and the Issue and Profits of all his Lands, Benefices, and Promotions; and being the third time convict, shall forfeit all his Goods, Debts, Lands, Benefices, &c. and be imprisoned during his Life: and the Woman, if married, shall be imprisoned during Life; but being unmarried, she shall, the first time she is convict, forfeit all her Goods, Chattels, and Debts; the second time, the Moiety of the Issues of her Lands during her Life; and the third time, the whole Issues and Profits of all her Lands, &c. and shall be imprisoned during her Life."

STAT. 32 HEN.
8, c. 12.

LXXI. STAT. 32 HENRICI 8, c. 12 (2). A.D. 1540.

"All Sanctuaries and Places privileged, which have been used for Sanctuary, shall be utterly extinguished, except Parish Churches and their Church-yards, Cathedral Churches, Hospitals, and Churches Collegiate, and all Churches dedicated, used as Parish Churches, and the Sanctuaries to either of them belonging, and Wells in the County of Somerset, Westminster, Manchester, Northampton, Norwich, York, Derby, and Lancaster. None of the said Places shall give Immunity or Defence to any Person which shall commit wilful Murder, Rape, Burglary, Robbery in the Highway or in any House, or in any Church or Chapel, or which shall burn wilfully any House, or Barn with Corn. He that taketh Sanctuary in any Church, Church-yard, &c. may remain there forty Days, as hath been used, unless the Coroner repair to him to take his Abjuration; in which case he shall abjure to any of the foresaid privileged Places, not being full of the number appointed to them, viz. above twenty Persons, there to remain during Life. If a privileged Person, daily called to appear before the Governor, shall make Default three Days, or if he commit any Felony, he shall lose the benefit of Sanctuary. A privileged Person abjuring to any of the aforesaid Places, shall be conducted from Constable to Constable directly, until he be brought to the Governor of the said privileged Place; and if that Place be full of his number, then he shall be conducted to the next privileged Place, and so to the next, &c. until, &c."

STAT. 32 HEN:
8, c. 15.

LXXII. STAT. 32 HENRICI 8, c. 15 (3). A.D. 1540.

"In all Commissions to be granted to the Bishop of the Diocese, his Chancellor and Commissary, concerning Christian Religion, according to the Statute of 31 Hen. 8, c. 14, there shall be joined with them the Archdeacons and their Officials, all which shall be named in the said Commissions by their Names of Dignity, and not by their Christian and Surnames."

(1) The Stat. 31 Hen. 8, c. 14, having been repealed by Stat. 1 Edw. 6, c. 12, this statute is become obsolete.

(2) Repealed by Stat. 1 Jac. 1, c. 25, s. 34. Stat. 21 Jac. 1, c. 28, s. 7.

(3) Repealed by Stat. 1 Edw. 6, c. 12, s. 3.

LXXIII. STAT. 32 HENRICI 8, c. 20 (1). A.D. 1540.

STAT. 32 HEN.
8, c. 20.*"Concerning Privileges and Franchises."*

"Where divers and sundry sites, circuits, and precincts of late monasteries, abbies, priories, nunneries, colleges, hospitals, and other ecclesiastical and religious houses and places, and divers honours, castles, manors, messuages, lands, tenements, liberties, privileges, franchises, and other hereditaments, by divers and sundry statutes heretofore made, been assigned, limited, and appointed, to the order, rule, survey, and governance of the court of our sovereign lord the king, called the court of augmentations of the revenues of his crown, and of the chancellor, officers, and ministers of the same, by the which statutes it is not fully, plainly, nor expressly declared or rehearsed, how and in what wise, and by what special officers and ministers, the liberties, privileges, and franchises, which the late owners of the same sites, circuits, precincts, honours, castles, manors, messuages, lands, tenements, and other the premises had, used, and exercised, should be ordered, used, exercised, and put in execution: be it therefore enacted by the king our sovereign lord, with the assent of the lords spiritual and temporal, and of the commons, of this present parliament assembled, and by the authority of the same, that all and singular the same liberties, franchises, privileges, and temporal jurisdictions, which the said late owners had, used, and exercised lawfully, by themselves, or by their officers or ministers, or might have used or exercised, within three months next before that the said sites, circuits, precincts, honours, castles, manors, messuages, lands, tenements, and other the premises, came to the possession of the king's highness, shall be by virtue of this present act revived, and be really and actually in the king's highness, his heirs and successors, and shall be in the rule, order, survey, and governance of the king's said court of augmentations of the revenues of his crown, and of the chancellor, officers, and ministers of the same; and that the same liberties, franchises, privileges, and temporal jurisdictions, and all manner fines, issues, amerciaments, and other profits and commodities, of what kinds or natures soever they be, coming, growing, or rising, by reason or occasion of them, or any of them, shall be used, exercised, and occupied to all intents, purposes, conditions, and respects, and shall be claimed, levied, collected, and taken by such stewards, bailiffs, and other officers and ministers, as shall please the king's highness, to name and appoint, in like manner, form, fashion, and condition as they or any of them were lawfully used, exercised, executed, claimed, levied, collected, and taken, before that they came to the hands and possession of our said sovereign lord; and that the same stewards, bailiffs, officers, and ministers, shall be accomptant for the issues and revenues of their bailiwicks and officers, and shall be compelled to account in the said court of augmentations, like as the king's receivers or other officers accomptants in the said court heretofore have done or ought to do.

Co. pl. f. 440,
546.

The same franchises that the late owners of religious houses had within three months before their dissolutions shall be revived, and be actually in the king, and in the survey of the court of augmentations. Moor, 297.

"II. And where also divers and sundry sites, circuits, and precincts of late monasteries, abbies, priories, nunneries, colleges, hospitals, and other ecclesiastical and religious houses and places, and also divers honours, castles, manors, messuages, lands, tenements, liberties, privileges, franchises, and other hereditaments, which been comen to the king's hands by attainder or attainders of high treason, been assigned, limited, and appointed to the order, rule, survey, and governance of the king's general surveyors; and forasmuch as it is not fully, plainly, nor expressly known or declared, how, and in what wise, and by what special officers or ministers, the temporal liberties, privileges, franchises, and temporal jurisdictions, which the late owners of the said sites, circuits, precincts, honours, castles, manors, messuages, lands, tenements, and other the premises had, used, and exercised, should be ordered, used, and put in execution: be it therefore enacted by authority aforesaid, that all and singular the same liberties, franchises, privileges, and temporal jurisdictions, which the late owners of the said sites, circuits, precincts, honours, castles, manors, and other the premises, which been

Those lands, &c. of the late abbeys, which came to the

STAT. 32 HEN.
8, c. 20.

king by attainder, shall be in the order of the general surveyors.

come into the king's hands by attainders, as is aforesaid, lawfully had, used, and exercised by themselves, or by their officers or ministers, or which they might have used or exercised, within three months next before that the same sites, circuits, precincts, honours, castles, manors, and other the premises, came to the possession of the king's highness, shall be by virtue of this act revived, and be really and actually in the king's highness, his heirs and successors, and shall be in the rule, order, survey, and governance of the king's said general surveyors, and of the officers and ministers of the same; and that the same liberties, franchises, privileges, and temporal jurisdictions, and all manner of fines, issues, amerciaments, and other profits and commodities, of what kinds or natures soever they be, coming, growing, or rising, by reason or occasion of them, or any of them, shall be used, exercised, and executed to all intents, purposes, conditions, and respects, and shall be claimed, levied, collected, and taken by such stewards, bailiffs, and other officers and ministers as shall please the king's highness to name and appoint for the same, in like manner, form, fashion, and condition as they or any of them were used, exercised, executed, claimed, levied, collected, and taken before they came to the hands and possession of our said sovereign lord by attainder, as is aforesaid; and that the said stewards, bailiffs, officers, and ministers thereof, shall be accomptant for the issues and revenues of their bailiwicks and offices, and shall be compelled to account before the said general surveyors, as other officers accomptants in that court heretofore have done, or ought to do.

The jurisdiction of the stewards and bailiffs of those liberties that were late the abbeyes, &c. and their attendance to the king's court.

"III. And be it enacted by authority aforesaid, that the said stewards, bailiffs, and other officers and ministers, shall be attendant and obedient to all other the king's courts, as well for all executions and returns of writs, warrants, and precepts, as for their personal appearances, and other duties of their officers, like as the officers and ministers of the said late owners did and ought to do, or should have done, by reason of their said several offices, before that the same liberties, privileges, and temporal jurisdictions did come to the possession of our said sovereign lord, and that to be done and observed upon all pains and penalties by the laws of this realm limited and ordained for any offence or default in the same: and that no sheriff, under-sheriff, nor other officer or minister of any sheriff or other foreign officer or minister, shall in any wise intromit or meddle in, with, or upon any of the premises, otherwise or in any other manner, nor for any other cause, than they or any of them lawfully might have done before the same premises did come to the possession of our said sovereign lord.

Every person may use such liberties as he hath by the king's grants or otherwise.

"IV. Provided always, and be it enacted, that all and singular persons and bodies politick, and the heirs, successors, and assigns of every of them, shall have, hold and enjoy, use, execute and exercise, as well by themselves, their officers, servants, and ministers, as by and for their tenants, farmers, and resiants, all and singular liberties, privileges, and franchises, which they or any of them now have by or from the king's majesty by any letters patents, indentures, writings, under any his highness' seals, or by authority of parliament, or otherwise, or by the lawful grant or lease of any person or persons, or by any other means or lawful title, in as large, ample, and beneficial manner, to all intents, respects, and purposes, as they or any of them now have, or of right ought to have, the said liberties, franchises, and privileges, or any of them, and as though this act had never been had ne made: any thing above written notwithstanding, the privileges of sanctuaries, church, church-yards, or cemeteries, for tuition of transgressors and offenders, only excepted; saving to all and singular persons and bodies politick, and the heirs, successors, and assigns of every of them, all such office and offices, fees, annuities, profits, and commodities, which they or any of them now have, or of right ought to have, in or upon, or by reason of the said sites, circuits, precincts, castles, honours, manors, messuages, lands, tenements, liberties, franchises, privileges, and other the premises, or in any part or parcel of them, in as large and ample manner, form, fashion, and condition, to all respects and purposes, as if this act had never been had nor made: any thing in this act to the contrary thereof notwithstanding.

Saving to all persons their offices, fees, annuities, and profits out of any of the lands or any abbeyes, &c.

"V. And furthermore, be it enacted by the authority of this present parliament, that the chancellor of the said court of augmentations now being, and every of his successors, being chancellor of that court, and the king's general attorney, and his grace's attorney of the said court of augmentations for the time being, and every of them, and their successors, and the successors of every of them, shall have full power and authority, by virtue of this act, to take to the use of the king our sovereign lord, his heirs and successors, knowledges of all manner of concords for fines thereupon to be had and recorded in the court of our said sovereign lord the king, and of his heirs and successors, commonly called the common pleas, of and upon all and singular manors, lordships, lands, tenements, and other hereditaments, being, and which by reason of those fines or otherwise shall be, under the order, rule, or survey of the said court of augmentations, without any fine or fee to be paid for the same; and that the judges and justices for the time being of the said court called the common pleas, and their successors, shall accept, receive, and allow, all the said knowledges of concords by the said chancellor and attornies, or any of them, to be certified and delivered unto the said court called the common pleas.

STAT. 32 HEN.
8, c. 20.

"VI. And the same to be as effectual in the law to all intents and purposes, as if the same knowledges of concords had been made, taken, or acknowledged, before the chief judge of the said common pleas out of the same court, or openly in that court; and also that the said chancellor and attornies for the time being, and every of them, and the successors of every of them, shall have full power and authority to take knowledge for inrollments of all deeds made or to be made to the use of the king our sovereign lord, his heirs and successors, of any manors, lands, and tenements, and of all obligations to be made to the king, his heirs and successors, or to any other person or persons to the use of the king, his heirs and successors, for any matter or cause concerning the said court of augmentations, or concerning the said manors, lands, and tenements, without any fee, gift, or reward, by them or any of them to be taken therefore: and the same deeds, so knowledged, to be inrolled or registered in the said court of augmentations, and so being there inrolled or registered among other records there remaining, and the inrollments and registrings of the same, to stand and be of record, and of as good strength and effect, as if the same were or had been knowledged before any other judge or justice of record, and inrolled in any other court of record.

Deeds may be inrolled in the court of augmentations to the king.

"VII. Provided alway, and be it enacted by the authority aforesaid, that in all such of the said liberties, franchises, and places privileged, and in every of them limited to the said court of augmentations, and to the surveyor's court, wheresoever the king's highness in his own most royal person shall come to rest, tarry, abide, or make his repose within this his realm, or any of his dominions, within liberty or without, there and within the verge limited and accustomed to his grace's court during the time of his abode, the steward or great master of his grace's household, the marshal, coroner, clerk of the market, and all other his ministers, shall and may keep their courts for justice, and exercise their office and offices, as shall appertain to them according to the laws, customs, and statutes of this realm, as well within liberties and franchises as without: and that his grace's clerks of the market, and none other, during the same time, as well within the said liberties and franchises as without, shall exercise the office of clerks of the market within the said verge; any privilege, grant, allowance, or other thing to the contrary thereof notwithstanding.

Inrollments in the court of augmentations of all deeds made to the use of the king, and of all obligations.

The king's officers may keep court within the verge, and his clerk of the market only execute his office there.
27 Hen. 8, c. 2.

"VIII. Provided alway, that this article next above rehearsed, or any thing therein contained, be not in any wise prejudicial to the city of London, but that the same city shall have and use such liberties as they might if that article had never been had nor made.

The liberty of the city of London reserved.

"IX. And where also the sites, circuits, and precincts of the late monastery of Furnes, and of the late monasteries and priories of Cartemele, Coningshead, Burscough, and Holland; and also divers honours, castles, manors, messuages, lands, tenements, liberties, privileges, franchises, and other hereditaments, late parcel and appertaining to the said late monasteries and priories, or to any of

STAT. 32 HEN.
8, c. 20.

them, which been coming into the king's hands, been assigned, limited, and appointed to the order, rule, survey, and governance of the chancellor, officers, and ministers of the county palatine and duchy of Lancaster: and forasmuch as it is not fully, plainly, nor expressly known or declared, how and in what wise, and by what special officers and ministers, the temporal liberties, privileges, franchises, and temporal jurisdictions, which the late owners of the said sites, circuits, precincts, honours, castles, manors, messuages, lands, tenements, and other the premises had, used, or exercised, should be ordered, used, and put in execution.

The lands of certain late monasteries of friars, &c. shall be in the government of the officers of the duchy.

“X. Be it therefore enacted by the authority aforesaid, that all and singular the same liberties, franchises, privileges, and temporal jurisdictions, which the said late owners of the said sites, circuits, precincts, honours, castles, manors, and other the premises, lawfully had, used, and exercised by themselves, or by their officers or ministers, or which they might have used or exercised within three months next before the same sites, circuits, precincts, honours, castles, manors, and other the premises, came to the possession of the king's highness, shall be by virtue of this act revived, and be really and actually in the king's highness, his heirs and successors, and shall be for ever in the rule, order, survey, and governance of the said chancellor, officers, and ministers of the said county palatine and duchy of Lancaster: and that the same liberties, franchises, privileges, and temporal jurisdictions, and all manner of fines, issues, amerciements, and other profits and commodities, of what kind or nature soever they be, coming, growing, or rising by reason or occasion of them, or any of them, shall be used, exercised, and executed, to all purposes, intents, conditions, and respects, and shall be claimed, levied, collected, and taken by such stewards, bailiffs, and other officers and ministers, as shall please the king's highness to name and appoint for the same, in like manner, form, and condition, as they or any of them were used, exercised, executed, claimed, levied, collected, and taken before they came to the hands and possession of our said sovereign lord: and that the said stewards, bailiffs, officers, and ministers, shall be compelled to account for the same before the said chancellor, officers, and ministers of the said county palatine and duchy of Lancaster, as other officers and accomptants in the court of the said duchy heretofore have done, or owe to do.

The stewards and bailiffs of those liberties shall be attendant on the king's courts.

“XI. And be it enacted by the authority aforesaid, that the said stewards, bailiffs, and other officers and ministers, shall be attendant and obedient to all other the king's courts, as well for all executions and returns of writs, warrants, and precepts, as for personal appearances and other duties of their officers, like as the officers and ministers of the said late owners did or ought to do, or should have done, by reason of their said several offices, before that the same liberties, privileges, and temporal jurisdictions did come to the possession of our said sovereign lord: and that to be done and observed, upon all pains and penalties by the laws of this realm limited and ordained for any offence or default in the same: and that no sheriff, under-sheriff, or other officer or minister of any sheriff or other foreign officer or minister, shall in any wise intromit or meddle in, with or upon any of the premises otherwise or in any other manner, or for any other cause, than they or any of them might lawfully have done before the said premises did come to the possession of our said sovereign lord.

The sheriff or other officers shall not meddle within those liberties.

This statute shall not diminish the liberties of any lands being parcel of the duchy of Lancaster.

“XII. Provided always, that this act, nor any thing therein contained, shall in any wise extend to abrogate, adnul, diminish, nor to take away any liberties, franchises, privileges, jurisdictions, royalties, or any other profits, commodities, and advantages whatsoever they be, belonging or in any wise appertaining to any the king's castles, honours, manors, lands, tenements, or other his possessions of his said county palatine of Lancaster and duchy of Lancaster, or of either of them; but that all such liberties, franchises, privileges, jurisdictions, royalties, and all other such profits, commodities, and advantages whatsoever they be, shall be received, taken, and answered to the king's highness, his heirs and successors, by the chancellor, officer, and ministers of the said county palatine of Lancaster and duchy of Lancaster, and either of them, as heretofore hath been used and done at

any time before the fourth day of February in the seven and twentieth year of his most noble reign; any thing, matter, or clause in this act contained to the contrary hereof in any wise notwithstanding.

“XIII. Provided always, that this act, or any thing therein contained, do not extend to disannul or be hurtful to any of the liberties or privileges of the Cinque Ports, or the members of the same; but that they and every of them shall enjoy, possess, and have all and singular liberties, customs, and grants to them granted heretofore by the most famous prince of memory King Henry the Fourth, and other his noble progenitors, confirmed by our sovereign lord the king’s majesty that now is, in like manner and form as though this act had never been had ne made.”

STAT. 32 HEN. 8, c. 20

The liberties of the five ports reserved.
1 Mar. sess. 2, c. 10.
7 Edw. 6, c. 2, for the uniting, dissolving, and new erecting of courts.

LXXIV. STAT. 32 HENRICI 8, c. 22 (1). A.D. 1540.

“For the Bishops’ Accounts, and others’, of the Tenth granted unto the King.”

“In most humble wise beseeching your most royal majesty, your humble subjects the archbishops and bishops of this your realm, that where in the parliament begun at London the third day of November, the one and twentieth year of your most gracious reign, and from thence adjourned to Westminster, and there holden and continued by divers prorogations unto the third day of November in the six and twentieth year of our most noble reign, it was enacted, by the authority of the same parliament, among other things, that your majesty, your heirs and successors, kings of this realm, for more augmentation and maintenance of the royal estate of your imperial crown and dignity of supreme head of the church of England, should yearly have, take, perceive, and enjoy, united and knit to your imperial crown for ever, one yearly rent or pension, amounting to the value of the tenth part of all the revenues, rents, farms, tithes, offerings, emoluments, and of all other profits, as well called spiritual as temporal, then appertaining or belonging, or that hereafter should belong to any archbishoprick, bishoprick, abbacy, monastery, priory, archdeaconry, deanery, hospital, college, house collegiate, prebend, cathedral church, collegiate church, conventual church, parsonage, vicarage, chantry, free chapel, and other benefice or promotion spiritual, of what name, nature, or quality soever they then were, within any diocese of this your realm or in Wales; the said pension or annual rent to be yearly paid for ever to your majesty, your heirs and successors, kings of this realm, at the feast of the Nativity of our Lord God, as in the said act more plainly appeareth.

STAT. 32 HEN. 8, c. 22.

By the statute of 26 Hen. 8, c. 3, a tenth was granted to the king of all spiritual livings.

“II. And furthermore it was enacted by the said authority in the same parliament, that after a certificate made into your exchequer, and tax set, in such manner and form as by the said act is limited, every archbishop and bishop then being, and after that to be, should be charged and chargeable to levy, collect, and receive within their proper diocese, as well in place exempt as not exempt, all such sums of money wherewith the dignities, benefices, and other promotions spiritual aforementioned within their diocese, chargeable by the said act, should be set, taxed, and charged towards the payment of the said yearly pension; and should pay and content the said sums of money before the first day of April, to the treasurer of your chamber for the time being, or to any other person or persons whom it should please your highness to appoint to receive the same; and that the treasurer, chancellor, chamberlain, and barons of your exchequer, should cause yearly process to be made by their discretions for nonpayment of the said pension or yearly rent, as by the said act, among other things, more at large appeareth.

Every bishop charged with the collection of the tenth of all spiritual livings within his diocese.

“III. And forasmuch as since the making of the said act, all and singular abbies, priories, monasteries, and other religious houses, which were then conventual, being clearly dissolved, and come to your highness by authority of parliament, and otherwise by your laws, whereby the said yearly rents and pensions,

Causes why the bishops shall not levy so much money for tenths as by

(1) Virtually repealed by Stat. 2 & 3 Ann. c. 11. Stat. 5 Ann. c. 24. Stat. 1 Geo. 1, St. II. c. 10. Stat. 43 Geo. 3, c. 107. Stat. 1 & 2 Vict. c. 20.

STAT. 32 HEN.
8, c. 22.

commissions
was certified
to be due.

which before that time were of them severally to be paid, be now not payable or leivable; and also that the said archbishops and bishops, upon certificate made into the said exchequer, by reason of the said act made in the said six and twentieth year of your reign, been charged and chargeable with the said yearly rents or pensions of the tenth of divers and many persons, which were certified into your said exchequer by the commissioners assigned to tax and cess the said spiritual dignities and promotions, to have perpetuities and chantries and other salaries, where never any such chantry or perpetual salary was founded or ordained, and many chantries and other perpetuities spiritual, then being in *esse*, been since that time utterly dissolved and extincted; and also many prebends, parsonages, and vicarages, been double certified by the said commissioners, and some certified to be in places where none such be *in rerum natura*, and some by wrong names or otherwise miscertified; and also some parts of the profits and emoluments, which did then belong to some dignities, parsonages, vicarages, cathedral churches and collegiate churches, as in proxies, synodals, oblations, and indulgences, pardons, and other profits, been now decayed and diminished by sundry means, and many chantries, and other small promotions spiritual, been since that time decayed and extinguished, and no priests thereon abiding.

26 Hen. 8,
c. 1.

"IV. And also sith the making of the said act, made in the said six and twentieth year, there have been assurances made to your majesty by some of the said archbishops and bishops, of parcels of their possessions charged with the said rent or pension, and parcel of the said possessions charged with the payment of the said yearly rent or pension been come to your hands by other lawful means; by reason whereof, and of many other causes, doubts, and ambiguities, which do daily rise concerning the premises, the said collectors cannot levy the said yearly rents or pensions concerning many promotions or profits spiritual, certified in your said exchequer by the said commissioners; and yet that notwithstanding the said archbishops and bishops, for lack of sufficient warrant and authority to the barons of your said exchequer for their discharge in that behalf, been greatly prolonged and letted in yielding of their accompts in your said exchequer of the said annual rent or pension, and put to great costs and charges, to their great inquietness, charges, losses, and troubles, where they have nothing allowed them, or to any of their officers, for the collecting, levying, gathering, or paying of the said annual rents or pensions to the use of your highness.

If a bishop or
any of his de-
puties will take
his oath, that
he cannot levy
the tenth of any
promotion, he
shall be dis-
charged
thereof.

"V. It may therefore please your highness, with the assent of the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, that it be enacted by the authority aforesaid, that if the said archbishops and bishops, or any of them, their deputies or other accomptants, or any of them, that now be or hereafter shall be chargeable with the collection of the said annual rent or pension, or of any part or portion thereof, show and allege, by the oath of any of the said archbishops, bishops, or other accomptants, or any other person or persons authorized to accompt for any of them, before the treasurer, chancellor, and barons of your exchequer, or before the more part of them, or before such other persons as it shall please the king's highness to appoint to hear the same accompt, that they or any of them for any of the causes above said, or for any other sufficient cause or matter, by any of them to be alleged, cannot or may not in any wise lawfully levy such particular sum or sums of money of the said annual rent or pension, as they or any of them now be, or hereafter shall be chargeable and charged with, and no matter apparent there shewed to the contrary for your highness by any of your serjeants at the law, or by your attorney-general for the time being, or by any other for your majesty; that then your said treasurer, chancellor, and barons, or the more part of them, or such other persons as shall be appointed by the king's highness, shall, by virtue and authority of this act, have full power and authority by their discretions, to accept and allow that allegation, and thereupon thereof to discharge the accomptant, or else by their discretions to direct the king's writ unto any of the king's courts, for to certify unto them the truth thereof; and thereupon the said treasurer, chancellor, and barons, or the more part of them, or

such persons as shall be thereunto appointed by the king's highness, further to hear and examine the same matter and cause, by witness and depositions of such as can inform the court, or the said other persons as shall be thereunto appointed by the king's highness, of the truth thereof, or by any other ways and means that they can best devise; and if need require, to award commissions by their discretions to certain indifferent persons in every such diocese, where any such matter or cause shall be alleged, without any charge, asking, or taking for the making of the same commissions so to be awarded; which said commissioners shall and may, by virtue of their commissions, have full power and authority to examine the same matter and cause so alleged by any of the said bishops, or other accomptants for them, and in their discharge, by the oaths of such persons as shall have perfect notice thereof, or otherwise, and thereupon to make certificate thereof to the said treasurer, chancellor, and barons, or to the more part of them in the said exchequer, or to such other persons as thereunto shall be appointed by the king's highness.

"VI. And upon certificate so made of the said matter, or if by any other matter or certificate it shall appear to the said treasurer, chancellor, and barons, or to the more part of them, or to such other persons as thereunto shall be appointed by the king's highness, that the said matter, and the allegations thereof be good and true; then the said treasurer, chancellor, and barons, or the more part of them, or the said such other persons as thereunto shall be appointed by the king's highness, thereupon to make a clear and sufficient deduction, allowance, determination, and discharge to any of the said archbishops, bishops, and other accomptants, and to every of them, of and for the same, without further suit or delay, and the same allowance and discharge to cause to be entered in that court, there to remain of record, as by their discretions shall be thought requisite from time to time, without further suit, charge, or other inquieting of any of the said archbishops, bishops, or other accomptants, or any of them, or any of the successors or executors of any of them in that behalf.

"VII. And that it may be further enacted by the authority aforesaid, that in case it be hereafter certified by commission, or otherwise by sufficient and probable witnesses had and found, before the said treasurer, chancellor, and barons, or before the more part of them, or before such other persons as thereunto shall be appointed by the king's highness, that any benefice, chantry, hospital, or other ecclesiastical promotion, is omitted, and not specified, or not certified by or in the said original, or former certificate; that then, upon due proof, information, knowledge, or certificate thereof by any of the said archbishops or bishops, or otherwise, made or declared before the said treasurer, chancellor, or barons, or before the more part of them, or before such other person or persons as thereunto shall be appointed by the king's highness of any sum or sums of money, concerning the premises so omitted, and not charged for lack of knowledge or certificate thereof, whereof the king of right ought to be answered; the said treasurer, chancellor, and barons, or the more part of them, or such other persons as thereunto shall be appointed by the king's highness, shall make a sufficient entry thereof, to be annexed to and with the said original of the same tenth, and thereupon to charge the said accomptants to make, levy, and answer thereof yearly from henceforth, so that the king's highness may be truly answered thereof from time to time, according to his lawful title in that behalf."

STAT. 32 HEN.
8, c. 22.

Commissions
may be awarded
to inquire the
cause of any
tenth defalked.

A mean how
the king shall
be answered
of the tenth of
any spiritual
living being
omitted in the
former
certificate.

See farther c.
47, and 34 Hen.
8, c. 17.
2 & 3 Edw. 6,
c. 20.
7 Edw. 6, c. 4.
Repealed by
2 & 3 P. & M.
c. 4, and
revived by
1 Eliz. c. 4.

LXXV. STAT. 32 HENRICI 8, c. 23. A.D. 1540.

"A Confirmation of a Subsidy to be paid within two Years, of four Shillings in the Pound granted to the King by the Clergy of the Province of Canterbury, and of such Sums of Money which after shall be granted to him by the Clergy of the Province of York."

STAT. 32 HEN.
8, c. 23.

STAT. 32 HEN.
8, c. 24.

LXXVI. STAT. 32 HENRICI 8, c. 24. A.D. 1540.

"An Act concerning the Possession of Saint John of Jerusalem (1), in England and Ireland."

STAT. 32 HEN.
8, c. 26.

LXXVII. STAT. 32 HENRICI 8, c. 26 (2). A.D. 1540.

"All Decrees and Ordinances, which, according to God's Word, and Christ's Gospel, by the King's Advice and Confirmation by his Letters Patents, shall be made and ordained by the Archbishops, Bishops, and Doctors appointed, or to be appointed, in and upon the matter of Christian Religion and Christian Faith, and the lawful Rights, Ceremonies, and Observations of the same, shall be in every point thereof believed, obeyed, and performed, to all intents and purposes, upon the Pains therein comprised. Provided, that nothing shall be ordained or desired, which shall be repugnant to the Laws and Statutes of this Realm."

STAT. 32 HEN.
8, c. 28.

LXXVIII. STAT. 32 HENRICI 8, c. 28 (3). A.D. 1540.

"Lessees to enjoy the Farm against the Tenants in Tail."

Leases made
by tenants in
fee or fee-tail,
in the right of
their wives or
churches,
which be good,
which void.
2 Roll. 169,
332, 403, 407.
Savil, 85.
Hutton, 84.
1 Leon. 59,
148.
3 Leon. 156.

Leases made
by tenant in
tail, or by him
which is seised
in the right of

"Where great number of the king's subjects have heretofore taken leases of lands, tenements, and other hereditaments, for term of years, and divers of them for term of lives, and have given and paid great fines and great sums for the same, and also have been at great costs and charges, as well in and about great reparations and buildings upon their said farms, as otherwise concerning their said farms; yet notwithstanding the said fermors, after the deaths or resignations of their lessors, have been and be daily with great cruelty expelled and put out of their said farms and takings, by the heirs or successors of their said lessors, or by such persons as have interest therein after the deaths or resignations of their said lessors, by reason of privy gifts of intail, or for that the lessors had nothing in the lands, tenements, or other hereditaments so letten, at the time of the leases thereof made, but only in the right of their wives, or such other like cause, to the great impoverishment, and in manner utter undoing of the said fermors: for reformation whereof, be it ordained, established, and enacted by the king our sovereign lord, the lords spiritual and temporal, and the commons, in this present parliament assembled, and by authority of the same, that all leases hereafter to be made (4) of any manors, lands, tenements, or other hereditaments (5), by writing

(1) *Saint John of Jerusalem*:—The members of this body were commonly called Hospitallers, from receiving and entertaining pilgrims to the Holy Land in their hospital at Jerusalem, to whom were given the lands of the Templars, as being ordained, instituted, and canonized for defence of Christians and holy church, *i. e.* for the same ends, that the Templars were. *Vide antè* 42, n. (3).

(2) Repealed by Stat. 1 Edw. 6, c. 12.

(3) *Sed vide* Stat. 1 Geo. 1, St. II. c. 10. Stat. 5 Geo. 3, c. 17. Stat. 40 Geo. 3, c. 41. Stat. 1 & 2 Gul. 4, c. 45. Stat. 5 & 6 Vict. cc. 26, 27, & 108.

(4) *All leases hereafter to be made*:—"Before this statute, although corporations aggregate of many, as deans and chapters, might have made long leases for lives or years, of themselves, and without any consent or confirmation, yet if such leases had been made by a sole corporation, (as bishop, archdeacon, or prebendary,) and not confirmed by such other person or persons whose consent was necessary, they expired with the lessor, and could not bind the successor. But by this statute, all such sole corporations, (except parsons and vicars,) are enabled to make leases for twenty-one years or three

lives, without any confirmation whatsoever; (the several conditions which follow in the statute being punctually observed;) for which reason it is called the *enabling* statute, and so it wholly was, and had nothing in it of restraint, but left aggregate corporations, and also sole corporations with *proper consent*, to their full liberty of going on to make all such leases as they might have made before, without being limited to the conditions of this statute, if they had but the proper confirmation or consent." Gibson's Codex, 732.

(5) *Of any manors, lands, tenements, or other hereditaments*:—"It must be of lands, tenements, or hereditaments, manurable or corporeal, which are necessary to be letten, and whereout a rent by law may be reserved; and not of things that lie in grant, as advowsons, fairs, markets, franchises, and the like, whereout a rent cannot be reserved." 1 Inst. 44 (b).

For the better understanding of which rule, it may be expedient to adopt the language of Dr. Burn: "First, all the books agree, that a lease for *three lives*, of tithes or other incorporeal inheritance, will not bind the successor, because he would then be without

indented (1) under seal for term of years, or for term of life, by any person or persons being of full age of twenty-one years, having *any estate of inheritance* either

STAT. 32 HEN.

8, c. 28.

his wife, or church, &c.

the tithes or other such incorporeal inheritance, and have no remedy for the rent thereon reserved; for distrain he could not, because there would be no place wherein to take any distress, the things leased or granted being perfectly incorporeal, and invisible; an assize he could not have, because either he had not seisin, or if he had, yet there would be nothing to put in view of the recognitors; and an action of debt he could not maintain during the lease, because, being for three lives, that is an estate of freehold, which will endure no action of debt so long as it continues, and so the successor in such case would have no manner of remedy for the rent reserved, which would be against the express provision and intent of the several acts.

"Secondly, it is held in some books, that a lease for *twenty-one years* of such incorporeal inheritance, though it have been usually demised, and the ancient rent be thereout reserved, is yet voidable by the successor within these statutes; because, though the rent reserved be good by way of contract between the lessor and the lessee, and an action of debt may be maintained for the recovery thereof, yet they say it is not such a rent, as is incident to the reversion, nor shall pass with it to the successor; and, therefore, the successor having no remedy for the rent, shall not be bound by the lease. *Jewel's case*, 5 Co. 3. *Fawkner v. Bellingham*, Litt. 44.

[The doctrine (2 Wood. Lect. 67; *Talentine v. Denton*, Mo. (Sir F.), 778,) of the common law, that incorporeal hereditaments could not be distrained for, having no locality, (2 Inst. 131, 132,) was carried to this extent, that an acceptance of rent by the succeeding bishop, did not substantiate a freehold demise of tithes, because, if the rent afterwards became in arrear, he could not bring either an action for debt and distress, or the species of real action called an assize of rent. *Rickman v. Garth*, Cro. Jac. 173. *Jehu Webb's case*, 8 Co. 46 (a). 2 Burn's E. L. by Phillimore, 366.]

"Yet this doctrine seems to have been shaken by contrary resolutions. For some books expressly hold, such lease for years to be good against the successor, because they say he has remedy for the rent by action of debt, and say it has been so judged, and take the diversity between such lease for years and a lease for life. Also, they say, that the rent issues out of the tithes in point of render, though not in point of remedy, because no distress can be taken for it, but that is supplied by the action of debt, which lies for such rent, and shall devolve on the successor; and that such rent doth not lie only in privity of contract as a sum in gross, but is incident to the reversion, otherwise the successor could not have it, being only privy to the estate, not to the personal contracts of his predecessor. And to this opinion the court inclined, but thought it a point of great consequence, and therefore to avoid it,

gave judgment on another point which was clear.

"Thirdly, all the books agree, that a lease for three lives, or twenty-one years, of a manor with the advowson appendant, or of lands or houses, and of tithes, usually let therewith, reserving the ancient rent and the like, is good, and shall bind the successor; for though the rent doth not issue out of the advowson or tithes, in point of remedy, yet the rent is greater in respect thereof, and the successor has his remedy for the whole rent upon the lands or other corporeal inheritance let therewith. And Vaughan proves this, from the express words of the statute of 13 Eliz., which are, "that all leases by any spiritual or ecclesiastical persons, having any lands, tenements, *tithes*, or hereditaments, (other than for twenty-one years or three lives,) shall be void." So that the statute plainly shows, that, some way or other, tithes may be leased for twenty-one years or three lives, and if they cannot be leased singly, it must be with lands usually let therewith." 2 Burn's E. L. by Phillimore, 367. *Sed vide* Stat. 5 Geo. 3, c. 17. 1 Inst. 44 (b). Touchst. by Atherley, 278. *Bally (Clerk) v. Wells*, 3 Wils. 25. Copyholds in general are not demisable under this statute. *Rowden v. Malster*, Cro. Car. 44.

(1) *By writing indented*:—It must be by deed indented, and not by deed poll, or by parol. 1 Inst. 44.

And if it be not really indented, though the words of the deed be *this indenture*, yet still it is not a deed indented; but if the deed actually be indented, it matters not whether it speaks itself to be an indenture or not; it is however a deed indented. 2 Burn's E. L. by Phillimore, 368.

A contract in the nature of a demise may enure with apt words for that purpose, by way of discharge from tithes. *Hawkes v. Brayfield*, Cro. Jac. 137. A demise of tithes for such time as lessor shall continue rector or vicar, passed a freehold, such being the estimation of uncertain interests in all species of real property, which may possibly endure for any life or lives. *Brewer v. Hill*, 2 Anst. 413. Gwillim, 1421. The mere delivery of the deed has the same force as livery of seisin, in the case of land. But if a rectorial or vicarial house, (which are corporeal hereditaments, and lie in livery,) are demised with the tithes, by an instrument not under seal, and the latter only pass, as parcel of the rectory or vicarage, the intended demise is ineffectual for the whole; for authorities establish that all leases and conveyances of tithes, (being incorporeal hereditaments lying in grant,) must be by deed. *Keddington v. Bridgman*, Bunb. 2. *Tanner v. Small*, Yelv. 95. *Luvered v. Owen*, Hetl. 121. *Anon.* Godb. 354. *Bugg v. Woodward*, Cro. Eliz. 188, 249. 2 Anst. 419. *Swadling v. Piers*, Cro. Jac. 613. An agreement not under seal, to demise a rectory and tithes, with a messuage used as a homestead for collecting the tithes, at an entire rent, has been

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8, c. 28.
1 Lev. 112.
Cro. ac. 173.
8 Co. 34.
10 Co. 60.
Bro. Accept. 9.
Dyer, 51, 363.
Co. Lit. 44.
Hob. 204.
Cro. Eliz. 875.
34 Hen. 8,
c. 20.
Cro. Eliz. 5,
350.
Special obser-
vations of

in fee-simple or in *fee-tail* (1), in their own right, or in the right of their churches (2) or wives, or jointly with their wives, of any estate of inheritance made before the coverture or after, shall be *good and effectual* (3) in the law against the lessors, their wives, heirs, and successors, and every of them, according to such estate as is comprised and specified in every such indenture of lease, in like manner and form as the same should have been, if the lessors thereof, and every of them, at the time of the making of such leases, had been lawfully seised of the same lands, tenements, and hereditaments comprised in such indenture, of a good, perfect, and pure estate of fee-simple thereof to their own only uses.

"II. Provided always, that this act, or any thing contained, shall not extend to any leases to be made of any manors, lands, tenements or hereditaments, being in the hands of any fermor or fermors by virtue of any old lease, *unless the same old lease be expired, surrendered, or ended within one year next after the making of the said new lease* (4) (5); nor shall extend to any grant to be made of any reversion (6)

held void, as to the whole. *Gardiner v. Williamson*, 2 B. & Ad. 336. *Bird v. Higginson*, 2 A. & E. 696. *Reg. v. Hockworthy* (Inhabitants of), 7 *Ibid.* 492.

(1) *Any estate of inheritance . . . in fee-tail*:—Before this statute, if a tenant in tail made a lease, it would not bind his issue. 1 *Inst.* 44. And the latter might affirm or avoid it. As he found it most for his advantage. *Dy.* 46 (a). *Bedford's (Le Countee de) case*, 7 Co. 7 (b). To make a lease binding under the statute, its requisites must be strictly complied with. 1 *Inst.* 44, 45. But if a tenant in tail make a lease, and die without issue, although the lease be made pursuant to the statute, yet it is absolutely determined, and will not bind him in remainder or reversion. *Reeve v. Cox*, Noy, 66. *Paine's case*, 8 Co. 34. And a lease made pursuant to the act, was held to be no bar to the entry in remainder, although made with warranty, it being no discontinuance; for the lessor did not warrant it for him and his heirs, but against him and his heirs, and therefore it was a warranty for life only. *Keen v. Cope*, Cro. Eliz. 602. 1 *Inst.* 44, 45. 4 *Bac. Abr.* Leases (D).

(2) *In the right of their churches*:—A bishop that is seised in the right of his bishoprick, a dean of his sole possessions in the right of his deanery, an archdeacon in the right of his archdeaconry, a prebendary, and the like, are within this statute; for every of them generally is seised in *jure ecclesiæ*. 1 *Inst.* 44 (b).

And, as before observed, (p. 262, n. (4).) all sole corporations whatsoever, (parsons and vicars only excepted,) are included within this statute, and are hereby enabled to bind their successors. Accordingly, it hath been adjudged, on several occasions, that precentors, chancellors, and treasurers of churches, are within the benefit of this statute; only, as to precentors, it hath been determined, that though there are persons of inferior rank, in several churches, who are commonly so called, yet they are not within this statute; but only those dignitaries of that denomination, who are properly so called, and who are next to the deans in place and order. *Gibson's Codex*, 732. *Watkinson v. Man*, Cro. Eliz. 350. *Ensden & Denny's case*, Palm. 106. *Bis v. Holt*, Sid. 158.

(3) *Good and effectual*:—Vide *Doe d. Richardson v. Thomas*, 6 A. & E. 556.

(4) *Unless the same old lease be expired, surrendered, or ended within one year next after the making of the said new lease*:—This surrender must be absolute, and not conditional; for the intent of the makers of the act was, to have a continual and absolute surrender, and not an illusory surrender which might be avoided the next day. *Elmer's case*, 5 Co. 2.

In *Wilson d. Eyre (Clerk) v. Carter*, (Str. 1201.) the lessor of the plaintiff, being a prebendary of Sarum, brought an ejectment to avoid a lease made by his predecessor, as not being conformable to the proviso in Stat. 32 Hen. 8, c. 28, s. 2. And his objection was, that the surrender made of the former lease was with a condition, that if the then prebendary did not within a week after, grant a new lease for three lives, the surrender should be void; whereby, (as was contended for the plaintiff,) the old term was not absolutely gone, but the lessee reserved a power of setting it up again. But the court, after two arguments, gave judgment for the defendants; observing, "This being within the intent of the statute, which was, that there should not be two long leases standing out against the successor. Here the new lease was made within the week, and from thence it became an absolute surrender, both in deed and in law, and the whole was out of the lessee, without further act to be done by him. In the proviso [in the act] there is the word *ended*, as well as *surrendered*; and can any body say the first lease is not at an end? This was no more than a reasonable caution in the first lessee, to keep some hold of his old estate, till a new title was made to him."

[For the law upon surrenders, restrictions, or renewals of leases by ecclesiastical persons, vide *Stephens on Clerical Law*.]

(5) *Within one year next after the making of the said new lease*:—This, as to sole corporations inferior to bishops, is extended by Stat. 18 Eliz. c. 11, to three years; and as to bishops themselves, it holds only where they make a new lease without confirmation, for if it be confirmed by the dean and chapter, the years to come in the old lease are not material. *Gibson's Codex*, 733.

(6) *Nor shall extend to any grant to be*

of any manors, lands, tenements, or hereditaments, *nor to any lease of any manors, lands, tenements, or hereditaments, which have not most commonly been letten to ferm* (1), or occupied by the fermors thereof, by the space of twenty years next before such lease thereof made (2); nor to any lease to be made without impeachment of waste (3), nor to any lease to be made above the number of twenty-one years, or three lives (4) at the most (5), from the day of making thereof (6) (7); and that upon every such lease there be reserved yearly (8) during the same lease, due and payable to the

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8, c. 28.

leases to be made by tenant in tail, or of the wife's land. Raym. 165.
1 Sid. 416.

made of any reversion:—That is, such grants as are made to commence at a day to come. Gibson's Codex, 733.

(1) *Letten to ferm*:—A grant by copy of court roll in fee for life or years, is a sufficient letting to farm within this statute, for he is but tenant at will according to the custom, and so it is of a lease at will by the common law, but those lettings to farm must be made by some seised of an estate of inheritance, and not by a guardian in chivalry, tenant by the curtesy, tenant in dower, or the like. 1 Inst. 44 (b).

(2) *Nor to any lease of any manors, lands, tenements, or hereditaments, which have not most commonly been letten to ferm, or occupied by the fermors thereof, by the space of twenty years next before such lease thereof made*:—So that Lord Coke saith, "If it be letten for eleven years, at one or several times within these twenty years, it is sufficient." 1 Inst. 44 (b).

(3) *Nor to any lease to be made without impeachment of waste*:—Therefore if a lease be made for life, the remainder to another for life, remainder to a third for life; this is not warranted by the statute, because the remainders make the present tenants punishable of waste: but if a lease be made to one during three lives, this is good, for the occupant, if any happen, shall be punished for waste. Ibid.

And although this condition of a good lease is not expressed in Stat. 1 Eliz. c. 19, and Stat. 13 Eliz. c. 10, for restraining of unreasonable leases, (the first of bishops, and the second of the inferior clergy,) yet are both bishops and clergy restrained by the equity of the said statutes from making leases punishable of waste; for the statutes were made against unreasonable leases, and it is unreasonable that a lessee shall at his pleasure do waste and spoil. *Le Dean & Chapter de Worcester's case*, 6 Co. 37. Gibson's Codex, 733.

(4) *Or three lives*:—That is, for three lives, to be all wearing together, and not to one for life, the remainder to a second for life, the remainder to a third for life, which would be a void lease, as it would be, if a lease were let for ninety-nine years, determinable upon three lives. But a lease to one for the lives of three others, or to three for their three lives, is good. Gibson's Codex, 733. *Glanville v. Payne*, 2 Atk. 40.

(5) *At the most*:—It must not exceed three lives, or one and twenty years from the making of it, but (according to Lord Coke) it may be for a lesser term or fewer lives. 1 Inst. 44 (b).

But in *Smartle v. Penhallow*, (1 Salk. 138,) where the point was, whether a copyhold for one life, where the custom enabled to grant for three lives, was good, it was held

to be good; Chief Justice Holt observing, "This is not like the case of a bishop's lease, that cannot be good for any part, because the statute ties it up to an express form: *aliter*, perhaps, had it been, that bishops should make leases for any number of years, not exceeding such a number."

(6) *Nor to any lease to be made above the number of twenty-one years, or three lives at the most, from the day of making thereof*:—"There must not be a double lease in being at one time; as if a lease for years be made according to the statute, he in the reversion cannot expulse the lessee, and make a lease for life or lives according to the statute; nor *è converso*, for the words of the statute be, to make a lease for three lives, or twenty-one years, so as one or the other may be made, and not both." 1 Inst. 44 (b).

(7) *From the day of making thereof*:—The statutes of 1 Eliz. c. 19 and 13 Eliz. c. 10, are *from the making*, and not *from the day of making*, and the distinction seems to be this: where the *habendum* is for twenty-one years from the making, the day of delivery (which is the making) shall be included; but where it is, from the day of the making, or from the day of the date, that day shall not be included as a part of the term, but the twenty-one years shall begin on the day following. Gibson's Codex, 733.

The word "from" has occasioned much controversy in the courts of law; the result of which seems to be, that it may be either inclusive or exclusive, according to the subject-matter. But the court will construe it, so as to effectuate the deed of parties, and not to destroy them; and therefore, where one, under a power reserved in his marriage settlement to lease "for twenty-one years in possession, but not in reversion, remainder, or expectancy," granted a lease to his only daughter for twenty-one years *from the day of the date*, it was adjudged a good lease *in possession*; (*Pugh v. Leeds (Duke of)*, Cowp. 714, where the authorities on both sides are stated by Lord Mansfield;) so also a lease for lives, to commence *from the date*, will be construed to include the day of the date, for otherwise the freehold would be conveyed to commence *in futuro*, which cannot be. Vide *Hatter v. Ash*, (1 Ld. Raym. 84,) where it is said, that the words "from the date," when used to pass an interest, include the day, *aliter*, when used by way of computation, only in matters of account. *Rex v. Adderley*, Doug. 464.

(8) *And that upon every such lease there be reserved yearly*:—If the accustomable rent had been payable at four days or feasts of the year; yet if it be reserved yearly payable at one feast, it is sufficient; for the words of the statute are, *reserved yearly*. 1 Inst. 44 (b).

STAT. 32 HEN.
8, c. 28.

Dyer, 115, 246,
271, 279, 304.

5 Co. 2, 5.

2 Roll. 402.

5 Co. 6.

Cro. Eliz. 602.

Cro. Car. 22,
44.

Latch, 257.

Bridgm. 29.

Moor, 759,

pl. 1050.

Hob. 324.

Leases made
by husband
and wife of the
wife's lands.

3 Leon. 132.

Jones, 60.

Hutt. 84.

1 Roll. 159,

163.

Latch, 45.

25 Hen. 8,
c. 13.

Leases of
ferms.

Leases of
parsonages of
vicarages.

lessors, their heirs and successors, to whom the same lands should have come after the deaths of the lessors, if no such lease had been thereof made, and to whom the reversion thereof shall appertain, according to their estates and interests, *so much yearly ferm or rent, or more*(1), *as hath been most accustomedly yielded or paid*(2) for the manors, lands, tenements, and hereditaments so to be letten within twenty years next before such lease thereof made; and that every such person and persons, to whom the reversion of such manors, lands, tenements, or hereditaments so to be letten shall appertain, as is aforesaid, after the deaths of such lessors or their heirs, shall and may have such like remedy and advantage, to all intents and purposes, against the lessees thereof, their executors and assigns, as the same lessor should or might have had against the same lessees. So that if the lessor were seised of any special estate-tail of the same hereditaments at the time of such lease, that the issue or heir of that special estate shall have the reversion, rents, and services reserved upon such lease after the death of the said lessor, as the lessor himself might or ought to have had if he had lived.

“III. Provided alway, that the wife be made party to every such lease which hereafter shall be made by her husband of any manors, lands, tenements, or hereditaments, being the inheritance of the wife; and that every such lease be made by indenture in the name of the husband and his wife, and she to seal to the same; and that the ferm and rent be reserved to the husband and to the wife, and to the heirs of the wife, according to her estate of inheritance in the same; and that the husband shall not in any wise aliene, discharge, grant, or give away the same rent reserved, nor any part thereof, longer than during the coverture, without it be by fine levied by the said husband and wife; but that the same rent shall remain, descend, revert, or come, after the death of such husband, unto such person or persons and their heirs, in such manner and sort as the lands so leased should have done, if no such lease had been thereof made.

“IV. Provided also, that this act extend not to give any liberty or power to any person or persons to take any more fermes, leases, or takings of any manors, lands, tenements, or other hereditaments, than he or they should or might lawfully have done before the making of this act; *nor extend to give any liberty or power to any parson or vicar*(3) of any church or vicarage, for to make any lease or grant of any of their messuages, lands, tenements, tithes, profits, or hereditaments belonging to their churches or vicarages, otherwise or in any other manner than they should or might have done before the making of this act; any thing contained in this act to the contrary notwithstanding.

(1) *Or more*:—Therefore, if more than the accustomed rent be reserved, it is good, by the express letter of the act. 1 Inst. 44 (b).

(2) *So much yearly ferm or rent, or more, as hath been most accustomedly yielded or paid*:—Where not only a yearly rent was formerly reserved, but things not annual, as heriots, or any fine, or other profit, at or upon the death of the farmer; yet if the yearly rent be reserved upon a lease made by force of this statute, it sufficeth by the express words of the act. Ibid.

But if a couple of capons, or the like, have been expressly reserved in kind, or in money over and above the rent; a subsequent lease not reserving these shall be void. *Morrice v. Antrobus*, Hardr. 325. And so it shall be, where all the great trees have been usually excepted, and then are omitted, because by this means every successor cannot have the benefit of boughs and fruits yearly renewing. Gibson's Codex, 734.

If twenty acres of land have been accustomedly letten, and a lease is made of those twenty, and of one acre, which was not accustomedly letten, reserving the accustomed yearly rent, and so much more as exceeds

the value of the other acre; this lease is not warranted by the act, for that the accustomed rent is not reserved, seeing part was not accustomedly letten, and the rent issueth out of the whole. 1 Inst. 44 (b).

But if tenant in tail let part of the land accustomedly letten, and reserve a rent *pro rata*, or more, this is good; for that is in substance the accustomed rent. Ibid.

So if two coparceners be tenants in tail of twenty acres, every one of equal value, and accustomedly letten, and they make partition, so as each have ten acres; they may make leases of their several parts each of them, reserving the half of the accustomed rent. Ibid.

(3) *Nor extend to give any liberty or power to any parson or vicar*:—Therefore, if either of them make a lease for twenty-one years, or three lives, of lands accustomedly letten, reserving the accustomed rent, it must be also confirmed by the patron and ordinary; because it is excepted out of Stat. 32 Hen. 8, c. 28, and not restrained by Stat. 1 Eliz. c. 19, or Stat. 13 Eliz. c. 10. Ibid.

“V. And furthermore, be it enacted by authority aforesaid, that all leases at any time within the space of three years next before the twelfth day of April in the thirty-first year of our sovereign lord the king's reign, made by writing indented under seal, by any person or persons of full age, of whole memory, not unlawfully coerced, nor being covert baron, for term of years, of any manors, lands, tenements, or other hereditaments, whereof the lessor or lessors were seised of any estate of inheritance of and in the same, to their own only use, at the time of making any such lease thereof, and whereof the lessees, their executors or assigns, be now in possession by virtue of the same lease, and no cause of re-entry or forfeiture thereof had or made, shall be good and effectual in the law against the lessors, their heirs and successors, and the heirs and successors of every of them, according to the covenants, articles, and agreements specified in every such indenture or lease: so always there be reserved and yearly payable during the same lease to the said lessors, their heirs or successors, or to such other as should or ought to have had the same manors, lands, tenements, or hereditaments so leased after the decease of such lessors, in case no such lease had thereof been made, as much yearly rent for the same, as was at any time therefore yielded or paid within twenty years next before the making of any such lease, or else such leases to be of no other force ne effect than they were before the making of this present act.

“VI. And moreover for certain consideration be it enacted by authority aforesaid, that no fine, feoffment, or other act or acts hereafter to be made, suffered, or done by the husband only, of any manors, lands, tenements, or hereditaments, being the inheritance or freehold of his wife, during the coverture between them, shall in any wise be or make any discontinuance thereof, or be prejudicial or hurtful to the said wife or to her heirs, or to such as shall have right, title, or interest to the same by the death of such wife or wives; but that the same wife and her heirs, and such other to whom such right shall appertain after her decease, shall and may then lawfully enter into all such manors, lands, tenements, and hereditaments according to their rights and titles therein; any such fine, feoffment, or other act to the contrary notwithstanding; fines levied by the husband and wife (whereunto the said wife is party and privy) only except.

“VII. Provided furthermore, that this clause or act extend not to give any liberty to any such wife, or to her heirs, for to avoid any lease hereafter to be made of any the inheritance of the wife by her husband and her for term of twenty-one years, or under, or any her inheritance for term of three lives at the uttermost, whereupon as much yearly rent or more is or shall be reserved, and yearly payable during the same lease, as was at any time therefore yielded or paid within twenty years next before the making of any such lease, according to the tenor of this present act; any thing therein contained to the contrary notwithstanding.

“VIII. Provided also, that this act extend not to make good any lease or leases heretofore made by any ecclesiastical person or persons by their covent or common seal, which be made void or taken away by authority of any act of parliament heretofore made; nor extend to make good any lease or leases heretofore made by any ecclesiastical person or persons now being attainted of treason, under their covent seal, or otherwise; or by any other person or persons now being attainted of treason by act of parliament, or otherwise; but that all and singular such lease and leases, and every of them, now made, or hereafter to be made, shall be of such like effect and strength in the law, and none other, as they and every of them were before the making of this act; any thing before mentioned in this act to the contrary thereof notwithstanding.”

LXXIX. STAT. 32 HENRICI 8, c. 37 (1). A.D. 1540.

“For Recovery of Arrearages of Rents by Executors of Tenant in Fee-simple.”

“Forasmuch as, by the order of the common law, the executors or administrators of tenants in fee-simple, tenants in fee-tail, and tenants for term of lives, of

(1) *Vide* 1 Inst. 162 (b). *Wade v. Marshe*, 1 Rol. Abr. 672, *Distress* (O), 13. Latch, 211.

Before the passing of this act, the inconvenience did not exist to the same extent, in

STAT. 32 HEN. 8, c. 28.

A confirmation of leases made before the statute by certain persons, and upon certain conditions.

The husband's only act of the wife's land shall not prejudice her or her heirs.

Explained by 34 & 35 Hen. 8, c. 22.
6 Edw. 1, c. 3.
13 Edw. 1, St. I. c. 3 & 40.
Moor, 58, pl. 164.
Moor, 872, pl. 1215.
2 Inst. 681.
Hob. 243, 261.
Dyer, 72, 264, 368.
Co. Lit. 326.
2 Roll. 410, 491, 499.

Leases made by the husband and the wife of the inheritance of the wife.

Gold. 102.
pl. 119.
Leases made by ecclesiastical persons attainted of treason.
2 Roll. 507.
See farther concerning leases, 1 Eliz. c. 19; 13 Eliz. c. 10 & 20; 14 Eliz. c. 11 & 14; 18 Eliz. c. 6; 43 Eliz. c. 9; and 29 Geo. 2, c. 31.

STAT. 32 HEN. 8, c. 37.

Vaugh. 39.
2 Roll. 373, 382, 457.

STAT. 32 HEN.
8, c. 37.

Dyer, 375.
Pl. 20.

18 Vin. 542.

1 Leon. 302.
Cro. Eliz. 805.
Cro. Car. 471.
2 Vern. ca. 550.

Redemption
money paid in
Wales and the
marches.
2 Leon. 33.
Vaugh. 415.

rent services, rent charges, rents secks, and fee-farms, have no remedy to recover such arrearages of the said rents or fee-farms as were due unto their testators in their lives, nor yet the heirs of such testator, nor any person having the reversion of his estate after his decease, may distrain, or have any lawful action to levy any such arrearages of rents or fee-farms, due unto him in his life as is aforesaid; by reason whereof, the tenants of the demesne of such lands, tenements, or hereditaments, out of the which such rents were due and payable, who of right ought to pay their rents and farms at such days and terms as they were due, do many times keep, hold, and retain such arrearages in their own hands, so that the executors and administrators of the persons to whom such rents or fee-farms were due, cannot have or come by the said arrearages of the same, towards the payment of the debts and performance of the will of the said testators: for remedy whereof, be it enacted by the authority of this present parliament, that the executors and administrators of every such person or persons, unto whom any such rent or fee-farm is or shall be due, and not paid at the time of his death, shall and may have an action of debt for all such arrearages, against the tenant or tenants that ought to have paid the said rent or fee-farms so being behind in the life of their testator, or against the executors and administrators of the said tenants; and also furthermore, it shall be lawful to every such executor and administrator of any such person or persons unto whom such rent or fee-farm is or shall be due, and not paid at the time of his death as is aforesaid, to distrain for the arrearages of all such rents and fee-farms, upon the lands, tenements, and other hereditaments, which were charged with the payment of such rents or fee-farms, and chargeable to the distress of the said testator, so long as the said lands, tenements, or hereditaments continue, remain, and be in the seisin or possession of the said tenant in demesne, who ought immediately to have paid the said rent or fee-farm so being behind, to the said testator in his life, or in the seisin or possession of any other person or persons claiming the said lands, tenements, and hereditaments, only by and from the same tenant by purchase, gift, or descent, in like manner and form as their said testator might or ought to have done in his life-time, and the said executors and administrators shall, for the same distress, lawfully make avowry upon their matter aforesaid.

“II. Provided alway, that this act, nor any thing therein contained, shall not extend to any such manor, lordship, or dominion in Wales, or in the marches of the same, whereof the inhabitants have used, time out of the mind of man, to pay unto every lord, or owner of such lordship, manor, or dominion, at his or their first entry into the same, any sum or sums of money, for the redemption and discharge of all duties, forfeitures, and penalties, wherewith the said inhabitants

regard to the executor of tenant for his own life, or to the executor of tenant *pur autre vie*, after the death of *cestui que vie*; for by the common law, an executor in either of those cases had a remedy, by action of debt, for the arrears of rent which had accrued in the life-time of the testator. 1 Inst. 162, n.(4). Gilb. Dis. 3rd edit. 33. But it has been adjudged, that the statute being remedial, applies to the executors of all tenants for life; not merely to such executors as, previously to the statute, had no remedy whatever, but also to those who were entitled to an action of debt, to whom, therefore, it gives merely the additional remedy of distress. 1 Inst. 162 (b), n. *Hool v. Bell*, 1 Ld. Raym. 172. *Read v. Erington*, Cro. Eliz. 322. Sed vide *Turner v. Lee*, Cro. Car. 471. Yet although the executors of all tenants for life, be authorized by the statute to distrain for such arrears, (*Hool v. Bell*, 1 Ld. Raym. 172.), it seems, that rent reserved on a lease for years is not within its provisions, inasmuch as the landlord is not tenant in

fee, fee-tail, or for life, of such a rent; and the executors of such tenants only are mentioned in the act. Gilb. Dis. 3rd edit. 34. *Prescott v. Boucher*, 3 B. & Ad. 849. However, in trespass, where it appeared the defendant had distrained the plaintiff's goods for rent due to his testator on a lease for years, Lee (C. J.) held it to be comprehended by the statute, and the defendant obtained a verdict. This decision was at *nisi prius*, and does not appear to have been approved of in later cases. *Powel v. Killick*, cit. *Ibid*.

Nor does the statute extend to the executor of the grantee of a rent-charge for a term of years, if he so long live; nor to copyhold rents, but only to rents of freehold. *Appleton v. Doily*, Yelv. 135. Sed vide *Shuttleworth v. Garnett*, Carth. 91.

But the executor of an executor is held to be within the equity of this statute. *Ex parte English*, 2 Bro. C. C. 610. Toller's Executors, by Whitmarsh, 450, 451. Stephens on Nisi Prius, tit. EXECUTORS AND ADMINISTRATORS, 1825—1915.

were chargeable to any of their said lord's ancestors or predecessors before his said entry. STAT. 32 HEN. 8, c. 37.

“III. And further be it enacted by the authority aforesaid, that if any man which now hath, or hereafter shall have, in the right of his wife, any estate in fee-simple, fee-tail, or for term of life, of or in any rents or fee-farms, and the same rents or fee-farms now be, or hereafter shall be due, behind and unpaid in the said wife's life; then the said husband, after the death of his said wife, his executors and administrators, shall have an action of debt for the said arrearages against the tenant of the demesne that ought to have paid the same, his executors or administrators; and also the said husband, after the death of his said wife, may distrain for the said arrearages, in like manner and form, as he might have done if his said wife had been then living, and make avowry upon his matter, as is aforesaid.

“IV. And likewise it is further enacted by the authority aforesaid, that if any person or persons which now have, or hereafter shall have, any rents or fee-farms for term of life or lives, of any other person or persons, and the said rent or fee-farm now be, or hereafter shall be due, behind and unpaid in the life of such person or persons for whose life or lives the estate of the said rent or fee-farm did depend or continue, and after the said person or persons do die; then he unto whom the said rent or fee-farm was due in form aforesaid, his executors or administrators shall and may have an action of debt against the tenant in demesne, that ought to have paid the same when it was first due, his executors and administrators, and also distrain for the same arrearages upon such lands and tenements out of the which the said rents or fee-farms were issuing and payable, in such like manner and form as he ought or might have done, if such person or persons by whose death the aforesaid estate in the said rents and fee-farms was determined and expired, had been in full life and not dead; and the avowry for the taking of the same distress to be made in manner and form aforesaid.”

The remedy for a rent, the estate whereof dependeth upon another's life being dead. 1 Anders. 47. 3 Leon. 59. 5 Co. 118. 7 Co. 39. 2 Leon. 153. Moor, 625, pl. 858. Co. Lit. 162(a). For further provisions concerning rents, see 18 Car. 2, c. 7; 8 Ann. Geo. 2, c. 19.

LXXX. STAT. 32 HENRICI 8, c. 38(1). A.D. 1540.

“For Marriages to stand, notwithstanding Pre-contracts.”

“Whereas heretofore the usurped power of the Bishop of Rome hath always entangled and troubled the meer jurisdiction and regal power of this realm of England, and also unquieted much the subjects of the same, by his usurped power in them, as by making that unlawful which by God's word is lawful, both in marriages and other things, as hereafter shall appear more at length, and till now of late in our sovereign lord's time, which is otherwise by learning taught than his predecessors in times past of long time have been, hath so continued the same, whereof yet some sparks be left, which hereafter might kindle a greater fire, and so remaining, his power not to seem utterly extinct:

“II. Therefore it is thought most convenient to the king's highness, his lords spiritual and temporal, with the commons of this realm, assembled in this present parliament, that two things specially for this time be with diligence provided for, whereby many inconveniencies have ensued, and many more else might ensue and follow; as where heretofore divers and many persons, after long continuance together in matrimony, without any allegation of either of the parties, or any other at their marriage, why the same matrimony should not be good, just, and lawful, and after the same matrimony solemnized and consummate by carnal knowledge, and also sometime fruit of children ensued of the same marriage, have nevertheless, by an unjust law of the Bishop of Rome, which is, that upon pretence of a former contract made, and not consummate by carnal copulation, (for proof whereof two witnesses by that law were only required,) been divorced and separate, contrary to God's law, and so the true matrimony, both solemnized in

STAT. 32 HEN. 8, c. 38.

What marriages are lawful, and what not. 2 Inst. 683.

The enormity of avoiding marriages by pre-contracts. 15 Vin. 262.

(1) This statute was repealed in part by Stat. 2 & 3 Edw. 6, c. 23, and was entirely repealed by Stat. 1 & 2 P. & M. c. 8, s. 19; but was again revived in part by Stat. 1 Eliz. c. 1, s. 11, and so left as it stood upon Stat. 2 & 3 Edw. 6, c. 23.

STAT. 32 HEN.
8, c. 38.

The inconveniences of dispensations to marry.

Cro. Eliz. 228.
Co. Lit. 235(a).

All persons be lawful to contract marriage that be not prohibited by God's law.

Vaugh. 206.

That marriage is indissoluble, which is contracted and solemnized in the face of the church, and consummate with bodily knowledge or fruit of child, notwithstanding any pre-contract.

the face of the church, and consummate with bodily knowledge, and confirmed also with the fruit of children had between them, clearly frustrate and dissolved: further also, by reason of other prohibitions than God's law admitteth, for their lucre by that court invented, the dispensations whereof they always reserved to themselves, as in kindred or affinity between cousin-germanes, and so to *fourth* (1) and fourth degree, carnal knowledge of any of the same kin, or affinity before in such outward degrees, which else were lawful, and be not prohibited by God's law, and all because they would get money by it, and keep a reputation to their usurped jurisdiction, whereby not only much discord between lawful married persons hath (contrary to God's ordinance) arisen, much debate and suit at the law, with wrongful vexation, and great damage of the innocent party hath been procured, and many just marriages brought in doubt and danger of undoing, and also many times undone, and lawful heirs disherited, whereof there had never else, but for his vain-glorious usurpation, been moved any such question, since freedom in them was given us by God's law, which ought to be most sure and certain; but that notwithstanding, marriages have been brought into such an uncertainty thereby, that no marriage could be so surely knit and bounden, but it should lie in either of the parties' power and arbiter, casting away the fear of God, by means and compasses to prove a pre-contract, a kindred and alliance, or a carnal knowledge, to defeat the same, and so under the pretence of these allegations afore rehearsed, to live all the days of their lives in detestable adultery, to the utter destruction of their own souls, and the provocation of the terrible wrath of God upon the places where such abominations were used and suffered: be it therefore enacted by the king our sovereign lord, the lords spiritual and temporal, and the commons, in this present parliament assembled, and by authority of the same, that from the first day of the month of July next coming, in the year of our Lord God 1540, all and every such marriages as within this church of England shall be contracted between lawful persons, (as by this act we declare all persons to be lawful, that be not prohibited by God's law to marry,) such marriages being contract and solemnized in the face of the church, and consummate with bodily knowledge, or fruit of children or child being had therein between the parties so married, shall be by authority of this present parliament aforesaid deemed, judged, and taken to be lawful, good, just, and indissoluble, notwithstanding any pre-contract or pre-contracts of matrimony not consummate with bodily knowledge, which either of the parties so married or both shall have made with any other person or persons before the time of contracting that marriage which is solemnized and consummate, or whereof such fruit is ensued, or may ensue, as afore, and notwithstanding any dispensation, prescription, law, or other thing granted or confirmed by act or otherwise; and that no reservation or prohibition, *God's law except* (2), shall trouble or impeach *any marriage without the Levitical de-*

(1) *Fourth*.—The more ancient prohibition of the canon law was to the seventh generation: "De affinitate consanguinitatis per gradus cognationis, placuit usque ad septimam generationem observari." Caus. 35, q. 2, 3, cc. 1, & 20, 21. And the same was the law of the church of England, as in the council of London: (2 Spel. 8:) "Quoad usque parentela ex alterutra parte ad septimum gradum perveniat;" and in the council of Westminster, "Inter consanguineos, seu affinitate propinquos, usque ad septimam generationem matrimonia contrahi prohibemus." But in the fourth council of Lateran, which was held A.D. 1215, the prohibition was reduced to the fourth degree: "Prohibitio copule conjugalís quartum consanguinitatis et affinitatis gradum de cætero non excedat; quoniam in ulterioribus gradibus jam non potest absque gravi dispendio hujusmodi prohibitio generaliter observari."

Which limitation was also the rule of the church of England, as appears not only by this statute, but also by the frequent dispensations for the fourth degree, (and no further,) which we meet with in our ecclesiastical records; as granted here by special authority from the see of Rome. *Harrison v. Burwell* (Dr.), Vaugh. 220.

(2) *God's law except*.—For there are other laws of God, prohibiting marriages, besides the law of God in the Levitical degrees; as, persons precontracted to one another, are prohibited by the law of God to marry against such precontract; and so, persons of natural impotency may not marry under any circumstances, since, if marriage answer not the ends of avoiding fornication, &c. it is as null; which marriages may be impeached, as contrary to the laws of God, though out of the Levitical degrees.

grees(1)(2); and that no person, of what estate, degree, or condition soever he STAT. 32 HEN.
8, c. 38.

(1) *Any marriage without the Levitical degrees*:—Since this statute, it has been clearly agreed, that if the spiritual courts proceed to impeach a marriage out of the Levitical degrees, a prohibition will lie, for all marriages that are expressly or inferentially out of those degrees are held to be good. *Harrison v. Burwell (Dr.)*, Vaugh. 206; and see further, as to the computation of the de-

grees, 1 Inst. 24 (a); 5 Bac. Abr. *Marriage*; Stephens on Clerical Law, tit. MARRIAGE.

(2) *The Levitical degrees*:—Particularly set forth in the eighteenth chapter of Leviticus, and specified in Stat. 25 Hen. 8, c. 22, and Stat. 28 Hen. 8, c. 16; but they may be more clearly and readily understood by the following table:

OF THE MAN'S PART.

Degrees of Kindred and Consanguinity prohibited.

A man may not marry his

- 1 Mother.
- 2 Father's sister.
- 3 Mother's sister.
- 4 Sister.
- 5 Daughter*.
- 6 Son's daughter, or daughter's daughter.

Degrees of Affinity and Alliance prohibited.

A man may not marry his

- 1 Father's wife.
- 2 Uncle's wife.
- 3 Father's wife's daughter.
- 4 Brother's wife.
- 5 Wife's sister.
- 6 Son's wife, or wife's daughter.
- 7 Daughter of his wife's son or daughter.

* In *Haines v. Jeffreys*, (1 Com. 2; 1 Ld. Raym. 68,) where a man had married a bastard of his sister, the lord chief justice held, and all the court seemed to think, it would be very mischievous, "if a bastard should not be accounted within the Stat. 32 Hen. 8, c. 38. For by that rule, a man might marry his own daughter; and where it is said, that a bastard is the son of no one, this is in civil respects, and where there is an inheritance."

OF THE WOMAN'S PART.

Degrees of Kindred and Consanguinity prohibited.

A woman may not marry her

- 1 Father.
- 2 Father's brother.
- 3 Mother's brother.
- 4 Brother.
- 5 Son.
- 6 Son of her son or daughter.

Degrees of Affinity and Alliance prohibited.

A woman may not marry her

- 1 Mother's husband.
- 2 Aunt's husband†.
- 3 Sister's husband.
- 4 Husband's brother.
- 5 Daughter's husband.
- 6 Son of her son or daughter.

† In *Ellerton v. Gastrell*, (Com. 318,) where Ellerton had married the daughter of the sister of his former wife, this was declared to be within the prohibition of the Levitical degrees.

For the better understanding of such prohibitions, together with the grounds and limitations of them, it may not be improper to mention some special rules which have been laid down for that end, both by lawyers and divines.

First, That marriages in the ascending and descending line, *i. e.* of children, with their father, grandfather, mother, grandmother, and so upwards, are prohibited, without limit; because they are the cause, (immediate, or mediate,) of their being; and it is directly repugnant to the order of nature, which hath assigned several duties and offices, essential to each, that would thereby be inverted and overthrown. A parent cannot obey a child; and therefore it is unnatural, that a parent should be wife to a child: a parent, as a parent, has a natural right to command and correct a child; and that a child, as husband, should command and correct the same parent, is unnatural. And therefore Grotius, (De Jur. l. 2, c. 5,) speaking of such marriages, says: "Quæ quo minus licita sunt rati (ni fallor) satis apparet; nam nec maritus, qui superior est lege matrimonii, eam reverentiam potest præstare matri, quam natura exigit, nec patri filia; quia, quanquam inferior est in ma-

trimonio, ipsum tamen matrimonium talem inducit societatem, quæ illius necessitudinis reverentiam excludit." To which may be added, the inconsistency, absurdity, and monstrosity of the relations to be begotten, if such prohibitions were not absolute and unlimited. The son or daughter (for instance) born of the mother, and begot by the son, considered as born of the mother, would be a brother or sister to the father, but, as begot by him, would be a son or daughter. So, the issue procreate upon the grandmother, as born of the grandmother, will be uncles or aunts to the father, but, as begot by the son, they will be sons or daughters to him, and this in the first degrees of kindred. *Harrison v. Burwell (Dr.)*, 2 Vent. 19. Vaugh. 242.

Secondly, There are several degrees, which, although not expressly named in the Levitical law, are yet prohibited by that, and by this act, *paritate rationis*; which is well expressed and illustrated in the *Reformatio Legum*, fol. 23 (a): "Hoc tamen in illis Levitici capitibus diligenter animadvertendum est, minimè ibi omnes non legitimas personas nominatim explicari. Nam spiritus sanctus illas ibi personas evidenter et expressè posuit, ex quibus similia spatia reliquorum graduum,

STAT. 32 HEN. or she be, shall, after the first day of the said month of July aforesaid, be 8, c. 38.

et differentiæ inter se, facillè possint conjectari et inveniri. Quemadmodum, exempli causâ, cum filio non datur uxor mater, consequens est, ut ne filia quidem patri conjux dari potest. Et, si patri non licet uxorem in matrimonio habere, nec cum avunculi profectò conjuge nobis nuptiæ concedi possunt." To which the same book adds two particular rules for our direction in this matter: "1. Ut qui loci viris attribuantur, eosdem sciamus fæminis assignari, paribus semper proportionum et propinquitatum gradibus. 2. Ut vir et uxor unam et eandem inter se carnem habere existimentur; et ita quo quisque gradu consanguinitatis quemque contingit, eodem ejus uxorem continget affinitatis gradu; quod etiam in contrariam partem, eadem ratione, valet."

Upon the foregoing rule, from parity of reason, (which is also acknowledged and laid down by the books of common law, 2 Inst. 683; *Harrison v. Burwell* (Dr.), 2 Vent. 12,) rests the prohibition against marrying a wife's sister; which cannot be better explained, than in the words of Bishop Jewel, in his printed letter upon that point. Stry. Park. App. 33. "Albeit, I be not forbidden by plain words to marry my wife's sister, yet am I forbidden so to do by other words, which by exposition are plain enough. For when God commands me, I shall not marry my brother's wife, it follows directly, by the same, that he forbids me to marry my wife's sister. For between one man and two sisters, and one woman and two brothers, is like analogy or proportion." Accordingly, in the canons of 1571, where the dissolution of all marriages within the Levitical degrees is directed, this case is specially enforced: "Maximè vero, si quis priore uxore demortuâ, ejus sororem uxorem duxerit; hic enim gradus communi doctorum virorum consensu, et judicio putatur in Levitico prohiberi." And when this point, of marrying the wife's sister, came under consideration in *Hill v. Good*, (Vaugh. 302,) though it was alleged, that the precept, *primâ facie*, seemed to be only against having two sisters at the same time, and prohibition to the spiritual court was granted; yet, subsequently, after hearing civilians, they granted a consultation, as in a matter within Stat. 32 Hen. 8, c. 38; "though the former statute, (28 Hen. 8,) had never been revived, after the repeal of Queen Mary, which yet it virtually was; and there, as in 25 Hen. 8, the wife's sister is expressly prohibited." Gibson's Codex, 412.

Upon the like parity of reason, in *Wortley v. Watkinson*, (2 Lev. 254,) a consultation was granted, where one had married the daughter of the sister of his former wife; which (as Sir John King stated the argument) is in the same degree of proximity, as the nephew's marrying his father's brother's wife; and this being expressly prohibited, the other, *paritate rationis*, is so too; as it had been declared, in *Rennington's case*, (cit. *Howard v. Bartlet*, Hob. 181;) before the high commissioners. Which point was

again argued, in *Snowling v. Nursey*, (Lutw. 1075,) and consultation granted as before; notwithstanding the case of *Richard Parsons*, mentioned by my Lord Coke, (1 Inst. 235 (a),) in which it was first determined not to be within the Levitical degrees, and prohibition granted; but a consultation being awarded, (*Hill v. Good*, Vaugh. 322,) on debate, two years after, that case is said to have been expunged out of the First Institute, by order of king and council. It may be added, that this was the very point, in which (immediately after the making of the act) Cromwell desired, (Stry. Cranm. 46,) a dispensation for one Massey, who was contracted to his sister's daughter of his late wife; but the archbishop denied it, as contrary to the law of God, and gave for reason, that as several persons are prohibited, which are not expressed, but understood, by like prohibition in equal degree; so, in this case, it being expressed, that the nephew shall not marry his uncle's wife, it is implied, that the niece shall not be married to the aunt's husband.

Much less can it be doubted, whether the like rule, *de paritate rationis*, doth not forbid the uncle to marry his niece, which, though not expressly forbidden, is virtually prohibited in the precept, that forbids the nephew to marry the aunt; nor is it of moment to allege, that the first is a more favourable case, as the natural superiority is preserved; since the parity of degree (which is the proper rule of judging,) is the very same. *Watkinson v. Mergatron*, Raym. (Sir T.), 464. *Haines v. Jescott*, 5 Mod. 170.

But where the case in the spiritual court was, that one had married the wife of his great uncle, this was declared, not to be within the Levitical degrees; and accordingly. (after the opinion of all the judges, taken by the king's special command,) a prohibition was granted. This was the case of *Harrison v. Burwell* (Dr.), (Vaugh. 206; 2 Vent. 9,) very particularly reported by Vaughan and Ventris; in which reports, (together with that of *Hill v. Good*, Vaugh. 302, which is likewise set forth at large by Vaughan,) may be found a variety of learning and argument upon this point of Levitical degrees.

Thirdly, There are two rules in the *Reformatio Legum*, (23 (b),) which conduce much to the true understanding of the Levitical degrees: "1. Non solum in legitimis matrimoniis talem habent dispositionem, qualem jam posuimus, sed eundem in corporum illegitimâ conjunctione locum habent; filius enim, quo jure matrem non potest uxorem sumere, eodem nec patris concubinam habere potest; et pater, quo modo filii non debet uxorem contractare, sic ab illâ se removere debet, quâ filius est abusus; qua ratione mater nec cum filii marito jungi debet, nec etiam cum illo congrredi quæ filiam oppreserit.

"2. Non solum istas, maritis adhuc superstitibus, disjungi personas quas diximus, sed etiam illis mortuis, idem perpetuò valere. Quemadmodum enim horribile flagitium est

admitted in any of the *spiritual courts* (1) within this the king's realm, or any his grace's other lands and dominions, to any process, plea, or allegation, contrary to this foresaid act." STAT. 32 HEN. 8, c. 38.

2 & 3 Edw. 6, c. 23, s. 2; and 1 & 2 P. & M. c. 8, s. 20; and in part revived by 1 Eliz. c. 1, s. 12, as to so much as is not repealed by 2 & 3 Edw. 6, c. 23. Repealed by
c. 1, s. 12, as to

LXXXI. STAT. 32 HENRICI 8, c. 45 (2). A.D. 1540.

STAT. 32 HEN. 8, c. 45.

[*The Erection of the Court of the First-fruits and Tenth.*]

in vitâ patris, fratris, patruī, aut avunculi, audere illorum uxores violare: sic, post mortem illorum matrimonium cum illis contrahere, parem turpitudinem habet."

To the first of these rules may be referred the case of *Haines & Jescott*, (5 Mod. 168,) in which a prohibition was prayed to the spiritual court on a suit there, against a man for marrying his sister's bastard daughter, as not within the Levitical law. But it was urged against the prohibition, that in this case, legitimacy or illegitimacy made no difference, and that if a bastard be not within the rule, "Ad proximum sanguinis non accedat," then a mother may marry her bastard son. The court seemed inclined not to grant a prohibition; but the cause was adjourned, and it does not appear what became of it.

(1) *Spiritual courts*:—In *Harrison v. Burwell* (Dr.), (Vaugh. 213,) it was observed, that no prohibition was to be found in the register, or elsewhere, concerning the questioning of any marriage in the spiritual court, before the ecclesiastical acts of parliament, nor until long after some of them; and it was also observed, (Ibid. 216,) that neither Stat. 25 Hen. 8, c. 22 (*antè* 172), nor Stat. 28 Hen. 8, c. 7 (*antè* 205), gave any additional jurisdiction to the temporal courts, concerning marriages, beyond that which they had before; being acts directory only as to ecclesiastical proceedings in matters of marriage. Ibid. 209. 2 Vent. 14. It was, however, declared that, by this act, the temporal courts became the proper judges, what marriages were within or without the Levitical degrees, and were to prohibit the spiritual courts, if they impeached any persons for marriages without those degrees. But *Vaughan* observed in this case, (p. 220,) and repeated that declaration in *Hill v. Good*, (Vaugh. 304,) that if granting prohibitions to the spiritual courts in cases of matrimony, were *res integra* now, he saw no reason, why they should be granted in any case; but that there having been so many precedents of prohibitions, and no complaint, or at least redress, in parliament, they could not take upon them to alter the course of the law, so long practised.

But in *Watkinson v. Mergatron*, (Raym. (Sir. T.), 464,) a prohibition was prayed to the spiritual court at York, to hinder a prosecution there for marrying the sister's daughter; but it was denied by the whole court, upon this general reason: "Because it is a cause of ecclesiastical cognizance, and divines better know how to expound the law of marriages, than the common lawyer; and

though sometimes prohibitions have been granted in causes matrimonial; yet if it were now *res integra*, they would not be granted."

In *Collet & Collet*, (Skin. 37,) a prohibition to the spiritual court was prayed, to hinder them from proceeding to a divorce, where a man had married the sister of his first wife, and the suggestion was, that the issue of that marriage would be bastardized, in case of such divorce, and deprived of certain lands settled upon them in marriage. But the court said, this was not sufficient matter of suggestion; for here the spiritual court held not plea of the temporal inheritance directly, but consequentially; for which, if they should be prohibited, they would have no subject for adjudication.

In *Hinks v. Harris*, (Carth. 271,) the second wife, who was sister to the first, died, pending the suit for an incestuous marriage in the spiritual court; notwithstanding whose death, and the husband's pleading it, the court proceeded to declare the marriage null and void. But a prohibition was granted, forbidding the spiritual court from rendering the marriage void; because, they could only proceed against *Hinks*, after the death of his wife, *pro salute animæ*. *Sed vide* Stat. 5 & 6 Gul. 4, c. 54, by which marriages within the prohibited degrees are rendered absolutely void.

In *Collins v. Jessot*, (6 Mod. 155,) upon motion for a prohibition to the spiritual court, for libelling there to dissolve a marriage because of a precontract; it was affirmed, that in case of a contract *per verba de futuro*, the cognizance might be either in the spiritual court, upon precontract or no precontract, or in the temporal court, for damages; and each court to forbear upon showing process in the same matter, before the other. But as to the cognizance of matrimonial cases in general, the court agreed as follows: "The spiritual court have jurisdiction of all matrimonial causes whatsoever; and where it appears to us, that the cause is spiritual, of which in consequence they have cognizance, unless it be by reason of some collateral temporal matter in it, we ought not to prohibit them. And it is no reason here to prohibit them, because this may be a future contract, for breach of which an action at law will lie; no more than when they libel for laying violent hands upon a spiritual man; for which, an action at law lies for him, for the battery, and a suit in the spiritual court for the irreverence to his character."

(2) Repealed by Stat. 1 Eliz. c. 4, ss. 8 & 24.

STAT. 32 HEN.
8, c. 47.

LXXXII. STAT. 32 HENRICI 8, c. 47 (1). A.D. 1540.

"An Act that the Bishop of Norwich shall be charged with the Collection of the King's Tenth. A Statute not printed exempteth the Bishop of Norwich from collecting of the Tenths in his Diocese. The Bishop of Norwich and his Successors shall collect the Tenths of all Spiritual Promotions within his Diocese."

STAT. 32 HEN.
8, c. 49.

LXXXIII. STAT. 32 HENRICI 8, c. 49. A.D. 1540.

"A Confirmation by Act of Parliament of the King's general and free Pardon to all his Subjects, of all Heresies, Treasons, Felonies, Offences, &c., saving certain Persons and certain Offences particularly excepted (2)."

STAT. 32 HEN.
8, c. 50.

LXXXIV. STAT. 32 HENRICI 8, c. 50 (3). A.D. 1540.

[*A Grant of a Subsidy.*]

STAT. 33 HEN.
8, c. 5.

LXXXV. STAT. 33 HENRICI 8, c. 5 (4). A.D. 1541.

[*An Act concerning the keeping of great Horses.*]

[Archbishops to keep seven horses;—bishops of 1000*l.* per annum to keep five horses;—bishops of 1000 marks per annum to keep three horses;—bishops under 1000 marks, and spiritual persons of 500 marks, to keep two horses;—spiritual persons of 100*l.* to keep one horse.]

STAT. 33 HEN.
8, c. 6. [IR.]

LXXXVI. STAT. 33 HENRICI 8, c. 6. [IRELAND.] A.D. 1542.

"An Act for Marriages."

Eng. 32 Hen.
8, c. 38.
Eng. 2 & 3
Edw. 6, c. 23.
This act re-
pealed 3 & 4
P. & M.
Revived 2 Eliz.
c. 1, Ir. as to
so much only
as concerns
degrees of con-
sanguinity.
The Pope's
usurped power,
making that
unlawful which
by God's word
is lawful, not
utterly extinct.
Two evils pro-
vided for.
Divorces on
pretence of
former con-
tract.

"Whereas heretofore the usurped power of the Bishop of Rome hath alwayes entangled and troubled the mere jurisdiction and regal power of this land of Ireland, and also inquieted much the subjects of the same by his usurped power in them: as by making that unlawful, which by God's word is lawful, both in marriages and other things, as hereafter shall appeare at more length: till now of late in our soveraigne lord's time, which is otherwise by learning taught, than his predecessours in times past of long time hath beene, and hath so continued the same, whereof yet some sparkles bee left, which hereafter might kindle a great fire, and so remayning, his power not to seeme utterly extinct: therefore it is thought most convenient to the king's highnesse, and to his lords spirituall and temporall, with the commons of this land assembled in this present parliament, that two things specially for this time be with diligence provided for, whereby many inconveniences hath ensued, and many moe evils mought ensue and follow: as where heretofore diverse and many persons, after long continuance together in matrimonie, without any allegation of eyther of the parties, or anie other at their marriage, why the same matrimonie should not bee good, just, and lawfull, and after the same matrimonie solemnized and consummate by carnall copulation, and also sometimes fruite of children ensued of the same marriage, have neverthesse by an unjust law of the Bishop of Rome, which is, that upon pretence of a former contract made and not consummate by carnall knowledge, for proove whereof two witnesses by that law were onely required, beene divorced and separated contrarie to God's law; and so the true matrimonie both solemnised in the face of the church, and consummate with bodily knowledge, and confirmed also with the fruit of children had betwixt them, cleerely frustrate and dissolved: further also, by reason of other prohibitions than God's law admitteth, for their lucre by that court invented, the dispensation whereof they alwayes reserved to themselves, as in kindred or affinitie betwixt cosen germanes, and so to fourth and fourth degree,

(1) Repealed by Stat. 3 Geo. 1, c. 10, s. 1.

(2) In this statute, anabaptists, and the opposers of transubstantiation, were excepted.

(3) Expired. In this statute the goods of

churches were not to be rated to the subsidy;—which exemption again occurs in Stat. 34 & 35 Hen. 8, c. 27.

(4) Expired.

carnall knowledge of any of the same kinne or affinity, before in such outward degrees, which all were lawfull, and be not prohibited by God's law, and all because they would get money by it, and keepe a reputation to their usurped jurisdiction, whereby not onely much discord betwixt lawfull married persons hath (contrary to God's ordinance) arisen, much debate and suit at the law, with the wrongfull vexation and great dammage of the innocent partie hath bene procured, and many just marriages in doubt and danger of undoing, and also many times undone, and lawfull heyres disinherited, whereof they had never else, but for his vaine glorious usurpation, bene moved any such question sithence freedom in them was given us by God's law, which ought to be most sure and certaine: but that notwithstanding, marriages have bene brought into such an uncertaintie thereby, that no marriage could be so sure knitte and bounden, but it should lye in eyther of the parties' powers and arbitre, casting away the feare of God, by meanes and compasse to prove a precontract, a kindred and allyance, or carnall knowledge, to defeat the same: and so under the pretence of these allegations afore rehearsed to live all the dayes of their life in detestable adulterie, to the utter destruction of their owne soules, and the provocation of the terrible wrath of God upon the places where such abominations were used and suffered: be it therefore enacted by the king our soveraigne lord, and the lords spirituall and temporall, and the commons in this present parliament assembled, and by authoritie of the same, that from the first day of July last past, in the year of our Lord God 1540, all and every such marriage as within this church of Ireland hath or shall be so contracted betwixt lawfull persons, as by this act we declare all persons to be lawfull, that be not prohibited by God's law to marry, such marriages being contracted and solemnized in the face of the church, and consummate with bodily knowledge, or fruit of children, or child, being had therein betwixt the parties so married, shall be by authoritie of this present parliament aforesaid deemed, judged, and taken to be lawfull, good, just, and indissoluble, notwithstanding any precontract or precontracts of matrimonie, not consummate with bodily knowledge, which eyther of the persons so married, or both, shall have made with any other person or persons before the time of contracting that marriage, which is solemnized or consummate, or whereof such fruit is ensued or may ensue, as afore. And notwithstanding any dispensation, prescription, law, or other thing graunted or confirmed by act or otherwise. And that no reservation or prohibition (God's law except) shall trouble or impeach any marriage without the Levitical degrees. And that no person, of what estate, degree, or condition soever he or shee be, shall after the first day of the moneth of July aforesaid be admitted in any of the spiritual courts within this the king's land of Ireland, or any other his grace's lands and dominions, to any proces, ples, or allegations contrary to this aforesaid act."

STAT. 33 HEN. 8, c. 6. [IR.] Dispensation of prohibitions invented by the court of Rome.

Marriages between persons not prohibited by God's law to marry, and solemnized in face of the church, and consummated, shall be good, notwithstanding pre-contract not consummated; and notwithstanding any dispensation, &c.

No reservation or prohibition (God's law excepted,) shall impeach any marriage without the Levitical degrees. 28 Hen. 8, c. 2. No process, plea, or allegation, in any spiritual court, to be admitted contrary to this act.

LXXXVII. STAT. 33 HENRICI 8, c. 8. [IRELAND.] A.D. 1542.

"An Act for Capacities."

STAT. 33 HEN. 8, c. 8. [IR.]

LXXXVIII. STAT. 33 HENRICI 8, c. 9. A.D. 1541.

"The Bill for . . . the debarring of Unlawful Games."

STAT. 33 HEN. 8, c. 9.

[Persons prohibited to play at unlawful games out of Christmas.]

LXXXIX. STAT. 33 HENRICI 8, c. 12(1). [IRELAND.] A.D. 1542.

"An Act for Tythes."

STAT. 33 HEN. 8, c. 12. [IR.]

"Where divers and many persons inhabiting in sundrie countries and places of this land of Ireland, not regarding their duties to Almighty God, and to the king our soveraigne lord, but in few years past more contemptuously and commonly presuming to offend and to infringe the good and wholesome lawes of this land of

Eng. 32 Hen. 8, c. 7. Eng. 27 Hen. 8, c. 20.

(1) *Vide* Stat. 7 Geo. 3, c. 21(1.); which was perpetuated by Stat. 11 & 12 Geo. 3, c. 19 (1.)

STAT. 33 HEN.
8, c. 12. [IR.]

Lay persons could not by the laws ecclesiastical sue for tithes in the ecclesiastical court, nor had any remedy by common law.

Tithes and offerings shall be truly and effectually set out or paid according to the usage of the place where they grow due.

Detainers thereof may be convened by the lay or ecclesiastical owners, before the ordinary, &c., who shall examine summarily according to ecclesiastical laws, and sentence. And upon appeal shall adjudge, and compel the appellant to pay reasonable costs; taking security for restoring if adjudged for appellant.

Persons refusing to pay, shall, upon certificate of the ecclesiastical judge, be committed by two justices of peace of the same shire (*quor. unus*) to next gaol, till sureties found.

Ireland, and gracious commaundements of our said sovereign lord, than in times passed hath been seen or known, have not letted to substract and withdraw the lawfull and accustomed tythes of corne, hay, pasturages, and other sort of tythes and oblations commonly due to the owners, proprietaries, and possessioners of the parsonages, vicarages, and other ecclesiasticall places of and within the said land of Ireland; being the more encouraged thereunto, for that that divers of the king's subjects being lay persons, having parsonages, vicarages, and tythes, to them and to their heires, or to them and to the heires of their bodies lawfully begotten, or for tearme of life or yeares, cannot by the order and course of the ecclesiastical laws of this land sue in any ecclesiasticall court for the wrongfull withholding and detaining of the said tithes or other duties, nor cannot by the order of the common lawes of this land of Ireland have any remedie against any person or persons, their heires or assignes, that wrongfully withholdeth and detayneth the same; by occasion whereof much controversie, suit, variance, and discord is like to ensurge and ensue amongst the king's subjects, to the great detriment, damage, and decay of many of them, if convenient and speedie remedy thereof be not had and provided: wherefore it is ordained and enacted by our said sovereign lord the king with the assent of the lords spirituall and temporall and the commons in this present parliament assembled, and by the authority of the same, that all and singular persons of this his said land, of what estate, degree, or condition soever he or they be, shall fully, truly, and effectually divide, set out, yeeld, or pay all and singular tythes and offerings aforesaid, according to the lawfull customes, and usages of the paroches and places, where such tythes or duties shall growe, arise, come, or be due; and in case that it shall happen any person or persons of his or their ungodly and perverse will and mind to detain or withhold any of the said tythes or offerings, or part or parcell thereof, then the person or partie, being ecclesiasticall or lay person, having cause to demanda or to have the said tythes or offerings, being thereby wronged or grieved, shall or may convent the person or persons so offending before the ordinarie, his commissarie, or other competent minister or lawfull judge of the place, where such wrong should bee done according to the ecclesiasticall lawes; and in everie such cause or matter of suit the same ordinarie, commissarie, or other competent minister or lawfull judge, having the parties or their lawfull procurators before him or them, shall and may by virtue of this act proceed to examination, hearing, and determination of everie such cause or matter ordinarily of someralie according to the course and processe of the said ecclesiasticall laws, and thereupon may give sentence accordingly. And in case that anie of the parties for anie cause or matter concerning that suit doe appeale from the sentence, order, and definite judgment of the said ordinarie, or other competent judge, as is aforesaid, then the same judge by vertue of the same act forthwith upon such appellation made shall adjudge to the other partie the reasonable costs of his suite therein before expended, and shall compell the same partie appellaunt to satisfie and pay the same costes so adjudged, by compulsarie processe and censoures of the said laws ecclesiasticall, taking suretie of the other partie, to whom such costes shall be adjudged and payde, to restore the same costes to the partie appellaunt, if after the principall cause of that suit of appeal shall be adjudged against the same partie, to whom the said costes shall be yeelded; and so everie ordinarie or other competent judge ecclesiasticall by vertue of this act, shall adjudge costes to the other partie upon everie appeale to bee made in any suite or cause of subtraction or detention of any tythes or offerings, or in any other suite to bee made for or concerning the dutie of such tythes or offerings.

"II. And further be it enacted by the authority aforesaid, that if any person or persons, after such sentence definitive given against them, obstinately and wilfully refuse for to pay their tythes or duties, or such summes of money so adjudged, wherein they be condemned for the same, that then two justices of peace of the same shire, whereof one to be of the *quorum*, shall have authority by this act upon information, certificate, or complaint, to them made in writing by the said ecclesiastical judge that gave the same sentence, to cause the same partie

so refusing to be attached and committed to the next gaole, and there to remain without bayle or mainprise, till he or they shall have found sufficient sureties, to be bound by recognisance or otherwise before the same justice to the use of our sovereign lord the king to performe the same definitive sentence and judgment.

“III. Provided alwayes, and be it enacted by the authoritie aforesaid, that no person ne persons shall be sued or otherwise compelled to yield, give, or pay any manner of tythes for any mannors, lands, tenements, or hereditaments, which by the laws or statutes of this land of Ireland are discharged, and not chargeable with the payment of any such tythes.

“IV. Bee it further enacted by the authority aforesaid, that in all cases where any person or persons, which now have, or which hereafter shall have, any estate of inheritance, freehold, terme, right, or interest of, in, or to any parsonage or vicarage, portion, pension, tythes, oblations, or other ecclesiasticall or spirituall profites, which now bee, or which hereafter shall bee, made temporall, or admitted to bee, abide, and goe to, or in temporall handes, or lay uses and profites, by the lawes or statutes of this land of Ireland, shall hereafter fortune to be disseised, deforced, wronged, or otherwise kept or put from their lawful inheritance, estate, seisin, possession, or occupation, terme, right, or interest of, in, or to the same, or of, in, or to any parcell thereof, by any other person or persons clayming or pretending to have interest or title in or to the same: that then, in every and all such cases or case, the person or persons so disseised, deforced, or wrongfully kept, or put from his or their right or possession, as is afore rehearsed, their heyres, wives, or such other, to whom such injurie or wrong shall be done or committed, shall and may have their remedie in the king's temporall courts, or in other courts, as the case shall require, for the recoverie, getting, or obtaining of such inheritance, estate, freehold, seisin, possession, terme, right, or interest, by writs originall of *precipe quod reddat assise de novel disseisin, morte dauncester, quod ei deforceat*, writs of dower or other writs originall, as the case shall require, to be devised and graunted in the king's chauncerie, of every such parsonage, vicarage, portion, pension, or other profit called ecclesiasticall or spirituall, so to be demaunded according to the nature and cause of the suit thereof, in like manner and forme as they should, ought, or might have had of or for landes, tenementes, and other hereditamentes, in such manner to be demanded, and that writs of covenant and other writs for fines to be levied, and all other assurances to be had, made, or conveyed of any such parsonage, vicarage, portion, pension, or other profite, called ecclesiasticall or spirituall, as is aforesaid, shall be hereafter devised and graunted in the said chaunceries, according as hath been used for fines, to bee levied, and assurances to bee had, made, or conveyed, of landes, tenementes, or other hereditamentes. And that all judgments to bee given upon any of the said writs originall, so to bee devised and graunted, of or for any the premises, or any of them, and all fines to be levied and knowledged in any of the king's said courts thereof, shall bee of like force and effect in the law to all intents and purposes, as judgments given and fines levied of lands, tenements, and hereditaments in the same courts upon writs originall, therefore duly pursued and prosecuted: albeit no such forme of writs originall out of the said court of chauncery have heretofore proceeded or beene awarded.

“V. Provided alwayes, that this last act shall not extend nor bee expounded to give any remedie, cause of action, or suit in the courts temporall against anie person or persons, which shall refuse, or denie to set out his or their tythes, or which shall detain, withhold, or refuse to pay his tythes or offerings, or any parcell thereof; but that in all such cases the person or partie being ecclesiasticall or lay person, having cause to demaund or to have the said tythes or offerings, and thereby wronged or grieved, shall take and have their remedie for their said tythes or offerings in everie such case in the spirituall courts, according to the ordinance in the first part of this act mentioned, and not otherwise, any thing here expressed to the contrarie notwithstanding.”

STAT. 33 HEN. 8, c. 12. [I.R.] None compellable to pay tithes for lands, &c. by the laws or statutes of Ireland, discharged of tithes.

Persons having inheritance, freehold, term, right, or interest in tithes, &c. made temporal, or admitted to be to lay uses, if disseised, &c. shall have like remedy in the temporal or other courts as the case requires, by writ original, as for lands, &c.

Writs of covenant and other writs for fines and other assurances of such ecclesiastical profits, and judgments thereon, and fines levied thereof, shall be of like effect as of lands, &c.

Although no such form of writs original, heretofore awarded. But the remedy for the refusing to pay tithes shall be in the court ecclesiastical, and not otherwise.

STAT. 33 HEN.
8, c. 14. [IR.]

XC. STAT. 33 HENRICI 8, c. 14. [IRELAND.] A.D. 1542.

"An Act for erecting of Vicarages."

Divers parish churches appropriated to religious houses dissolved, having no vicars endowed.

Certain persons are by this act empowered to erect and incorporate one vicarage of one vicar in every parish church, which shall have succession for ever.

The lord deputy to nominate in the king's name to the ordinary, an able person to be vicar, who, after admission, &c. shall be taken and implead as vicar. Such mansions, tithes, &c. as necessary and convenient, shall be assigned to such vicars out of the possessions coming to the king by the dissolution of monasteries, for mainte-

"Where as well the church of Kilmaynam is a parish church, and hath been appropriated and united unto the late Hospitall of Saint John's Jerusalem, within this land of Ireland, as also diverse other parish churches, within the said land, likewise appropriated to the said late hospitall, and to other monasteries, religious houses and hospitals, now dissolved, having no vicar, endowed within the same parish churches, within which parish churches divine service was done, maintained and kept, and the cure served by the late religious persons of the same hospitall, monasteries, and religious houses. And forasmuch as the said hospitall, monasteries, or religious houses, be now lawfully and justly dissolved, and comen to his majestie's hands, whereby there is no person certain appointed to doe, maintain, or keep the same cure, minister sacraments and sacramentals to the parishioners within the same parishes, and every of them: wherefore if it might please the king's highnesse, it were convenient that one able person should be appointed, and limited, within every of the said parish churches, for and to the intent afore rehearsed, in consideration whereof, and to the intent that the king's subjects, inhabiting within every of the said parishes, should be hereafter, from time to time, instructed with the true, perfect, and sincere word of Almighty God, and to the intents aforesaid, at the humble petition and suite of the king's most obedient and loving subjects, the inhabitants of the said parishes; his majestie is contented and pleased, that it bee enacted and established by authoritie of this present parliament, that Sir Anthony Sentleger, knight, deputy to the king's highnesse, John Allen, his grace's chauncellor, William Brabazon, his majestie's vicethesaurer of this land, Sir Garald Aylmer, knight, his grace's chiefe justice of the plees, before himselfe to bee holden, within this his said land, Sir Thomas Lutrell, knight, chiefe justice of the common place, James Bath, chiefe baron of the king's exchequer, Robert Cowley, master of the rolls, Thomas Houth, secundarie justice of the king's bench, Patrick Barnwall, the king's sargeant at lawes, Robert Dillon, the king's generall attorney, within this said land of Ireland, or nine, eight, seven, or sixe of them, whereof the said lord deputie, lord chauncellour, vicethesaurer and chiefe justice, to bee four of them, shall and may by authoritie of this present act have full power and authoritie to erect, ordaine, and incorporate, one vicarage, of one vicar in everie of the parish churches, as they, or nine, eight, seven, or sixe of them, as is aforesaid, shall think convenient, which shall have succession in everie of the same vicarages as vicar in him and his successors for ever. And that the said lord deputie to nominate, and present in the king's highnesse's name, to the ordinarie within whose diocesse the said church doth stand, one able and sufficient person to bee vicar of everie of the said churches, which person so nominated, and presented after his admission, institution, and induction to bee reputed, taken, impleaded, and to implead as vicar of the said church to all intents and purposes, as other vicars of this land have, by the law of this land. And that further, by the same authoritie, the said Sir Anthony, John Allen, William Brabazon, Sir Garald, Sir Thomas, James, Robert Cowley, Thomas Houth, Patrick, and Robert, or nine, eight, seven, or sixe of them, as is aforesaid, shall and may limmit and assigne unto everie such vicar such manses, portions of tythes, alterages, and oblations, of the possessions comming to the king's highnesse, by the dissolution of the same monasteries, hospitals, or houses for the mayntenance of divine service, keeping of good hospitality within their said parishes, and for the intents and purposes aforesaid, as by the said Sir Anthony, John, William, Sir Garald, Sir Thomas, James, Robert Cowley, Thomas Houth, Patrick, and Robert Dillon, or nine, eight, seven, or sixe of them, whereof the lord deputie, lord chauncellor, vicethesaurer, and chiefe justice, to be four of them, shall bee necessarie and convenient; and that the lord chauncellor of this said land, for the time being, after the certificate had under their seals of the said limitation and appointment of the mansions, portions of tythes, alterages and oblations, into the king's court of chaun-

cerie, within this land, shall bee by the king's letters patents, under the great seal of this land, by vertue of this act, and in the king's name, graunt and endow the same vicars with the same mansions, tythes, portions, alterages, and oblations so certified, into the said court of chauncerie, to bee had, every such manses, portions of tythes, alterages, and oblations, unto every such vicar and vicars, and his and their successours, in pure almes, for ever; paying and reserving unto the king's highnesse, his heyres and successours, yearely, the twentieth part of every such vicarages, and the first fruits at and upon every presentation, nomination, or collation of every such vicar, in such manner and forme as other vicars within this land bee bound by the lawes and statutes of this realme. So that, and provided alway, that the yearly valor of every such manse, portion of tythes, alterages, and oblations, so to bee endowed, given, graunted, limited, and assigned, to any such vicar at the time of any such endowment, gift, graunt, limitation, and assignment, doe not exceed the yearly value of thirteen pounds sixe shillings and eight pence Irish: saving to all and singular persons, bodies politique and corporate, their heyres and successors, and the heyres and successors of every of them, other than the king's highnesse, his heyres and successors, all such right, title, interest, claime, possession, reversion, remainder, offices, annuities, rent charges, or commons, which they or any of them have, ought or might have had, in or to any such of the said mansions, parcels of tythes, alterages, and oblations, so to bee endowed, given, graunted, limited, or assigned, to any such vicar or vicars; this act or any thing or things therein contained to the contrary notwithstanding.

"II. Provided, and also be it enacted, that after the first establishment of every such vicarage, and after the admission and institution of every such vicar or vicars in the same, the king's highnesse, his heyres and successours, shall possesse and enjoy the advowson, presentation, and nomination of every such vicarage, to have and to hold every such advowsons, presentations, and nominations of every of the said vicarages unto our said sovereign lord, his heyres and successors for ever, as united and knit to his and their imperiall crown."

STAT. 33 HEN. 8, c. 14. [Ir.] nance of divine service, hospitality, &c.

After certificate thereof the chancellor by letters patent in the king's name shall grant and endow such vicars therewith in pure alms for ever. Reserving to the king yearly the twentieth part and first-fruits, on every presentation.

The yearly value of such endowments not to exceed 13*l.* 6*s.* 8*d.* Saving the right of others.

The king shall enjoy the advowson as united to his crown.

XCI. STAT. 33 HENRICI 8, SESS. 2, c. 5. [IRELAND.] A.D. 1542.

"An Act for the Suppression of Kylmaynham and other Religious Houses."

STAT. 33 HEN. 8, SESS. 2, c. 5. [Ir.]

XCII. STAT. 33 HENRICI 8, c. 15 (1). A.D. 1541.

"A Repeal of so much of the Statute of 32 Hen. 8, c. 12, as doth assign the Town of Manchester to be a Place of Sanctuary. But instead thereof, the City of Westchester, in the County of Chester, shall be a Place of Sanctuary."

STAT. 33 HEN. 8, c. 15.

XCIII. STAT. 33 HENRICI 8, c. 27 (2). A.D. 1541.

"The Bill for Leases of Hospitals, Colleges, and other Corporations."

STAT. 33 HEN. 8, c. 27.

"Albeit that by the common laws of this realm of England, all assents, elections, grants, and leases had, made, and granted by the dean, warden, provost, master, president, or other governor of any cathedral church, hospital, college, or other corporation, by whatsoever name they be incorporate or founded, with the assent and consent of the more or greater part of their chapter, fellows, or brethren of such corporation, having voices of assent thereunto, be as good and effectual in the law to the grantees and lessees of the same, as if the residue or the whole number of such chapter, fellows, and brethren of such corporation, having voices of assent, had thereunto consented and agreed; yet the said common laws notwithstanding, divers founders of such deaneries, hospitals, colleges, and corporations within the said realm, have upon the foundation and establishment of the same deaneries, hospitals, colleges, and other corporations, established and made, amongst other their peculiar acts, local statutes and ordinances, that if any one of such corporation, having power or authority to assent or dissent, should and would

Leases of hospitals, &c. good with consent of the more part. Dyer, 247. 19 Hen. 7, c. 7.

(1) Repealed by Stat. 1 Jac. 1, c. 25, s. 34. Stat. 21 Jac. 1, c. 28, s. 7. (2) Vide Stat. 13 Eliz. c. 10. Stat. 5 & 6 Vict. cc. 26, 27, 108.

STAT. 33 HEN.
8, c. 27.

In corporations none shall have a negative voice.

An oath shall not be observed which is taken contrary to this statute.

deny any such grant or grants, that then no such lease, election, or grant should be had, granted, or leased; and for the performance of the same, every person having power of assent to the same, have been and be daily thereunto sworn, and so the residue may not proceed to the perfection of such elections, grants, and leases, according to the course of the common laws of this realm, unless they should incur the danger of perjury. For the avoiding whereof, and for the due execution of the common law universally within this realm, and every place, in one conformity of reason to be used; be it ordained, established, and enacted, by the authority of this present parliament, that all and every peculiar act, order, rule, and estatute, heretofore made or hereafter to be made by any founder or founders of any hospital, college, deanery, or other corporation, at or upon the foundation of any such hospital, college, deanery, or corporation, whereby the grant, lease, gift, or election of the governor or ruler⁽¹⁾ of such hospital, college, deanery, or other corporation, with the assent⁽²⁾ of the more part of such of the same hospital, college, deanery, or corporation, as have or shall have voice of assent to the same, at the time⁽³⁾ of such grant, lease, gift, or election hereafter to be made, should be in any wise hindered or let by any one or more, being the lesser number of such corporation, contrary to the form, order, and course of the common law of this realm of England, shall be from henceforth clearly frustrate, void, and of none effect; and that all oaths heretofore taken by any person or persons of such hospital, college, deanery, and other corporation, shall be, for and concerning

(1) *Ruler*.—In the case of the *Dean and Chapter of Fernes*, (Dav. 42 (b).) in Ireland, which was concerning the confirmation of a lease made by the bishop; it was adjudged, that the confirmation was ill, because the dean was not only not present, but acted by a proctor who was a stranger to the chapter, and not of the body. This decision was in accordance with the rules of the civil law: “Absens non potest demandare votum suum, nisi uni de capitulo. . . Oportet, quod procurator semper institutus sit, de collegio.”

In the same case, it was likewise said, upon the authority of the Year Books, that neither would this, nor any other act, that had charged the revenues of the church, have been good, though the dean had done it by one of the chapter as his commissary; for, (as is there alleged,) “though the dean may have his president or commissary to execute his spiritual jurisdiction, yet such commissary cannot charge the possessions of the church;” and that, “besides the authority of the commissary for spiritual jurisdiction, and the authority of the president, sub-dean, &c., for the exercise of the decanal office, a distinct proxy to one or more members of the chapter, to represent him in the passing of grants, confirmations, and other chapter acts, was necessary to make them good and valid in law.”

(2) *Assent*.—This must be given by each member singly, or as the Report states, (Dav. 48 (a).) *in numero distincto*, and not in a confused and uncertain manner.

(3) *At the time*.—That is, when they are *capitulariter congregati* in one certain place, (Ibid. 43 (a), 57 (b).) and not a consent given by the members in several places, and at several times; which was the case of the *Dean and Chapter of Fernes*. (Dav. 42 (b).) The chapter consisted of ten persons, and only three were present, (together with the dean's proctor,) when the chapter seal was fixed to the confirmation; afterwards three

others of the prebendaries subscribed it; and this was adjudged ill, as being the act of particular persons only, and not of the corporation, because they were not assembled in one place, and in a caputular manner; that is, the act was not done, *simul et semel*, at the same time and place, as the law requires.

But it was there agreed and acknowledged, that in case the dean and chapter (Ibid. 48 (a).) be caputularly assembled in any place, their acts shall be good, though such assembly be not held in the chapter house; (Ibid. :) and the act of the dean and major part of the chapter so assembled, will be properly the act of the corporation, although the rest do not agree, or be absent through their own default.

The king's courts are the proper tribunals where disputed elections in lay corporations are to be determined. *Marriott v. Gregory*, Lofft, 21.

In private eleemosynary lay foundations, if no special visitor be appointed by the founder, the right of visitation, in default of his heirs, devolves upon the king, to be exercised by the great seal. *Rev v. Catherine's Hall, Cambridge (Master & Fellows of)*, 4 T. R. 233.

A *mandamus* is, in general, the proper mode of laying the validity of an election to a vacant fellowship. *Rev v. Gregory*, 4 T. R. 233.

In some cases no election is valid in which the master does not concur; (*In re Catherine Hall, Cambridge*, 5 Russ. 85; *In re Queen's College, Cambridge*, Ibid. :) but where the statutes provided, “that, the election of a fellow shall be by the master and the major part of the fellows present;” it was held, that a valid election might be made without the concurrent voice of the master. *In re Clare Hall, Cambridge*, Ibid. 73. *In re Gonville & Caius College, Cambridge*, Ibid. 76.

the observance of any such order, statute, or rule, deemed void and of none effect; and that from henceforth no manner person or persons of any such hospital, college, deanery, or other corporation, shall be in any wise compelled to take any oath for the observing of any such order, statute, or rule, upon the pain of every person so giving such oath, to forfeit, for every time so offending, five pounds; the one moiety thereof to be to the use of our sovereign lord the king, and the other moiety thereof to any of the king's subjects which will sue for the same in any the king's courts of record, by action of debt, bill, plaint, information, or otherwise; wherein the defendant shall not be admitted to wage his law, nor any protection nor essoin, or any other dilatory plea admitted or allowed."

STAT. 33 HEN. 8, c. 27.

Farther provisions respecting corporations, 2 & 3 P. & M. c. 18; 13 Car. 2, St. II. c. 1; 5 Geo. 1, c. 6; and 11 Geo. 1, c. 4.

XCIV. STAT. 33 HENRICI 8, c. 28 (1). A.D. 1541.

"An Act for the Chancellor of the Duchy of Lancaster, and others, to have Chaplains."

"To the king our sovereign lord. Where in the parliament holden at Westminster in the one and twentieth year of your most gracious reign, it was amongst other things ordained and provided, that certain honourable persons, and other of your highness' counsellors and officers, as well spiritual as temporal, should and might have chaplains beneficed with cure, to serve and attend upon them in their houses, which chaplains should not incur the danger of any penalty or forfeiture made or declared in the same parliament for non-residence upon their said benefices, or for obtaining licences or dispensations of pluralities, in which act is no provision made for any the head officers of your grace's several courts of your duchy of Lancaster, the courts of augmentations of the revenues of your highness' crown, the first-fruits and tenths, the master of your majesty's wards and liveries, the general surveyors of your grace's lands, and other your grace's courts.

STAT. 33 HEN. 8, c. 28.

None of the following Acts of this thirty-third year are on the Roll. 21 Hen. 8, c. 13.

"II. In consideration whereof, it may please your majesty that it may be enacted by your highness, with the assent of the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, that the chancellor of the said court of the duchy of Lancaster, the chancellor of your highness' court of augmentations, the chancellor of your grace's court of first-fruits and tenths, the master of your highness' wards and liveries, and every of your grace's general surveyors of your highness' lands, the treasurer of your grace's chamber, the treasurer of your highness' court of augmentations, and the groom of your grace's stole, and every of them for the time being, shall and may retain singularly to every of them in his house, or attendant unto his person, one chaplain having one benefice with cure of souls, which may be absent from the said benefice, and non-resident upon the same; the said statute made in the said twenty-first year of your most gracious reign, or any other statute, act, or ordinance, made to the contrary in any wise notwithstanding.

Certain persons which may retain one chaplain having a benefice with cure of souls, that may be absent from his benefice.

"III. Provided alway, and be it enacted by authority aforesaid, that every of the said chaplains so being beneficed as aforesaid, and dwelling with any the officers afore named, shall personally repair two times in every year at the least to his said benefice and cure, and there to tarry and abide by the space of eight days at every such time at the least, to visit and instruct his said cure, upon the pain to forfeit for every time so failing XL. s., the one moiety thereof to the king our sovereign lord, the other to such as will sue for the same by action of debt, bill, plaint, or information, in any of the king's courts of record, in which suit no essoin, protection, or wager of law shall be allowed."

These chaplains must sometimes resort to their cure.

XCV. STAT. 33 HENRICI 8, c. 29 (2). A.D. 1541.

"Religious Persons which were removed from one Corporation to another, enabled to inherit, purchase, sue, and be sued."

STAT. 33 HEN. 8, c. 29.

(1) As to the effect of this statute previously to Stat. 1 & 2 Vict. c. 106, vide 3 Geo. 3, c. 99. Vide Stat. 1 & 2 Vict. c. 106. Burn's E. L. by Phillimore, 482.

(2) Expired.

This statute was not repealed by Stat. 57

STAT. 33 HEN.
8, c. 30.

XCVI. STAT. 33 HENRICI 8, c. 30. A.D. 1541.

"All Leases, Grants, and other Writings, to be made by the Bishop of Coventry and Lichfield for the time being, in Writing under his Seal, of any his Lands, Offices, Fees, &c., and confirmed by the Dean and Chapter of Lichfield in Writing under their Chapter Seal, shall be good in Law to bind in succession the Successors of the said Bishop: and the Dean and Chapter of Lichfield shall be for ever the entire and sole Chapter of the said Bishoprick of Coventry and Lichfield, whereof the Prior and Covent of the dissolved Priory of Coventry were heretofore the Moiety or Half Part."

STAT. 33 HEN.
8, c. 31.

XCVII. STAT. 33 HENRICI 8, c. 31(1). A.D. 1541.

"The Diocese of Chester, and the Diocese of Man in the Isle of Man, shall be united to the Province and Archbishoprick of York, and shall be dissevered from the Archbishoprick of Canterbury."

[Every bishop's house belonging to his see, though in another diocese, shall be accounted his own (2).]

STAT. 33 HEN.
8, c. 32.

XCVIII. STAT. 33 HENRICI 8, c. 32. A.D. 1541.

"The Church of Whitegate, in the County of Chester, shall be a Parish Church of itself, and no part of the Parish of Over. There shall be a Vicar there to be named by the King, &c., which shall have perpetual Succession, and be called Vicar of the Parish Church of our blessed Lady the Virgin of Whitegate, and by that name shall sue and be sued."

STAT. 34 & 35
HEN. 8, c. 1.

XCIX. STAT. 34 & 35 HENRICI 8, c. 1 (3). A.D. 1542-3.

"Recourse must be had to the Catholick and Apostolick Church for the Decision of Controversies; and therefore all Books of the Old and New Testament in English, being of Tindal's false Translation, or comprising any Matter of Christian Religion, Articles of the Faith, or Holy Scripture, contrary to the Doctrine set forth sithence A.D. 1540, or to be set forth by the King, shall be abolished. No Printer or Bookseller shall utter any of the aforesaid Books. No Persons shall play in entertaine, sing or rhyme, contrary to the said Doctrine. No Person shall retain any English Books or Writings concerning Matter against the holy and blessed Sacrament of the Altar, or for the Maintenance of Anabaptists, or other Books abolished by the King's Proclamation. There shall be no Annotations or Preambles in Bibles or New Testaments in English. The Bible shall not be read in English in any Church. No Women or Artificers, Prentices, Journeymen, Servingmen of the degree of Yeomen or under, Husbandmen nor Labourers, shall read the New Testament in English. Nothing shall be taught or maintained contrary to the King's Instructions. And if any Spiritual Person preach, teach, or maintain anything contrary to the King's Instructions or Determinations, made or to be made, and shall be thereof convict, he shall for the first Offence recant, for his second abjure and bear a Faggot, and for his third shall be adjudged an Heretick, and be burned, and lose all his Goods and Chattels."

(1) *Vide* Stat. 6 Geo. 4, c. 34. Stat. 1 & 2 Vict. c. 30, s. 3.

(2) "The greatest part of the bishops of England had seats, or (as they were commonly called) places, in or near London, in which they were resident, during their attendance on parliament, on the court, or their own proper occasions. And it was a great advantage, in many respects, that during those attendances they might freely exercise jurisdiction in their respective places, as in their own proper dioceses." Gibson's Codex, 132. But now most of those houses are either exchanged, or (being built into private houses) are held in lease of the bishopricks

to which they belonged; and seemingly no houses now remain which can be considered as places of residence in another diocese, but Lambeth and Addington Palaces belonging to the Archbishop of Canterbury; "Winchester House," St. James' Square; and "Ely House," in Dover Street, Piccadilly. It is not however very clear, that such prelates can now exercise all their episcopal functions out of their respective dioceses;—and the question of the exemption of these places of residence from the jurisdiction of the bishop in whose diocese they are locally situated, is one of some difficulty.

(3) Repealed by Stat. 1 Edw. 6, c. 12, s. 3.

C. STAT. 34 & 35 HENRICI 8, c. 5 (1). A.D. 1542-3.

STAT. 34 & 35
HEN. 8, c. 5.

"The Bill concerning the Explanation of Wills."

CI. STAT. 34 & 35 HENRICI 8, c. 15. A.D. 1542-3.

STAT. 34 & 35
HEN. 8, c. 15.

"All Gifts, Grants, and Writings, to be made by the Bishop of Bath and Wells, under his Seal, of any his Lands, Offices, Fees, &c. and confirmed by the Dean and Chapter of Wells, in Writing under their Chapter Seal, shall be good in Law to bind the Successors of the said Bishop; and the Dean and Chapter of Wells shall be for ever the entire and sole Chapter of the said Bishoprick of Bath and Wells, whereof the Prior and Covent of the dissolved Monastery of St. Peter and Paul of Bath were heretofore the Half Part."

CII. STAT. 34 & 35 HENRICI 8, c. 17 (2). A.D. 1542-3.

STAT. 34 & 35
HEN. 8, c. 17.

"An Act for Bishops newly erected to pay their Tenths in the Court of the First-fruits and Tenths only."

"Where in the parliament begun and holden at London the third day of November, in the twenty-first year of the reign of our most dread sovereign lord King Henry the Eighth, and from thence adjourned to Westminster, and there holden and continued by divers prorogations until the dissolution thereof, it was among other things established and enacted, that the king's majesty, his heirs and successors, for the augmentation and maintenance of the royal estate of his imperial crown and dignity of supreme head of the church of England, should yearly have, take, enjoy, and receive, united and knit unto his imperial crown for ever, one yearly rent or pension amounting to the value of the tenth part of all the revenues, rents, farms, tithes, offerings, emoluments, and of all other profits, as well called spiritual as temporal, then appertaining or belonging, or that afterward from thenceforth should belong, to any archbishoprick, bishoprick, abbacy, monastery, priory, archdeaconry, deanery, hospital, college, house collegiate, prebend, cathedral church, collegiate church, conventual church, parsonage, vicarage, chantry, free chapel, or other benefice or promotion spiritual, of what name, nature, or quality soever they were, within any diocese of this realm, or in Wales; the said pension or annual rent to be yearly paid for ever to our said sovereign lord, to his heirs and successors, kings of this realm, at the feast of the Nativity of our Lord God, as by the same act, among divers other things therein contained, more plainly is shewed and may appear.

26 Hen. 8,
c. 3, it was
enacted, that
the king
should have a
yearly tenth of
all spiritual
promotions.
12 Co. 45.
8 Vin. 564.

"II. And where also at the parliament begun at Westminster the twenty-eighth day of April, in the thirty-first year of our said sovereign lord the king's most gracious reign, and afterwards continued by divers and sundry prorogations until the dissolution thereof, there was by authority of the said parliament erected and established a certain court, called the Court of the First-fruits and Tenths.

32 Hen. 8,
c. 45, the
king's court of
first-fruits
was erected.

"III. And it was further enacted by the authority of the said parliament, that the said first-fruits and tenths, and all the revenues and profits thereof, which then were, or hereafter from henceforth should grow or be by any manner of means, should be from thenceforth in the order, survey, and governance of the said courts of the first-fruits and tenths, and ministers of the same, as by the said act, among divers other things therein contained, plainly appeareth. Sithen the making of which said act, our said sovereign lord, of his most gracious and blessed disposition, by his most gracious letters patents, hath made, erected, incorporated, and established, within this his realm, divers and sundry bishops, and sees of bishops, that is to say, John now Bishop of Chester, John now Bishop of Gloucester, John now Bishop of Peterborough, Paul now Bishop of Bristol, and Robert now Bishop of Oxenford; and by the same his several and sundry letters patents hath sundrily and severally given and granted unto the said bishops divers and sundry manors,

Five new
bishopricks
erected by the
king's letters
patents.

(1) Repealed by Stat. 7 Gul. 4 & 1 Vict. 4, and revived by Stat. 1 Eliz. c. 4. *Vide etiam*, Stat. 2 & 3 Ann. c. 11. Stat. 3

(2) Repealed by Stat. 2 & 3 P. & M. c. Geo. 1, c. 10. Stat. 1 & 2 Vict. c. 20.

STAT. 34 & 35 lands, tenements, and hereditaments; in which said several letters patents there
 HEN. 8, c. 17. been reserved unto his highness, his heirs and successors, certain yearly rents and pensions, amounting to the tenth of the same manors, lands, tenements, and hereditaments, so severally given to the said several bishops, to be paid and payable yearly in our said sovereign lord the king's court of augmentations of the revenues of his crown, as in the said several letters patents more plainly appeareth. And forasmuch as by the said former statutes the said bishops been compellable every one of them to pay the tenths of his or their possessions annexed to their several bishopricks, in our said sovereign lord the king's court of first-fruits and tenths, the said bishops be and shall be double charged and chargeable with the payments of the said rents and pensions, reserved and to be paid as is abovesaid, for that, that the payments thereof in one of the said courts is no discharge in the other, contrary to the true intent and meaning of the king's highness, and to the great hurt and decay of the said bishops and their successors, if speedy remedy be not therefore provided: for reformation whereof, be it enacted and ordained by authority of this present parliament, that all the yearly rents, tenths, and pensions, as is or be above rehearsed, reserved in and by all and singular the king's highness' said several letters patents, made of any manors, lands, tenements, parsonages appropriate, or other hereditaments whatsoever they be, sithen the twenty-eighth day of April in the said thirty-first year of the reign of our said sovereign lord, to any of the said several bishops, shall, from the first day of May next coming, be in the rule, governance, and survey of the said court of first-fruits and tenths. And that all such and the same rents, pensions, and tenths, shall be from the said first day of May payable, and always paid, in the said court of first-fruits and tenths, and not elsewhere, nor in any other court or place; any thing rehearsed in the said several letters patents, or in any of them, or any act, statute, or law, had, made, or used to the contrary thereof notwithstanding.

The Bishops of
 Chester,
 Gloucester,
 Peterborough,
 Bristol, and
 Oxford, shall
 pay their
 tenths in the
 court of first-
 fruits.

Repealed by
 2 & 3 P. & M.
 c. 4, and
 revived by
 1 Eliz. c. 4.

"IV. And be it further enacted by the authority aforesaid, that the said bishops, nor their successors ne any of them, shall at any time hereafter be impeached or sued in the said court of first-fruits and tenths, of or for any tenth, yearly rent, or pension, reserved in or by any of the said several letters patents which now is, or before the said first day of May next coming shall be, due unto the king's highness, and that all and singular process and suits now had and pursued, or hereafter on this side the said first day of May, to be had or sued out of the said court of first-fruits and tenths, against any of the said bishops, newly erected and made, as is aforesaid, of, for, or concerning only any yearly rent, pension, or tenths, reserved upon or by any of the said letters patents, shall cease and be clearly void to all intents and purposes."

STAT. 34 & 35
 HEN. 8, c. 19.

CIII. STAT. 34 & 35 HENRICI 8, c. 19. A.D. 1542-3.

"An Act for the Payment of Pensions granted out of the late Abbies." {

A rehearsal of
 the statute of
 31 Hen. 8,
 c. 13, touching
 the dissolution
 of monasteries.

"Where the archbishops, bishops, archdeacons, and the other ecclesiastical persons, of both the provinces of Canterbury and York within this realm of England, have heretofore, in the right of their churches, had and received out of the late monasteries, abbies, priories, nunneries, colleges, hospitals, houses of friars, and other religious and ecclesiastical houses and places now dissolved, and out of the manors, lands, tenements, and hereditaments belonging to the same, divers pensions, portions, corrodies, *indemnities* (1), synodics, proxies, and other profits: and where also in the parliament begun and holden at Westminster the twenty-eighth day of April in the thirty-first year of the reign of our sovereign lord Henry the Eighth, by the grace of God King of England, France, and Ireland, defender of the faith, and of the church of England, and also of Ireland, the supreme head, it was ordained and enacted by the authority of the same parliament, that as well the said late monasteries, abbies, priories, nunneries,

(1) *Indemnities*:—Pensions paid to the churches united, or appropriated from the bishops, in consideration of discharging payment of procurations.

colleges, hospitals, houses of friars, and other religious and ecclesiastical houses and places, with the manors, lands, tenements, hereditaments, and other profits belonging unto the same late monasteries, abbies, priories, and other religious and ecclesiastical houses and places as then were, or then hereafter should come unto the king's highness' hands, should be vested, deemed, and adjudged in the actual and real possession and seisin of the king's highness, his heirs and successors.

STAT. 34 & 35
HEN. 8, c. 19.

"II. Saving to all and every *person and persons* (1), and bodies politick, and their heirs and successors, and the heirs and successors of all and every of them, other than the late abbots, priors, abbesses, prioresses, and other ecclesiastical governors and governesses of the said late monasteries, abbies, priories, nunneries, colleges, hospitals, houses of friars, and other religious and ecclesiastical houses and places, and their successors, and the successors of every of them, and such as pretend to be founders, patrons, or donors of such monasteries, abbies, priories, nunneries, colleges, hospitals, houses of friars, and other ecclesiastical houses and places, or of any manors, messuages, lands, tenements, or other hereditaments, belonging to the same, or to any of them, their heirs and successors, and the heirs and successors of every such founder, patron, or donor, and the then abbots, priors, abbesses, prioresses, and other ecclesiastical governors and governesses of such monasteries, abbies, priories, nunneries, colleges, hospitals, houses of friars, and other religious and ecclesiastical houses and places, which then hereafter should happen to be dissolved, suppressed, renounced, relinquished, forfeited, given up, or come to the king's highness, and such as pretend to be founders, patrons, or donors of such monasteries, abbies, priories, nunneries, colleges, hospitals, houses of friars, and other ecclesiastical houses and places, or of any manors, messuages, lands, tenements, or other hereditaments to the same belonging, or to any of them, their heirs and successors, and the heirs and successors of every of them, all such right, title, claim, interest, possession, rents, charges, annuities, leases, farms, offices, fees, liveries, livings, portions, pensions, corrodies, commons, synodics, proxies, and other profits, which they or any of them have, claim, ought, may, or might have had in or to the premises, or to any part or parcel thereof, in such like manner, form, and condition, to all intents, respects, constructions, and purposes, as if the same act had never been had ne made, (rents-services, rents-seck, and all other services and suits only except,) as by the same act, among divers other things therein contained, more plainly is shewed, and may appear.

A rehearsal of the saving in the said statute of 31 Hen. 8, specified.

"III. And yet notwithstanding the said general saving contained in the said act, the said archbishops, bishops, archdeacons, and other ecclesiastical persons of both the said provinces of Canterbury and York be, and sithen the making of the said act have been, disturbed and denied of the having, receiving, and gathering of the said pensions, portions, corrodies, indemnities, synodics, and proxies, with other profits belonging unto them, by divers of the farmers and occupiers of great part and parcel of the said manors, lands, tenements, and hereditaments of the said late monasteries, and other ecclesiastical houses and places, or being parcel of the possessions of them, and have no direct mean to obtain, recover, or come to the same, not only to their great hurt and damage, but also like to grow and be to the great loss and disherison of the king's majesty, concerning his first-fruits and tenths:

Pensions, synodics, proxies.

"IV. For reformation whereof, be it ordained, established, and enacted by the king's highness, with the assent of the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, that

Pensions, &c. due out of religious lands dissolved, shall

(1) *Person and persons*:—"Where there had been religious societies, (*Rochester (Bishop of) v. Rochester (Dean and Chapter of)*, (2 And. 106,) though they were dissolved, yet if the king did incorporate a new society, (for instance, a dean and chapter,) endowing them with the possessions of the dissolved society, the pension or annuity shall be due

from the society newly incorporated, especially if it be good law, (what hath been held,) that the old corporations were dissolved, not by the surrender, but by the extinction of the religious, and, by consequence, that the duties were in being, when this statute was made." Gibson's Codex, 707. *Le case de Proxies*, Davis (Sir John), Irish, 1.

STAT. 34 & 35
HEN. 8, c. 19.

be paid to
bishops, arch-
deacons, &c.
by the occu-
piers of the
same lands.

if any person or persons being farmer or occupier of any manors, lands, tenements, parsonages, benefices, or other hereditaments of any the said late monasteries or ecclesiastical houses or places, or belonging to them or any of them, by the king's highness' gift, grant, sale, exchange, or otherwise, out of which premises any such portions, pensions, corrodies, indemnities, synodics, proxies, or any other profits, have been heretofore lawfully going out, answered, or paid to any of the archbishops, bishops, archdeacons, and other ecclesiastical persons abovesaid, do, at any time after the first day of April next coming, *wilfully deny* (1) the payment thereof, at the days of payment heretofore accustomed, of any of the said pensions, portions, corrodies, indemnities, synodics, proxies, or any other profits, whereof the said archbishops, bishops, archdeacons, or other ecclesiastical persons, were in possession at or within *ten years* (2) next before the time of the dissolution of any such monasteries or other ecclesiastical houses or places; that then it shall be lawful for the same archbishops, bishops, archdeacons, or other ecclesiastical persons aforesaid, being so denied to be satisfied and paid thereof, and having right to the same thing in demand, to make such process as well against every such person and persons as shall so deny payment of the same pensions, portions, corrodies, proxies, indemnities, synodics, or any other profits which of right ought to be paid, as is afore said, as against the church or churches charged with the same, as heretofore they have lawfully done, and as by and according to the laws and statutes of this realm they may now lawfully do, for the true payment and recovery thereof; and if the party defendant be lawfully convict in any such suit, cause, or matter, according to the ecclesiastical laws, then the party plaintiff shall have and recover against the party defendant the thing in demand, and the value thereof in damages, with his costs for his suit.

The remedy if
the matter be
determinable
at the common
law.

“V. And be it further ordained and enacted by the authority aforesaid, that if it fortune the cause or matter of variance between any of the said parties be determinable at the common law, that then the party grieved to sue for his recovery and remedy therein at the common law; and if the party defendant fortune to be by the course of the common law lawfully condemned to the party plaintiff, then the said party plaintiff shall likewise have and recover against the party defendant the thing in demand, and the value thereof in damages, with his costs for his suit.

The remedy
where the king
hath demised
any land with
covenant of
discharge
thereof.
Hardr. 388.
Br. Recoverie,
2, &c.

“VI. Provided alway, and be it enacted by the authority aforesaid, that all and singular such of the said archbishops, bishops, archdeacons, and other ecclesiastical persons, which have right or title to claim, demand, or enjoy any of the said pensions, portions, corrodies, indemnities, synodics, or proxies against any person or persons, to whom the king hath made, or hereafter shall make in writing under seal, any sale, gift, grant, or lease for term of life, lives, or years, of any of the said manors, lands, tenements, parsonages, benefices, and other hereditaments charged or chargeable to or with any of the said pensions, portions, corrodies, indemnities, synodics, or proxies, and also hath covenanted, granted, promised, or agreed, or hereafter shall covenant, grant, promise, or agree by the said writing, to acquit, discharge, or save harmless the same person or persons, of all pensions, portions, corrodies, indemnities, synodics, and proxies, going out of the premises, or any parcel thereof, as be or shall be mentioned in the same writings, or any of them, shall sue for their remedy and recovery thereof in the court of the augmentations of the revenues of the king's crown, and not elsewhere; and that the party defendant having any such discharge, being convented, called, or sued in any other court or place, or before any other judge, for any the causes above said, shall be discharged and dismissed out of the same court or place without any thing paying for the same, by the only shewing forth any of the said writings sealed

(1) *Wilfully deny*:—In *Bulbrooke v. Briggs*, (Cro. Jac. 217,) where the pension libelled for was never demanded, and consequently not denied, a prohibition was refused, because the suit originally appertained to the spiritual court.

(2) *Ten years*:—“If pensions have been usually paid, the law will presume that they were paid at the time of the dissolution; but the showing of *deed* only, without prescription, will not avail.” Gibson's Codex, 707.

under any of the king's seals, proving or declaring the king to have covenanted, promised, or agreed, to acquit, discharge, or save harmless the said party defendant thereof, as is aforesaid; any thing contained in this act to the contrary notwithstanding."

STAT. 34 & 35
HEN. 8, c. 19.

CIV. STAT. 34 & 35 HENRICI 8, c. 21(1). A.D. 1542-3.

STAT. 34 & 35
HEN. 8, c. 21.

"An Act for the Confirmation of Lands obtained by the King's Majesty, by Exchange or otherwise, of his Grace's Subjects, or by his said Subjects of his Highness, notwithstanding the Misrecital either of Name, Place, or Date."

CV. STAT. 35 HENRICI 8, c. 1(2). A.D. 1543.

STAT. 35 HEN.
8, c. 1.

"An Act for the Establishment of the King's Succession."

[Oath of Supremacy.]

CVI. STAT. 35 HENRICI 8, c. 3(3). A.D. 1543.

STAT. 35 HEN.
8, c. 3.

"An Act for the Ratification of the King's Majesty's Stile."

"Where our most dread, natural, and gracious sovereign liege lord the king hath heretofore been, and is justly, lawfully, and notoriously known, named, published, and declared to be, King of England, France, and Ireland, *defender of the faith* (4), and of the church of England, and also of Ireland, in earth supreme head; and hath justly and lawfully used the title and name thereof, as to his grace appertaineth; be it enacted by the king our sovereign lord, with the assent of the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, that all and singular his grace's subjects and resiants, of or within this his realm of England, Ireland, and elsewhere, within other his majesty's dominions, shall from henceforth accept and take the same his majesty's stile, as it is declared and set forth in manner and form following, that is to say, in the Latin tongue by these words, 'Henricus Octavus, Dei gratia, Angliæ, Franciæ & Hiberniæ Rex, fidei defensor, & in terra ecclesiæ Anglicanæ & Hibernicæ supremum caput;' and in the English tongue by these words, 'Henry the Eighth, by the grace of God King of England, France, and Ireland, defender of the faith, and of the church of England, and also of Ireland, in earth the supreme head;' and that the said stile, declared and set forth by this act, in manner and form as is above-mentioned, shall be from henceforth, by the authority aforesaid, united and annexed for ever to the imperial crown of his highness' realm of England."

The king's
stiles and titles.

Repealed
1 & 2 P. & M.
c. 8, and
revived by
1 Eliz. c. 1.
Dyer, 98.

1 Mar. St. I.
c. 1, s. 3.

CVII. STAT. 35 HENRICI 8, c. 5(5). A.D. 1543.

STAT. 35 HEN.
8, c. 5.

[An Act concerning the Qualification of the Statute of the Six Articles.]

(1) This act is explained by Stat. 7 Edw. 6, c. 3. Stat. 4 & 5 P. & M. c. 1. Stat. 18 Eliz. c. 2. Stat. 35 Eliz. c. 3. Stat. 43 Eliz. c. 1.

(2) Repealed by Stat. 1 & 2 P. & M. c. 8, s. 21.

(3) Repealed by Stat. 1 & 2 P. & M. c. 8, s. 20. Revived by Stat. 1 Eliz. c. 1.

(4) *Defender of the faith*:—This title was given to King Henry the Eighth, by Pope Leo the Tenth, upon his writing against Luther; but Pope Paul the Third revoked it by his bull against the same king, (ann. Regni 27,) upon his suppression of the lesser houses of religion. 4 Inst. 344. Notwithstanding which revocation, Queen Mary, in all her sessions of parliament, before her marriage and after, and in her letters pa-

tents, &c., used the style and title of Defender of the Faith, even though Pope Julius the Third, in his bull to King Philip and Queen Mary, probably with a view to such revocation, had not thought fit to use that title, but addressed them, "Charissimis in Christo filiis nostris Philippo regi et Mariæ reginæ illustribus."

But all kings and queens regnant of England have, at their coronation, time out of mind, been sworn to defend the faith, and therefore were of common right defenders of the faith: by reason of which oath they were entitled to take upon them the style, and were more firmly bound to perform and do it, than by the Pope's bull.

(5) Repealed by Stat. 1 Edw. 6, c. 12, s. 3.

STAT. 35 HEN.
8, c. 16.

CVIII. STAT. 35 HENRICI 8, c. 16(1). A.D. 1543.

"The King shall have Authority during his Life to name two-and-thirty Persons, viz. sixteen Spiritual, and sixteen Temporal, to examine all Canons, Constitutions, and Ordinances, Principal and Synodal, and to establish all such Laws(2) Ecclesiastical, as shall be thought by the King and them convenient to be used in all Spiritual Courts."

STAT. 35 HEN.
8, c. 18.

CIX. STAT. 35 HENRICI 8, c. 18(3). A.D. 1543.

[An Act concerning the King's general Pardon.]

[Treasons against the king as supreme head of the church. All offences against the Statute of Provisions. Robberies of goods in churches were excepted.]

STAT. 37 HEN.
8, c. 4.

CX. STAT. 37 HENRICI 8, c. 4(4). A.D. 1545.

"A Bill for Colleges, Chantries, &c."

STAT. 37 HEN.
8, c. 9.

CXI. STAT. 37 HENRICI 8, c. 9. A.D. 1545.

"A Bill against Usury."

[Repealing Stat. 20 Hen. 3, c. 5; Stat. 3 Hen. 7, cc. 5 & 6; Stat. 11 Hen. 7, c. 8.]

STAT. 37 HEN.
8, c. 12.

CXII. STAT. 37 HENRICI 8, c. 12(5). A.D. 1545.

"An Act for Tithes in London."

STAT. 37 HEN.
8, c. 17.

CXIII. STAT. 37 HENRICI 8, c. 17. A.D. 1545.

"A Bill that Doctors of Civil Law, being married, may exercise Ecclesiastical Jurisdiction(6)."

The authority
of the king as
supreme head

"In most humble wise shew and declare unto your highness, your most faithful, humble, and obedient subjects, the lords spiritual and temporal, and the commons, of this present parliament assembled, that where your most royal majesty is and hath always justly been, by the word of God, supreme head in earth of the church of England, and hath full power and authority to correct, punish, and repress all manner of heresies, errors, vices, sins, abuses, idolatries, hypocrisies, and superstitions, sprung and growing within the same, and to exercise all other manner of jurisdictions, commonly called ecclesiastical jurisdiction: Nevertheless the Bishop of Rome and his adherents, minding utterly as much as in him lay to abolish, obscure, and delete such power given by God to the princes of the earth, whereby they might gather and get to themselves the government

(1) Expired. *Vide* Stat. 25 Hen. 8, c. 19, s. 7. Stat. 27 Hen. 8, c. 15. Stat. 3 & 4 Edw. 6, c. 11. Stat. 1 & 2 P. & M. c. 8.

(2) *Establish all such Laws*:—"Pursuant to the powers given by this act, not only the thirty-two persons were appointed for reformation of the canon law, but they had drawn the whole into form, so as nothing was wanting but the confirmation of the king, as appears by the Letter or Act of Confirmation which was ready prepared, and which is now prefixed to the book entitled, *Reformatio Legum, &c.*" Gibson's Codex, 951.

(3) Expired.

(4) *Vide post*. 294, Stat. 1 Edw. 6, c. 14.

"This act was made so general, that even the colleges at Oxford and Cambridge, with those of Winchester and Eton, were included. And upon the breaking up of the parliament, notice was sent to both the uni-

versities, that their colleges were at the king's disposal. This put them upon petitioning for mercy, which was soon obtained, and letters of thanks were sent for the continuance of them.

"But the commissioners appointed by this act for giving the king possession of such houses and places, did not enter upon many of them before his death, which happened in the January following." 2 Burn's E. L. by Phillimore, 537, 538.

(5) *Vide Macdougall v. Young*, 2 C. & P. 278.

(6) A statute to this effect had been prepared some years before, as appears from the following entry in the Records of Convocation, March 3, 1541, *i. e.* 33 Hen. 8: "Eodem die dominus cancellarius exhibuit actum, ubi decernitur, cancellarios episcoporum posse conjungi matrimonio, &c., á quo dissentiebant episcopi, &c."

and rule of the world, have, in their councils and synods provincial, made, ordained, established, and decreed, divers ordinances and constitutions, that no lay or married man should or might exercise or occupy any jurisdiction ecclesiastical, nor should be any judge or register in any court commonly called ecclesiastical court, lest their false and usurped power, which they pretended and went about to have in Christ's church, should decay, wax vile, and be of no reputation, as by the said councils and constitutions provincial appeareth: which standing and remaining in their effect, not abolished by your grace's laws, did sound to appear to make greatly for the said usurped power of the said Bishop of Rome, and to be directly repugnant to your majesty as supreme head of the church, and prerogative royal, your grace being a lay-man.

"II. And albeit the said decrees, ordinances, and constitutions, by a statute made in the five and twentieth year of your most noble reign, be utterly abolished, frustrate, and of none effect; yet because the contrary thereunto is not used, nor put in practice by the archbishops, bishops, archdeacons and other ecclesiastical persons, who have no manner of jurisdiction ecclesiastical, but by, under, and from your royal majesty, it addeth, or at the least may give occasion to some evil-disposed persons to think, and little to regard the proceedings and censures ecclesiastical made by your highness and your vicegerent, officials, commissaries, judges, and visitators, being also lay and married men, to be of little or none effect or force, whereby the people gathereth heart and presumption to do evil, and not to have such reverence to your most godly injunctions and proceedings as becometh them.

"III. But forasmuch as your majesty is the only and undoubted supreme head of the Church of England, and also of Ireland, to whom by Holy Scripture all authority and power is wholly given to hear and determine all manner causes ecclesiastical, and to correct vice and sin whatsoever, and to all such persons as your majesty shall appoint thereunto; that, in consideration thereof, as well for the instruction of ignorant persons, as also to avoid the occasion of the opinion aforesaid, and the setting forth of your prerogative royal and supremacy:

"IV. It may therefore please your highness, that it may be ordained and enacted by authority of this present parliament, that all and singular persons, as well lay, as those that be now married or hereafter shall be married, *being doctors* (1) of the civil law, lawfully create and made in any university, which shall be made, ordained, constituted, and *deputed* (2) to be any chancellor, vicar general, commissary, official, scribe, or register, by your majesty, or any of your heirs or successors, or by any archbishop, bishop, archdeacon, or other person whatsoever, having authority under your majesty, your heirs and successors, to make any chancellor, vicar general, commissary, official, or register, may lawfully execute and exercise all manner of jurisdiction, commonly called ecclesiastical jurisdiction,

STAT. 37 HEN. 8, c. 17.

of the church. The cause why no married man should exercise ecclesiastical jurisdiction.

25 Hen. 8, c. 19, s. 7. The clergy have no ecclesiastical jurisdiction but by and under the king. 27 Hen. 8, c. 20, s. 4. 32 Hen. 8, c. 7, s. 5.

Doctors of the civil law, if they be laymen, being married or unmarried, may exercise ecclesiastical jurisdiction.

(1) *Being doctors*:—In *Walker v. Lamb (Sir John)*, (Cro. Car. 258,) it was adjudged, that a grant of any office specified in this statute, is good, though not made to a doctor of civil law; partly because, the only design of the statute was, to declare who might enjoy such offices, namely, lay and married men, and partly because the statute is wholly affirmative, without any restriction; and notwithstanding it enacts, that doctors of civil law (although lay persons, or married,) shall have such offices, it does not enact, that none others shall have them. Exclusive of which the statute annexes this qualification of being doctor of civil law to scribes and registers, as strongly as to chancellors, vicars general, commissaries, and officials; and it cannot well be supposed it was the intention of the legislators, that none who are lay or married, and not doctors of civil law, should be

registers or scribes; or, whatsoever their intention was, the practice is universally contrary, notwithstanding this statute. And yet it must be owned, that the limiting clause in the conclusion of the act, (so that they be doctors of civil law,) seems to confine it to them, and to exclude all others, who are not doctors, from its favour and benefit. Vide etiam *Stock's case*, Poph. 37. Cro. Eliz. 314.

(2) *Deputed*:—In the case of the Bishop of *St. David's v. Lucy*, (1 Salk. 134,) it was held by the court of King's Bench, that notwithstanding the appointment of a chancellor or vicar general, the archbishop and every bishop may sit judge himself; for, as it is there added, "the power of a chancellor or vicar general is only delegated in case of the bishop."

STAT. 37 HEN. and all censures and coertions appertaining, or in any wise belonging unto the
8, c. 17. same, albeit such person or persons be lay, married or unmarried, so that they be

Cro. Eliz. 314. doctors of the civil law, as is aforesaid; any law, constitution, or ordinance to the
Cro. Car. 258. contrary notwithstanding."

Poph. 37. Repealed by 1 & 2 P. & M. c. 8, s. 22, and revived by 1 Eliz. c. 1, s. 12.

STAT. 37 HEN.
8, c. 21.

CXIV. STAT. 37 HENRICI 8, c. 21 (1). A.D. 1545,

"The Bill for the Union of Churches."

(1) This statute, and Stat. 17 Car. 2, c. ss. 15 & 16; but their provisions were by
3, were repealed by Stat. 1 & 2 Vict. c. 106, such statute re-enacted and extended.

STATUTA EDWARDI VI.

A.D. 1547—1553.

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I. STAT. 1 EDWARDI 6, c. 1(1). A.D. 1547.

STAT. 1 EDW.
6, c. 1.

“An Act against such as shall unreverently speak against the Sacrament of the Altar, and of the receiving thereof under both Kinds.”

“The king’s most excellent majesty, minding the governance and order of his most loving subjects to be in most perfect unity and concord in all things, and in especial in the true faith and religion of God, and wishing the same to be brought to pass with all clemency and mercy on his highness’ part towards them, as his most princely serenity and majesty hath already declared by evident proof, to the intent that his most loving subjects, provoked by clemency and goodness of their prince and king, shall study rather for love than for fear to do their duties, first to Almighty God, and then to his highness and the common wealth, nourishing concord and love amongst themselves; yet considereth and perceiveth that in a multitude all be not on that sort, that reason and the knowledge of their duties can move them from offence, but many which had need have some bridle of fear, and that the same be men most contentious and arrogant for the most part, or else most blind and ignorant: by the means of which sort of men, many things well and godly instituted, and to the edification of many, be perverted and abused, and turned to their own and others’ great loss and hindrance, and sometime to extreme destruction: the which doth appear in nothing more or sooner, than in matters of religion, and in the great and high mysteries thereof, as in the most comfortable sacrament of the body and blood of our Saviour Jesus Christ, commonly called the Sacrament of the Altar, and in Scripture(2) the supper [1 Cor. xi. 20] and table of the Lord [1 Cor. x. 21], the communion [1 Cor. x. 16] and partaking of the body and blood of Christ [1 Cor. x. 16, 17]: which sacrament was instituted of no less author than of our Saviour, both God and Man, when at his last supper, amongst his apostles, he did take the bread into his holy hands, and did say, Take, eat; this is my body [Matt. xxvi. 26], which is given [Luke xxii. 19] and broken for you [1 Cor. xi. 24]. And taking up the chalice or cup, did give thanks, and say [Matt. xxvi. 27], This is my blood of the New Testament [Mark xiv. 24], which is shed for you [Luke xxii. 20], and for many [Mark xiv. 24], for the remission of sins [Matt. xxvi. 28], that whensoever we should do the same, we should do it in the remembrance of him, and to declare and set forth his death, and most glorious passion, until his coming. Of the which bread whosoever

The penalty for unreverent speaking against the sacrament of the body and blood of Christ, or against the receiving thereof in both kinds.

The king mindeth to have unity in religion by clemency.

The blessed sacrament instituted by Christ himself, and by what words of his.

(1) Repealed by Stat. 1 Mar. sess. 2, c. 2.
Revived by Stat. 1 Eliz. c. 1, s. 14.

Scriptural references are very inaccurate, but such errors have been rectified.

(2) In Ruffhead’s copy of this statute, the

STAT. 1 EDW.
6, c. 1.

The causes of
the abuse of
the blessed
sacrament.

The penalty
for speaking
unreverently
of the most
blessed sacra-
ment.

Justices of
peace may
inquire of
offenders.

Examination of
the accusers.

12 Co. 103.
What process
shall be
awarded

eateth, or of the which cup whosoever drinketh unworthily [1 Cor. xi. 27], eateth and drinketh condemnation and judgment to himself, making no difference of the Lord's body [1 Cor. xi. 29]. The institution of which sacrament being ordained by Christ, as is before said, and the said words spoken of it here before rehearsed, being of eternal, infallible, and undoubted truth: yet the said sacrament (all this notwithstanding) hath been of late marvellously abused by such manner of men before rehearsed, who of wickedness, or else of ignorance and want of learning, for certain abuses heretofore committed of some, in misusing thereof, have condemned in their hearts and speech the whole thing, and contemptuously depraved, despised, or reviled the same most holy and blessed sacrament, and not only disputed and reasoned unreverently and ungodly of that most high mystery, but also in their sermons, preachings, readings, lectures, communications, arguments, talks, rhimes, songs, plays, or jests, name or call it by such vile and unseemly words, as Christian ears do abhor to hear rehearsed: for reformation whereof, be it enacted by the king's highness, with the assent of the lords spiritual and temporal, and of the commons, in this present parliament assembled, and by the authority of the same, that whatsoever person or persons, from and after the first day of May next coming, shall deprave, despise, or condemn the said most blessed sacrament, in contempt thereof, by any contemptuous words, or by any words of depraving, despising, or reviling; or what person or persons shall advisedly in any other wise condemn, despise, or revile the said most blessed sacrament, contrary to the effects and declaration abovesaid: that then he or they shall suffer imprisonment of his or their bodies, and make fine and ransom at the king's will and pleasure. And for full and effectual execution of the premises before devised, ordained, and enacted by this act, be it furthermore enacted by the authority of this present parliament, that immediately after the first day of May next coming, the justices of peace, or three of them at the least, whereof one of them to be of the quorum, in every shire of this realm, and Wales, and all other places within the king's dominions, shall have full power and authority by virtue of this act, as well to take information and accusation by the oaths and depositions of two able, honest, and lawful persons at the least, and after such accusation or information so had, to inquire by the oaths of xii. men, in every of their four quarter sessions yearly to be holden, of all and singular such accusations or informations to be had or made of any of the offences abovesaid, to be committed or done after the said first day of May, within the limits of their commission: and that upon every such accusation and information, the offender and offenders shall be inquired of, and indicted before the said justices of peace, or three of them at the least, as is aforesaid, of the said contempts and offences, by the verdict of twelve honest and indifferent men, if the matter of the said accusation and information shall seem to the said jury good and true.

"II. And it is also further enacted by the authority aforesaid, that the said justices of peace, or three of them at the least, as is aforesaid, before whom any such presentment, information, and accusation shall be made or taken as is aforesaid, shall examine the accusers, what other witness were by and present at the time of the doing and committing of the offence, whereof the information, accusation, and presentment shall be made, and how many others than the accusers have knowledge thereof, and shall have full power and authority by their discretions to bind by recognizance to be taken before them, as well the said accusers, as all such other persons whom the said accusers shall declare to have knowledge of the offences by them presented and informed, every of them in five pounds to the king, to appear before the said justices of peace, before whom the offender or offenders shall be tried at the day of trial and deliverance of such offenders.

"III. And it is further enacted by the authority aforesaid, that the said justices of peace, or three of them at the least, as is abovesaid, by virtue of this act, shall have full power and authority to make process against every person and persons so indicted, by two *capias* and an exigent, and by *capias utlagatum*, as

well within the limits of their commission, as into all other shires and places of this realm, Wales, and other the king's dominions, as well within liberties as without, and the same process to be good and effectual in the law to all intents, constructions, and purposes; and upon the appearance of any of the offenders, shall have full power and authority, by virtue of this act and the commission of peace, to determine the contempts and offences aforesaid, according to the laws of this realm and the effects of this act: and that the said justices of peace, or three of them at the least, as is abovesaid, shall have full power and authority to let any such person or persons so indicted, upon sufficient sureties, by their discretions, to bail for their appearance to be tried, according to the tenor, form, and effect of this act.

STAT. 1 EDW. 6, c. 1.
against the persons indicted.
Justices of peace may determine the offences.
Bailment of persons indicted.

“IV. Provided always, and be it enacted, that the said justices of peace, or three of them at the least, at their quarter-sessions, where any offender or offenders shall be or stand indicted of any of the contempts or offences abovesaid, shall direct and award one writ in the king's name to the bishop of the diocese where the said offence or offences be supposed to be committed or done, willing and requiring the said bishop to be in his own person or by his chancellor, or other his sufficient deputy learned, at the quarter-sessions in the said county to be holden, when and where the said offender shall be arraigned and tried, appointing to them in the said writ the day and place of the said arraignment; which writ shall be of this form: ‘Rex, &c. Episcopo L. salutem. Præcipimus tibi quod tu, cancellarius tuus, vel alius deputat. tuus sufficienter eruditus, sitis cum justic. nostris ad pacem in com. nostro B. conservand. assignat. apud D. tali die, ad sessionem nostram, adtunc et ibm. tenend. ad dand. consilium et advisament. eisdem justiciariis nostris ad pacem, super arranament. et deliberationem offendent. contra form. statuti concernen. sacrosanct. sacramentum altaris.’

A writ directed by the justices to the bishop.

“V. Provided always, and be it enacted by the authority aforesaid, that no person or persons shall be indicted of any of the contempts or offences abovesaid, but only of such contempts or offences as shall be done or perpetrated within three months next after the said offence or offences so committed or done*.

No indictment but within three months after the offence.
* Examined.

“VI. And be it further enacted by the authority aforesaid, that in all trials, for any such offenders before the said justices, as is aforesaid, the person or persons being complained on and arraigned, shall be admitted to purge or try his or their innocency, by as many or more witnesses in number, and of as good honesty and credence, as the witnesses be which deposed against him or them, or any of them.

The defendant may try his innocency by witnesses.

“VII. And forasmuch as it is more agreeable, both to the first institution of the said sacrament of the most precious body and blood of our Saviour Jesus Christ, and also more conformable to the common use and practice both of the apostles and of the primitive church, by the space of 500 years and more after Christ's ascension, that the said blessed sacrament should be ministered to all Christian people *under both the kinds* (1) of bread and wine, than under the form of bread only: and also it is more agreeable to the first institution of Christ, and to the usage of the apostles, and the primitive church, that the people being present should receive the same with the priest, than that the priest should receive it alone: therefore be it enacted by our said sovereign lord the king, with the consent of the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, that the said most blessed sacrament be hereafter commonly delivered and ministered unto the people within the church of England and Ireland, and other the king's dominions, under both the kinds, that is to say, of bread and wine, except necessity otherwise require, and also that the priest which shall minister the same, shall, at the least one day before, exhort all persons which shall be present likewise to resort and prepare themselves to receive the same. And when the day prefixed cometh, after a godly

The blessed sacrament shall be delivered unto the people under both kinds of bread and wine.

(1) *Under both the kinds*.—The following entry appears in the Journal of Convocation, 1 Edw. 6: “Item, determined, (no man

speaking against it,) that the communion should be administered in both kinds.”

STAT. 1 EDW. 6, c. 1. exhortation by the minister made, (wherein shall be further expressed the benefit and comfort promised to them which worthily receive the said holy sacrament, and danger and indignation of God threatened to them which shall presume to receive the same unworthily, to the end that every man may try and examine his own conscience before he shall receive the same,) the said minister shall not without a lawful cause deny the same to any person that will devoutly and humbly desire it; any law, statute, ordinance, or custom contrary thereunto in any wise notwithstanding: not condemning hereby the usage of any church out of the king's majesty's dominions."

The usage of other churches not condemned

STAT. 1 EDW. 6, c. 2.

II. STAT. 1 EDWARDI 6, c. 2(1). A.D. 1547.

"An Act for the Election of Bishops."

STAT. 1 EDW. 6, c. 12.

III. STAT. 1 EDWARDI 6, c. 12 (2). A.D. 1547.

"An Act for the Repeal of certain Statutes concerning Treasons and Felonies."

STAT. 1 EDW. 6, c. 14.

IV. STAT. 1 EDWARDI 6, c. 14 (3). A.D. 1547.

"The Act for Chantries Collegiate(4)."

All chantries, &c. be granted "The king's most loving subjects, the lords spiritual and temporal, and the commons, in this present parliament assembled, considering that a great part of

(1) "It hath been supposed by some, that the principal intent of this act was, to make deans and chapters less necessary, and thereby to prepare the way for a dissolution of them; but this statute was afterwards repealed, and the matter was brought back again, and still resteth upon Stat. 25 Hen. 8, c. 20." 1 Burn's E. L. by Phillimore, 202.

(2) Repealed by Stat. 6 Geo. 4, c. 25. Stat. 6 Geo. 4, c. 50. Stat. 7 & 8 Geo. 4, c. 27. Stat. 9 Geo. 4, c. 31.

(3) The entry in the Journal of the House of Peers, is, that this bill was "communi omnium procerum assensu conclusa, except' Archiep. Cant. Episcopis London', Norwiche', Hereford', Wigorn', Cicestren', Dunelmen', Elien'." Where the dissent of the popish bishops is easily accounted for, viz., because they desired, that the foundations might be continued as they then stood. But Archbishop Cranmer, in his dissent, acted upon a very different motive, viz. the hopes he had, that if such institutions could be saved out of lay hands till the king was of age, he might be persuaded to convert them to the bettering of the condition of the poor parochial clergy, who were now disappointed of all hopes of being bettered by other means, when they saw the impropriations conveyed apace into lay hands. 2 Burn. 45.

(4) Although this statute has now become almost obsolete, questions sometimes arise upon it, where old grants to charitable uses become the subject of judicial consideration, as in *Attorney-General v. Vivian*, 1 Russ. 226. The principle of all the decisions is, that the illegal purpose is made paramount where the superstitious uses and the lawful uses are so inseparably blended, that one cannot be distinguished from the other.

Mr. Boyle, in his Treatise upon Charities, (262), observes: "To characterize this act as one, which gave all property, appropriated to any of the superstitious uses reached by it,

to the king for his own benefit, is manifestly to misrepresent its policy and operation. As such, however, it has been sometimes treated. Vide *Attorney-General v. Cock*, 2 Ves. Sen. 273.

"The incorrectness of this view may be shown in two ways; first, by pointing out the several clauses respecting the duties of the commissioners to be appointed in pursuance of the act; and secondly, by referring to that part of the preamble, which speaks of the conversion of uses deemed superstitious, to uses considered to be godly; and which, after representing the inability, as it were, of the parliament, to effect that purpose, goes on to establish the propriety of committing such conversion to the king.

"From these two sources, it appears to have been the intention of parliament to provide for certain objects, as being the most urgent, through the medium of a commission, and to leave the rest to the discretion and disposal of the king; for it is to be observed, that the objects specified in the preamble are not identical, though some of them are the same, with those which are subsequently enumerated as proper to be comprised in a commission.

"The king, therefore, though he took all the property not exhausted by the latter, took it, not for his own benefit, but as a trustee, notwithstanding he could not be made responsible for its due application to any earthly tribunal."

Mr. Shelford, in his Treatise on Mortmain, (94), observes, that "The statute of Edw. 6 was taken to extend only to such uses as tended to superstition, which may be collected from the words of the act, and inferred from the time when it was made, the policy of those days being to subvert the authority of the Pope, and to dissolve the abbeys, chantries, and similar establishments." *Gibbons v. Malt-yard*, Poph. 6. *Porter's case*, 1 Co. 23 (b).

superstition and errors in Christian religion hath been brought into the minds and estimations of men, by reason of the ignorance of their very true and perfect salva-

STAT. 1 EDW.
6, c. 14.
to the king.
Cro. Jac. 51.

Thus, establishments or foundations for securing prayers for the souls of the dead are deemed to be superstitious, and within the Stat. 1 Edw. 6, c. 14. *Attorney-General v. Fishmongers' Company*, 2 Beav. 151. 5 M. & C. 11.

Parsonages and vicarages, although within the words of Stat. 1 Edw. 6, c. 14, were not within its intent, and were excepted by an equitable construction. *Eyston v. Studd*, Plowd. 466. *Pits v. Webster*, Palm. 125. *Vere v. Sampson*, Hardr. 208. And although the act, in terms, embraced all manner of colleges, yet it applied only to those that were superstitious, and not to the colleges of the universities. *Pits v. James*, Hob. 122. This statute also related only to such superstitious uses mentioned in it, as were then existing, and was not prospective. *Rex v. Portington (Lady)*, 1 Salk. 162. 12 Mod. 31. *Porter's case*, 1 Co. 23 (b). *Cary v. Abbot*, 7 Ves. 495.

Where a charitable use was intermixed with the superstitious, so that they could not be distinguished, the king was entitled to the entire. Duke, 469.

Lord Coke observes, (1 Inst. 342(a),) that Stat. 1 Edw. 6, c. 14, did not extend to any hospital whatsoever, either lay or religious; but in *Pits v. Webster*, (Palm. 124; Hob. 121,) an hospital founded and endowed under a licence granted by King Richard 2, with lands, for certain poor persons to serve God, and especially to pray for the soul of King Richard, and the founder, while they lived and after, and for the souls of the king's progenitors and heirs, and his own ancestors and heirs for ever, according to such ordinances as he should make, one of which was, that the poor should every day go to mass to a chapel of friars near adjoining, and should say fifty Paternosters and as many Ave-Marias, was held to be a superstitious hospital, and to be given to the crown by the statute of 1 Edw. 6, c. 14, although the word hospital was not in that act. Vide etiam *Egerton's (Lady) case*, Duke, 127.

Where lands were devised to the company of Goldsmiths, to the intent that they, with the issues and profits, should repair the tenements, and pay all rents issuing thereout; and should keep an obit, and should spend at it yearly 33s. 4d. and find perpetually a priest to sing masses for his soul; who should also keep a grammar school, chiefly for the poor, and receive 10l. yearly for his salary; and the value of the tenements at the time of the gift, exceeded the superstitious uses 50l. per annum; it was decided, that all the tenements were given to the king by Stat. 1 Edw. 6, for although the direction to found a grammar school chiefly for the relief of the poor, was a good and charitable use, yet being mixed with a superstitious use, and nothing in certain limited to the good use, in such case the uncertain mixture of the bad use with the good one, infected the whole. *Wimbish v. Tailbois*, Plowd. 51 (a). And

that the good use being derived out of the superstitious use, and to be performed by the priest, could not save the land, and it was the same, as if the whole had been limited to the superstitious uses. *Read's (Sir B.) case*, Mo. (Sir F.), 654. *Adams & Lambert's case*, 4 Co. 113 (a). So where a testator devised lands to the Dean of Newark, for an obit, and the residue to pay a chantry priest 7l. per annum during the lives of his wife and mother, to chant for his soul, and afterwards to perform divine service for ninety-nine years, and then directed the lands to be sold, and the produce distributed to charitable uses for the aforesaid souls, and the feoffees conveyed for ninety-nine years, reserving 7l. to the priest; and then came the Stat. 1 Edw. 6, c. 14,—it was held, that the fee-simple of the land was forfeited, as the testator had turned all to superstitious uses. *Waldern v. Ward*, 2 Sid. 13, 34, 46. *Pits v. James*, Hob. 122.

But where land was given to maintain a charitable use for the relief of the poor, and also that the schoolmaster or poor should pray for the donor's soul, the charitable use being considered as the principal intent of the donor, and the superstitious use of praying for the soul, but an accessory, the charitable use preserved the lands from forfeiture. *Hynshaw v. Morpeth (Corp. of)*, Duke, 242. It was the same where a certain sum was given out of lands, for maintaining a priest to say mass, and the remainder for repairing a church.

Lands given by a tenant in tail to superstitious uses, and enjoyed accordingly, five years before the Stat. 1 Edw. 6, belonged to the crown, for the issue was excluded, by the saving in the statute. *Sheffield (Lord) & Ratcliff's case*, Godb. 309. The king did not, under this statute, acquire the freehold of copyhold lands given to superstitious uses, but it remained in the lord of the manor, the uses being void, and the copyhold tenure destroyed. *Bagnall & Pol's case*, Godb. 233.

Where there is an absolute devise, an averment that it was for a superstitious use, is excluded by the Statute of Frauds, (29 Car. 2, c. 3,) and the nature of the thing; but an information may be maintained at the suit of the crown, for a discovery of the superstitious use, as the Statute of Frauds did not affect the king, who is bound by law to see that nothing be done to the propagation of a false religion. *Rex v. Portington (Lady)*, 1 Salk. 162. 12 Mod. 31.

The superstitious intent of the donor was in some early cases presumed from his own religious opinions: thus, where a recusant conveyed land by a fine in trust, that the profits should be employed upon an hospital of religious, which should be renewed when the times would serve, and, in the mean time, the profits were to be employed in the relief of poor people, at the discretion of the trustee and his heirs, according to the intent

STAT. 1 EDW.
6, c. 14.

Hob. 123.

Moor, 865.

1 Roll. 152,
417.

2 Roll. 160.

Goldsb. 93.

A rehearsal of
the statute of
37 Hen. 8,
c. 4, touching
the dissolution
of chantries,
&c.
Stile, 36, 82.

tion through the death of Jesus Christ, and by devising and fantasizing vain opinions of purgatory and masses satisfactory, to be done for them which be departed; the which doctrine and vain opinion, by nothing more is maintained and upholden, than by the abuse of trentals, chantries, and other provisions made for the continuance of the said blindness and ignorance; and further considering and understanding, that the alteration, change, and amendment of the same, and converting to good and godly uses, as in erecting of grammar schools to the education of youth in virtue and godliness, the further augmenting of the universities, and better provision for the poor and needy, cannot in this present parliament be provided and conveniently done, nor cannot, ne ought to any other manner person be committed, than to the king's highness, whose majesty, with and by the advice of his highness' most prudent council, can and will most wisely and beneficially, both for the honour of God, and the weal of this his majesty's realm, order, alter, convert, and dispose the same; and calling further to their remembrance, that in the parliament holden at Westminster the seven and thirtieth year of the reign of our late sovereign lord King Henry the Eighth, father to our most dread and natural sovereign lord the king that now is, it was ordained, enacted, and established, amongst other things, that all and singular colleges, free chapels, chantries, hospitals, fraternities, brotherhoods, guilds, and other promotions mentioned in the said former act, had or made to have continuance in perpetuity for ever, and then being, or that had or ought to be contributory or chargeable to the payment of the first-fruits and tenths, according to the laws and statutes in that behalf had and made, by

of the donor; because it was apparent that the donor was a recusant, and the employment was to be according to his intent, which could only be for the relief of poor recusants, which was contrary to law; it was decided not to be a charitable use. *Egerton's (Lady) case*, Duke, 127. So where lands were conveyed to trustees, upon hope, that they would employ the profits thereof to the use of the poor scholars in Oxford or Cambridge, or elsewhere, being such as studied divinity, and took holy orders, according to the discretion of the trustees, and agreeable to the intent of the donor; because he was a *recusant*, it was inferred, that his intent was in favour of poor popish priests, the word *elsewhere* meaning in some foreign university, and *holy orders*, such as were popish; and therefore the land was decreed to the heir, because the use was not charitable but superstitious. Duke, 128.

Although, as previously observed, the Stat. 1 Edw. 6, c. 14, was not prospective, so as to vest in the crown property afterwards given to superstitious uses, but related only to such as were then existing; and although there is no statute making superstitious uses void generally, except such, as are within Stat. 23 Hen. 8, c. 10, yet it has been determined, where property is devoted to superstitious uses, which are in their nature charitable, that the crown has the power of applying it to some other charitable purpose. When a devise is to a superstitious use, and made void by statute, or to a charity void by the statute of 9 Geo. 2, c. 36, the land or fund will belong to the heir at law, or next of kin; but where it is in itself a charity, but the mode in which it is to be applied cannot by the law of England take effect, as for promoting a religion contrary to that established by law; then the crown, by sign manual, directed to the attorney-

general, may give orders to what charitable purposes it shall be applied. *De Costa v. De Pas*, Ambl. 228. *Attorney-General v. Berryman*, Dick. 168. *De Garcin v. Lawson*, 4 Ves. 433. *Moggridge v. Thackwell*, 7 Ves. 77.

Thus, in *Cary v. Abbot*, (7 Ves. 490,) the testator gave the residue of his personal estate to his executors, and directed them to apply the interest "for the purpose of educating and bringing up poor children in the Roman catholic faith, such as orphans, or those whose parents or friends were not able or willing so to educate those children; to be chosen by my trustees hereinafter named, or such trustees as they shall afterwards appoint, or cause to be appointed; nevertheless, I at all times allow a part of this residue, to pay such sum or sums as may be requisite for the legal security or execution of this or any other part of this my last will." On a bill by the testator's next of kin, claiming the residue as in case of an intestacy, the use being for orphan children, and clearly charitable in its nature, although vitiated by being for educating them in the Roman catholic religion; the court declared the bequest of the residue void, but directed it to be applied to such use as the king should appoint by sign manual. The same direction was given where money was directed to be applied in teaching the Jewish law. *De Costa v. De Pas*, Ambl. 228. 2 Swanst. 487. *De Garcin v. Lawson*, 4 Ves. 433. *Mills v. Farmer*, 1 Meriv. 100. So one moiety of a legacy given to a Jewish charity, which was not permitted to take effect, was paid pursuant to the king's sign manual to the Magdalen Hospital, and the other moiety to the London Infirmary. *Isaac v. Gompertz*, 1 Ves. 464; Duke, 535. *Moggridge v. Thackwell*, 7 Ves. 61. *Shelford on Mortmain*, 93-100.

what name, surname, degree, or corporation, they or any of them were founded, ordained, established, erected, named, called, or known; and all and singular the mansion houses, manors, orchards, gardens, lands, tenements, pastures, woods, waters, rents, reversions, services, commons, tithes, pensions, portions, churches, chapels, advowsons, nominations, patronages, annuities, rights, interests, entries, conditions, leets, courts, liberties, privileges, franchises, and other hereditaments whatsoever, then appertaining or belonging, or that did appertain or belong, or were assigned or appointed to any such college, free chapel, chantry, hospital, fraternity, brotherhood, guild, stipendiary priest, or other the said promotions, or to any of them, or accepted, known, or taken as part, parcel, or member of them, or of any of them, and to the said colleges, chantries, free chapels, hospitals, fraternities, brotherhoods, guilds, stipendiary priests, or other promotions, or to any of them united or annexed, which between the fourth day of February, in the seven and twentieth year of the said late king's reign, and the five and twentieth day of December, in the seven and thirtieth of his grace's reign, by reason of any entry, expulsion, bargain, sale, feoffment, fine, recovery, lease, or other conveyance thereof made, were dissolved, determined, or relinquished by any of the ways, means, or conveyances mentioned in the said act, or otherwise, other than such of them as then were in the possession of the said late king, or that were granted or assured by his licence, agreement, consent, or letters patents, to any person or persons, or then had been lawfully obtained or recovered by any person by any former right or title, without fraud or covin, or by the king's licence, should from thenceforth, by authority of the same former act, be adjudged and deemed, and also be in the very actual and real possession and seisin of the said late king, and of his heirs and successors for ever, in as large and ample manner as the said priests, wardens, masters, ministers, governors, rulers, or other incumbents, or any of them, or the patrons, donors, or founders of any of them, at any time sithence the said fourth day of February, in the seven and twentieth year aforesaid, had occupied or enjoyed, or then had occupied or enjoyed the same, and as though all and singular the said colleges, chantries, hospitals, free chapels, fraternities, brotherhoods, guilds, and other the said promotions, and the said manors, lands, tenements, hereditaments, and other the premises whatsoever they be, and every of them, had been in the said former act specially, particularly, and certainly rehearsed, named, and expressed by express words, names, surnames, corporations, titles, and faculties, and in their natural kinds and qualities; the said entries, expulsions, bargains, sales, fines, feoffments, recoveries, or other assurance and conveyance whatsoever they were, had or made (except before in the former act excepted) to the contrary notwithstanding.

“II. And where also it was enacted and granted to the said late king, by the said former act, that the same late king, during his natural life, might make and direct his commission and commissions under his great seal, to enter into all and singular such and as many chantries, free chapels, hospitals, colleges, and other the promotions mentioned in the said former act, and into all and singular such manors, mansions, houses, meases, lands, tenements, pastures, woods, waters, rents, reversions, services, possessions, and other hereditaments whatsoever, or into any part or parcel thereof, in the name, seisin, and possession of all the hereditaments annexed, united, belonging, or appertaining to any chantry, hospital, free chapel, college, fraternity, brotherhood, guild, or other the said promotions, or whereof any priests, provosts, governors, rulers, or other incumbents of them or of any of them, by what name, surname, degree, title, or corporation, they and every of them or any of them were founded, erected, ordained, established, named, called, or known, then had or enjoyed, or that hereafter should have or enjoy, to the said chantries, hospitals, free chapels, colleges, fraternities, brotherhoods, guilds, and other the said promotions that then were chargeable to the payment of the first-fruits and tenths, and all colleges that were chargeable or not chargeable to the said payment of the first-fruits and tenths as is aforesaid, or to any of them, as should be named, expressed, and appointed, in the same commission or commissions; and to seise and take the same chantries, hospitals, colleges, free chapels, fraternities, brother-

STAT. 1 EDW.
6, c. 14.

1 Bulst. 120.

The king's
commissions
to certain
persons to
enter into
chantries, &c.
and their lands.
1 Leonard, 38.
3 Bulst. 151.

Moor, 263,
pl. 413, 693,
pl. 960.

STAT. 1 EDW.
6, c. 14.

Moor, 129,
pl. 277.

3 Leon. 114.
Colleges, free
chapels, chan-
tries, and their
lands, given to
the king.

Co. pl. 200.
Lane, 113,
115.

Dyer, 81, 267,
287.

2 Co. 49.

1 Roll. 357.

2 Roll. 206.

Cro. Car. 81.

Lands and
annual rents
assigned to the
finding of a
priest to have
continuance for
ever given to
the king.

4 Co. 104.

hoods, guilds, and other the said promotions, manors, lands, tenements, and other the premises mentioned in the said commission or commissions, and in every of them, and every part, parcel, and member of the same, into the king's possession and hands, to have and to hold the same to the said late king and to his heirs and successors for ever, as by the said former act, amongst other things, more at large appeareth. It is now ordained and enacted by the king our sovereign lord, with the assent of the lords and commons in this present parliament assembled, and by the authority of the same, that *all manner of colleges, free chapels, and chantries* (1), having, being, or in *esse* within five years next before the first day of this present parliament, (which were not in actual and real possession of the said late king, nor in the actual and real possession of the king our sovereign lord that now is, nor excepted in the said former act in form above said, other than such as by the king's commissions in form hereafter mentioned shall be altered, transposed, or changed,) *and all manors* (2), lands, tenements, rents, tithes, pensions, portions, and other hereditaments, and things above mentioned, belonging to them or any of them; and also all manors, lands, tenements, rents, and other hereditaments and things above mentioned, by any manner of assurance, conveyance, will, devise, or otherwise had, made, suffered, knowledge or declared, *given, assigned* (3), limited, or appointed, *to the finding of any priest* (4), to have *continuance for ever* (5), and wherewith or whereby any priest was sustained, maintained, or found within five years next before the first day of this present parliament, (which were not in the actual and real possession of the said late king, nor in the actual and real possession of our sovereign lord the king that now is,) and also all annual

(1) *All manner of . . . chantries*:—In the case of *Sir Henry Gilford*, (cit. Gibson's Codex, 1201,) it was said, that chantries are of two sorts, either such as were incorporated by the letters patents of the king, or such as, (though not duly erected or incorporated,) did yet subsist as chantries in use and reputation. And it was expressly held in *Adams & Lambert's case*, (4 Co. 107(b),) that chantries in reputation, as well as foundation, were given to the king by the present act, but with this difference, that if a chantry was set up by a private person of his own head, or by authority of the Pope only without the King, these were not chantries within the act; but otherwise, if there were the king's letters patents to countenance the erection, though by reason of any defects, such letters patents were not valid for that purpose. *Pits v. James*, Hob. 123.

(2) *And all manors*:—If these words had not been added, nothing had been given to the king but the bare sites of the colleges, free chapels, and chantries. *Adams & Lambert's case*, 4 Co. 108 (b).

(3) *Given, assigned*:—In *Holloway & Watkins*, (Cro. Jac. 51,) where 400*l.* was devised to the Dean and Chapter of York, for the finding of a chantry priest, &c. and they obliged themselves, *ac omnia bona sua*, to perform this, and did perform it; though *Daniel and Warborton* held that lands having been evidently purchased for that cause, and a priest maintained therewith, it was within this clause; yet the other justices held the contrary: that the intent of the deviser could not make a chantry, nor did the dean and chapter make any chantry; and as to the sum they paid, they did not pay it out of the land only, but out of all their possessions. And that when no lands certain are given to that purpose, nor employed for that purpose, it was not reason they should

be given to the king.

(4) *To the finding of any priest*:—Land of the value of 20*l.* *per ann.* being given to find a priest, and no mention made how much of it shall be applied to the maintenance of him, the whole is vested in the king by this statute. *Adams & Lambert's case*, 4 Co. 110 (b). And so it is, if 10*l.* of the 20*l.* is limited to the maintenance of a priest, and nothing said of the other 10*l.*, because it shall be presumed to be designed for books, vestments, and such other things, to carry on the superstitious use. But if the other 10*l.* was assigned to a good use, (as to repair the parish church, to be distributed among the poor, or the like,) then the king could only have the 10*l.* (which was allowed to the priest,) as an annual rent. *Ibid.* 111 (a). *Hart v. Brewer*, Cro. Eliz. 449.

(5) *Continuance for ever*:—In *Adams & Lambert's case*, (4 Co. 107,) it was resolved that the design of the act being to take away superstitious uses, and having expressly taken away such as were to have continuance for ever; such as were determinable and limited for a time, were also taken away by equity and good construction.

It may be observed, that since the Reformation, a charitable foundation for saying mass, praying for souls, &c., has been adjudged to be performed by saying the service according to the Liturgy; (1 Inst. 95 (b);) in fact, as previously stated, although the language of this statute relates only to superstitious uses then existing, yet other uses have since been deemed superstitious, and contrary to the policy of the law, as a devise for the good of the testator's soul was deemed to be a superstitious use; but that the queen, being the head of the commonwealth, might order it to be applied to a proper use. *Rex v. Portington (Lady)*, 1 Salk. 162.

rents, profits, and emoluments, at any time within five years next before the beginning of this present parliament, employed, paid, or bestowed, toward or for the maintenance, supportation, or finding of any stipendiary priest, intended by any act or writing to have continuance for ever, shall by the authority of this present parliament, immediately after the feast of Easter next coming, be adjudged and deemed, and also be in the very actual and real possession and seisin of the king our sovereign lord, and his heirs and successors for ever, without any office or other inquisition thereof to be had or found, and in as large and ample manner and form as the priests, wardens, masters, ministers, governors, rulers, or other incumbents of them, or any of them, at any time within five years next before the beginning of this present parliament, had, occupied, or enjoyed, or now hath, occupieth, or enjoyeth the same, and as though all and singular the said colleges, free chapels, chantries, stipends, salaries of priests, and the said manors, lands, tenements, hereditaments, and other the premises, whatsoever they be, and every of them, were in this present act specially, particularly, and certainly rehearsed, named, and expressed, by express words, names, surnames, corporations, titles, and faculties, and in their natures, kinds, and qualities.

“III. And over that, be it ordained and enacted by the authority of this present parliament, that where any manors, lands, tenements, tithes, pensions, portions, rents, profits, or other hereditaments, by any manner of assurance, conveyance, will, devise, or otherwise, at any time heretofore had, made, suffered, knowledged, or declared, were given, assigned, or appointed, to or for the maintenance, sustentation, or finding of one priest or divers priests, for term of certain years yet continuing, and that any priest hath been maintained, sustained, or found with the same, or with the revenues or profits thereof, within five years last past, that the king from the said feast of Easter next coming, shall have and enjoy in every behalf, for and during all such time to come, every such and like things, tenements, hereditaments, profits, and emoluments, as the priest or priests ought or should have had for or toward his or their maintenance, sustenance, or finding, and for no longer or further time, nor for any other profit, advantage, or commodity thereof to be taken.

“IV. Provided always, and it is ordained and enacted by the authority of this present parliament, that when and as soon as the time assigned for the maintenance, sustentation, or finding of the priest or priests, shall be expired and run, that then it shall be lawful to every person and persons, to whom any manors, lands, tenements, tithes, portions, pensions, rents, and other hereditaments, or any of them, should have belonged or appertained, if the said former act and this act had never been had or made, to enter into, take, perceive, have and enjoy the same, without any manner of livery, *ouster le maine*, petition or other suit to be made to the king, in like manner, form, and condition, to all intents, constructions, and purposes, as though the said former act and this act had never been had or made, and as though the king had never had any seisin or possession thereof; any thing in the said former act, or in this act, to the contrary in any wise notwithstanding.

“V. And be it ordained and enacted by the authority of this present parliament, that the king our sovereign lord, his heirs and successors, from the said feast of Easter next coming, shall have, hold, perceive, and enjoy for ever, all lands, tenements, rents, and other hereditaments, which by any manner of assurance, conveyance, will, wills, devise, or otherwise, at any time heretofore had, made, suffered, knowledged, or declared, were given, assigned, or appointed to go or to be employed *wholly* (1) to the finding or maintenance of any anniversary or obit, or other like thing, intent, or purpose, or of any light or lamp, in any church or chapel, to have continuance for ever, which hath been kept or maintained within five years next before the said first day of this present parliament.

STAT. 1 EDW.
6, c. 14.

Cro. Eliz. 799,
449.
Cro. Car. 248.

Where lands
have been
given to the
finding of
priests for
years.

He in reversion
may enter after
the years
expired.

Lands wholly
given to the
maintenance of
an obit, &c.
Co. Ent. 377.
Godb. 309.
Dyer, 337.

(1) *Wholly*.—In *Whetstone's case*, (4 Co. 116(b),) it was adjudged, that where lands were given to find an obit in such a chapel, appointing a certain sum upon it, and that the residue should be employed for the repa-

ration of the chapel, in which the obit was to be celebrated; all the lands were vested in the king, because, although the uses seemed to be different, yet they depended upon each other.

STAT. 1 EDW.
6, c. 14.

Part of the
issues of lands
employed to
the finding of a
lamp, obit, &c.
Dyer, 368.

The king's
distress for the
rent, and entry
for default
thereof.

Money given
to the finding
of a priest,
obit, lamp,
light, by a
corporation.

The king may
distrain for the
money or
profit.

“VI. And also, that where but *part of the issues* or revenues of any manors, lands(1), tenements, rents, or other hereditaments, hath by any of the ways or means abovesaid been given, assigned, or appointed to be bestowed or employed to the finding or maintenance of any anniversary or obit, or other like thing, intent, or purpose, or of any light or lamp, in any church or chapel, to have continuance for ever; that then our said sovereign lord the king shall from the said feast of Easter next coming for ever have, perceive, and enjoy every such sums of money, that in any one year within five years next before the first day of this present parliament, hath been expended and bestowed about the finding or maintenance of any such anniversary or obit, or other like thing, intent, or purpose, of any light or lamp, to him, his heirs and successors for ever, as a rent-charge to be paid yearly at the feast of St. Michael the Archangel, and the annunciation of our Lady St. Mary the Virgin, by even portions in the king's court of the augmentations and revenues of his crown, or in any other court or courts, as the king hereafter shall appoint. And that it shall be lawful to our said sovereign lord the king, his heirs and successors, for non-payment of any such sum or sums of money, to distrain in the said manors, lands, and tenements, of the issues and revenues whereof the said anniversary or obit, or other like thing, or any such light or lamp was found, sustained, or maintained; and that for lack of sufficient distress in or upon any of the premises, whereof any of the said yearly rents or sums of money should be paid, by the space of one month next after that any of the said rents should be paid, and be not paid within the said month; that then it shall be lawful to and for our sovereign lord the king, his heirs and successors, by virtue of this present act, to enter into, and to have and possess as much of the lands, tenements, and hereditaments whereof the said rent or rents should be levied or paid, as the rent or rents that should be levied or paid out of the same doth or shall amount or come to in yearly value, and the same lands, tenements, and hereditaments, to hold and keep, and to have to our said sovereign lord the king, his heirs and assigns for ever, or for such estate as our sovereign lord the king, his heirs or successors, had or ought to have had of or in the said rent or rents.

“VII. And it is also ordained and enacted by the authority of this present parliament, that our sovereign lord the king shall from the said feast of Easter next coming have, perceive, and enjoy, all and singular such sums of money, profits, commodities, and emoluments, which by virtue of any manner of assurance, conveyance, composition, will, device, or otherwise, heretofore have been given, assigned, limited, or appointed to have continuance for ever, which in any one year within five years next before the beginning of this present parliament have been paid, bestowed, or employed by any manner of corporations, guilds, fraternities, companies, or fellowships of mysteries or crafts, or any of them, being in England, Wales, and other the king's dominions, or by the masters, wardens, governors, or other officers or ministers, or by the master, warden, governor, or other officer or minister of them or any of them, toward or about the finding, maintenance, or sustentation of any priest or priests, of any anniversary or obit, lamp, light, or lights, or other like things as is aforesaid, to our said sovereign lord the king, his heirs and successors for ever, to be paid yearly as a rent-charge at the feasts of St. Michael the Archangel and the Annunciation of our Lady, by even portions, in the king's court of the augmentations and revenues of his crown, or in any other court or courts, as the king hereafter shall appoint.

“VIII. And that it shall be lawful to our said sovereign lord the king, his heirs and successors, for non-payment of any such sum or sums of money, profit, commodity, or emolument, or for non-payment of any of them, to distrain in all the manors, lands, and tenements, of every such crafts, corporations, guilds, fraternities, companies, or fellowships of mysteries or crafts, or any of them, by whom, or by the masters, wardens, governors, or other officers or ministers, or master,

(1) *Part of the issues . . . of . . .* under this act, but only an annual rent of ten marks. *Pawles (Dean and Chapter of), Dy. 368. Adams & Lambert's case, 4 Co. 116 (b).*

warden, governor, or minister, of the which any such sum or sums of money, profit, commodity, or emolument, have or hath been paid, bestowed, or employed: and that all and every of the said sums of money, profits, commodities, and emoluments, shall from the feast of Easter next comiug, without any manner of inquisition or office to be had or found, be judged and deemed to be in the actual and real possession of our said sovereign lord the king, in like manner and form to all intents, constructions, and purposes, as if the same had been particularly and specially mentioned in this present act.

STAT. 1 EDW.
6, c. 14.

“IX. And furthermore be it ordained and enacted by the authority aforesaid, that the king our sovereign lord shall from the said feast of Easter next coming have and enjoy to him, his heirs and successors for ever, all fraternities, brotherhoods, and guilds, being within the realm of England and Wales, and other the king's dominions: and all manors, lands, tenements, and other hereditaments belonging to them or any of them; (other than such corporations, guilds, fraternities, companies, and fellowships of mysteries or crafts, and the manors, lands, tenements, and other hereditaments pertaining to the said corporations, guilds, fraternities, companies, and fellowships of mysteries or crafts above mentioned;) and shall by virtue of this act be judged and deemed in the actual and real possession of our said sovereign lord the king, his heirs and successors, from the said feast of Easter next coming, for ever, without any inquisition or office thereof to be had or found.

Fraternities,
brotherhoods,
and guilds,
given to the
king.

“X. And be it ordained and enacted by the authority aforesaid, that our said sovereign lord the king, his heirs and successors, at his and their will and pleasure may direct his and their commission and commissions under the great seal of England to such persons as it shall please him: and that the same commissioners, or two of them at the least, shall have full power and authority by virtue of this act, and of the said commission, as well to survey all and singular lay-corporations, guilds, fraternities, companies, and fellowships of mysteries or crafts incorporate, and every of them, as all other the said fraternities, brotherhoods, and guilds within the limits of their commission to them directed, and all the evidences, compositions, books of accompts, and other writings of every of them, to the intent thereby to know what money and other things was paid or bestowed to the finding or maintenance of any priest or priests, anniversary or obit, or other like thing, light or lamp, by them or any of them: as also to inquire, search, and try by all such ways and means as to them shall be thought meet and convenient, what manors, lands, tenements, rents, and other hereditaments, profits, commodities, emoluments, and other things, be given, limited, or appointed to our said sovereign lord the king by this act, within the limits of their commission.

Commissions
shall be
directed to
several per-
sons, and what
their authority
shall be.

“XI. And also that the same commissioners, or two of them at the least, by virtue of this act, and of the commission to them directed, shall have full power and authority to assign, and shall appoint (in every such place where guild, fraternity, the priest or incumbent of any chantry *in esse*, the first day of this present parliament, by the foundation, ordinance, or the first institution thereof, should or ought to have kept a *grammar school* (1) or a preacher, and so hath done sithen the feast of St. Michael the Archangel last past,) lands, tenements, and other hereditaments of every such chantry, guild, and fraternity, to remain and continue in succession to a schoolmaster or preacher for ever, for and toward the keeping of a grammar school or preaching, and for such godly intents and purposes, and in such manner and form, as the same commissioners, or two of them at the least, shall assign or appoint: and also to make and ordain a vicar to have perpetuity for ever in every parish church, the first day of this present parliament, being a college, free chapel, or chantry, or appropriated, annexed, or united to any college, free chapel, or chantry, that shall come to the king's hands by virtue of this act, and to endow every such vicar sufficiently, having respect to his cure and charge; the same endowment to be to every such vicar, and to his successors for ever, without

Lands assigned
towards the
maintenance of
a preacher or
schoolmaster.
Endowment of
a vicar.

(1) *Grammar school*:—Among the petitions of the clergy in convocation, to the upper house, ann. 1555, one is, “Item, for

schools and hospitals promised in the Statute of Suppression of Colleges.” Gibson's Codex, 1203

STAT. 1 EDW.
6, c. 14.

Assigning one
or more priests
in a parish,
and lands for
their mainte-
nance.

The commis-
sioners shall
assign yearly
pensions to
every go-
vernor, fellow,
and servant, of
every chantry,
&c. dissolved.

Money or
yearly benefit
assured to cer-
tain persons
out of a chan-
try, &c. shall
be so continued
and paid.

Lands assigned
towards the
maintenance of
the walls and
banks of the
sea.

The commis-
sioners' obli-
gation to the
favourable
execution of
the commis-
sion.

any other licence or grant of the king, the bishop, or other officers of the diocess. And also the said commissioners, or two of them at the least, shall have authority by force of this act, to assign in every great town or parish, where they shall think necessary to have more priests than one, for the ministering of the sacraments within the same town or parish, lands and tenements belonging to any chantry, chapel, or stipendiary priests, being within the same town or parish, the first day of this present parliament, to be to such person and persons, as the said commissioners, or two of them at the least, shall assign or appoint to continue in succession for ever, for and towards the sufficient finding and maintenance of one or more priests within the same town or parish, as by the said commissioners, or two of them, shall be thought necessary or convenient: and as well to make ordinances and rules concerning the service, use, and demeanour of every such priest and schoolmaster, as is aforesaid, to be appointed, as also by what name or names he and they shall from henceforth be named and called. And also that the said commissioners, or two of them at the least, shall have full power and authority by virtue of this act, and of the said commission to them directed, to assign as well to every dean, master, warden, provost, and other incumbent and minister of any of the said colleges, free chapels, or chantries, being within the limits of their commission, which hereafter shall be dissolved or determined by virtue of this act, as to every stipendiary priest and other priest, whose salary the king shall be intitled unto by this act, as to every fellow and poor parson having yearly relief out of any of the said colleges, free chapels, or chantries being within the limits of their commission, such several yearly annuities, pensions, or other recompences during their several lives, as to the same commissioners, or two of them, shall be thought meet and convenient.

“XII. And over that, the said commissioners, or two of them at the least, shall have full power and authority by virtue of this act, and of the commission to them directed, to inquire and try by such ways and means as they shall think meet and convenient, what money, profit, and benefit any poor person or persons by virtue of any conveyance, assurance, composition, will, device, or otherwise, heretofore had or made, intended or meant to have continuance for ever, had or enjoyed within five years next before the beginning of this present parliament, out of any college, free chapel, or chantry, and other the premises, given, limited, or appointed to the king by this act, being within the limits of their commission; and thereupon to make assignments and orders in such manner and form as all and singular such said money, profit, and commodity shall be paid to poor people for ever, according to such said assurance, composition, will, device, or other thing had or made for the same; and to assign and appoint lands, tenements, or other hereditaments, parcel of the premises, for the maintenance and continuance of the same for ever; and also to appoint to fraternities, brotherhoods, and guilds, lands, tenements, and hereditaments, parcel of the premises, towards and for the maintenance of piers, jutties, walls, or banks against the rages of the sea, havens, and creeks. And that all and singular annuities, pensions, and other recompences shall be half-yearly paid to the persons to whom the same ought to be paid, by the king's receiver for the time being, of his lands commonly called the suppressed lands, or other his revenues, lying in the county or city where such college, free chapel, or chantry, or other the premises, given, limited, or appointed to the king by this act, the first day of this present parliament, were or remained, without any fee or reward therefore to be paid: the first payment to be begun at the feast of St. Michael the Archangel next coming; and that every such receiver, upon his accompt, shall have full and due allowance of all such annuities, pensions, and other recompences by him paid, by virtue of any such assignment to be made by the said commissioners, or two of them at the least.

“XIII. And it is ordained and enacted by the authority of this present parliament, that the said commissioners, and every of them, that shall take upon him the execution of any of the said commissions, shall be bound, as he will answer before God, to execute the commission to him and other directed, beneficially towards the deans, masters, wardens, provosts, and other incumbents and ministers

aforesaid, and towards the poor people, concerning the said assignments, and also towards the maintenance of piers, jutties, walls, or banks against the rages of the sea, havens, and creeks. And that all manner of assignments and ordinances to be made by the said commissioners, or two of them at the least, and certified under their seals, or the seals of two of them at the least, into the king's court of the augmentations and revenues of his crown, or to any other court or courts, by the king's majesty to be made or assigned, shall by virtue of this act and of the said commissions, be as good and effectual in the law, to all intents, constructions, and purposes, as though the same had been assigned and ordained by authority of this present parliament, by express and apt words, terms, and sentences.

"XIV. Provided also, that such annuities, pensions, or other recompences that the said commissioners, or any of them, shall assign or appoint to be paid yearly to any such dean, master, warden, governor, or other incumbent, fellow, or minister, shall not extend to any more clear yearly value, than such dean, master, warden, provost, governor, or other incumbent, fellow, or minister, or his predecessor, lawfully had and enjoyed in money, meat, drink, livery, or allowance of the same yearly, within five years next before the beginning of this present parliament.

"XV. Provided also, that if any of the said masters, wardens, provosts, governors, or other incumbents, fellow or minister, shall at any time hereafter during his life be promoted by the king to any benefice or other spiritual promotion, being of a better clear yearly value than his said annuity or pension, or other recompence shall be of; that then the annuity, pension, or other recompence, that any such dean, master, warden, governor, provost, or other incumbent, fellow, or minister that shall be so promoted shall have, shall, immediately after such promotion had, cease and utterly determine.

"XVI. And be it ordained and enacted by the authority of this present parliament, that the said commissioners, or two of them at the least, to whom any commission by virtue or mean of this act shall be directed and delivered, shall be bound upon the forfeiture, every of them of an hundred pound, to make certificate under their seals, or the seals of two of them at the least, into the said court of the augmentations and revenues of the king's crown, or into any other court, as is aforesaid, within one year next after the commission to them directed, of all manors, lands, tenements, rents, tithes, portions, pensions, hereditaments, and recompences, by the same commissioners or two of them assigned or appointed to any of the uses, intents, or purposes above mentioned.

"XVII. And also be it ordained and enacted by the authority of this present parliament, that our sovereign lord the king shall have and enjoy all such goods, chattels, jewels, plate, ornaments, and other moveables, as were or be the common goods of every such college, chantry, free chapel, or stipendiary priest, belonging or annexed to the furniture or services of their several foundations, or abused of any of the said corporations in the abuses aforesaid, the property whereof was not altered nor changed before the eighth day of December in the year of our Lord God 1547.

"XVIII. And it is also ordained and enacted by the authority of this present parliament, that all such debts and sums of money, as ought or should without fraud or covin hereafter be paid of the money or goods of any of the said colleges, due or payable by reason of any contract, specialty, or promise had or made before the same eighth day, shall truly and fully be paid by the treasurer of the king's court of the augmentations and revenues of his crown, or by the treasurer or receiver of any other court to which any of the premises shall be appointed, of the king's treasurer, being in his or their hands, with as convenient speed as the same may be paid.

"XIX. Provided always, and be it ordained and enacted by the authority aforesaid, that this act, or any article, clause, or matter contained in the same, shall not in any wise extend to any college, hostel, or hall, being within either of the universities of Cambridge and Oxford; nor to any chantry founded in any of the colleges, hostels, or halls, being in the same universities; nor to the free chapel of St. George the Martyr, situate in the castle of Windsor; nor to the

STAT. 1 EDW. 6, c. 14.

The force of the commissioners' assignments and ordinances.

No offices, annuity, or pension, shall extend to more than it did before.

His pension shall cease that is promoted to a better living.

The commissioners' certificate of lands assigned to the uses aforesaid.

The king shall have the goods of every college, chantry, &c. Latch. 38.

The debts of colleges shall be paid by the king.

To which colleges, &c. this statute shall not extend.

STAT. 1 EDW.
6, c. 14.

Cathedral
churches
wherein any
chantries,
obits, lamps,
or lights, have
been main-
tained.

The king may
alter the names
of chantries.

The right of
strangers
saved.
2 Roll. 318,
324.

Certain rents
and duties
saved to every
donor, founder,
and governor
of a college,
chantry, &c.
Dyer, 252.

college called St. Maries College of Winchester besides Winchester, of the foundation of Bishop Wickham; nor to the college of Eaton; nor to the parish church commonly called the chapel in the see in Newton, within the Isle of Ely in the county of Cambridge; nor to any manors, lands, tenements, or hereditaments to them or any of them pertaining or belonging; nor to any chapel made or ordained for the ease of the people dwelling distant from the parish church, or such like chapel whereunto no more lands or tenements than the church-yard, or a little house or close doth belong or pertain; nor to any cathedral church or college where a bishop's see is, within this realm of England or in Wales, nor to the manors, lands, tenements, or other hereditaments of any of them, other than to such chantries, obits, lights, and lamps, or any of them, as at any time within five years next before the beginning of this present parliament have been had, used, or maintained within the said cathedral churches, or within any of them, or the issues, revenues, or profits of any of the said cathedral churches, to which chantries, obits, lights, and lamps, it is enacted by the authority aforesaid, that this act shall extend.

“XX. And it is ordained and enacted by the authority aforesaid, that our sovereign lord the king, at any time during his life (which God long preserve) may at his will and pleasure alter and change the name or names of all and singular chantries, and the foundations of the same, being in any of the colleges, hostels, or halls of any of the said universities, according as to his godly wisdom shall be thought meet and convenient :

“XXI. Saving to all and every person and persons, bodies politick and corporate, their heirs and successors, and the heirs and successors of every of them, (other than the masters, wardens, ministers, governors, rulers, 'priests, incumbents, fellows, and brethren of the said colleges, chantries, free chapels, and other the premises, given, limited, or appointed to the king by this act, and the successors of them and every of them; and other than such as be or pretend to be founders, patrons, or donors of the premises or any of them, or of any part or parcel thereof, and the heirs, successors, and assigns of every or any of them; and other than such as be or were feoffees, recoverees, conisees, grantees, or devisees of any of the premises, to or for any of the uses, purposes, or intents abovementioned, or to the use of any of the said colleges, free chapels, chantries, or other the premises, given, limited, or appointed by this act to the king, or to the intent to employ the rents or profits thereof to the use of the masters, rulers, incumbents, or ministers of them or any of them; and other than such person and persons and bodies politick and corporate, their heirs, successors, and assigns, as claim or pretend to have estate, right, title, interest, use, possession, or condition of, in, or to the premises or any part or parcel thereof, by reason of any feoffment, fine, bargain, and sale, or by any other ways, means, or conveyance to them made of any estate of inheritance, without the said late king's licence, assent, consent, or agreement, and without the licence, assent, or agreement of the king's majesty that now is, by any of the said deans, masters, wardens, ministers, governors, rulers, priests, or incumbents, or by the founders, donors, or patrons of them or of any of them,) all such right, title, claim, possession, interest, rents, annuities, commodities, commons, offices, fees, leases, liveries, livings, pensions, portions, debts, duties, and other profits, which they or any of them lawfully have, or of right ought to have, or might have had, in, of, or to any of the premises, or in, of, or to any part or parcel thereof, in such like, manner, form, and condition, to all intents, respects, constructions, and purposes, as if this act had never been had or made, and as though the said chantries, colleges, and other the said promotions, had still continued and remained in their full being; and saving to all and every patron, donor, founder, or governor of any such college, chantry, free chapel, stipendiary priests, and other the premises, given, limited, or appointed to the king by this act, and the donor, feoffor, and giver of the aforesaid lands, tenements, or hereditaments, to them or any of them, or to any uses or purposes before mentioned, all such rents-services, rents-seck, rents-charge, fees, annuities, profits, and offices; and also all leases for term of life, lives, and years, whereupon the accustomed rent or more is

reserved, as they or any of them lawfully had, perceived, and enjoyed in, out, or of any of the said promotions, or out of any of the said lands, tenements, or hereditaments, before the first day of this present parliament. STAT. 1 EDW. 6, c. 14.

“XXII. And over that, it is ordained and enacted by the authority of this present parliament, that all and every person and persons being in life, which have or hath for any sum of money to him or them paid, bargained, or sold, any manors, lands, tenements, or other hereditaments aforesaid, whereunto the king our sovereign lord is intitled by virtue of this act, shall repay to such person as so bought any of the said manors, lands, tenements, or other hereditaments, or to his executors or assigns, upon a request therefore made, or within three months then next ensuing the same request, as much money as he or they received for the sale of any thing so by him or them sold; and for non-payment thereof such person and persons as purchased or bought the said lands, tenements, and other the premises, or any parcel thereof, and their executors and administrators, shall be enabled by the authority of this present parliament to sue and maintain an action of debt at the common law of this realm, against such person or persons as so bargained or sold to him or them, or to their testator, any of the premises belonging to any college, chantry, free chapel, or other promotion spiritual; in which action of debt no essoin, protection, or wager of law shall be admitted or allowed.

Every person that hath sold any lands due to the king by this act shall repay the money.

“XXIII. And be it further enacted by the authority aforesaid, that all and every of the said chantries, colleges, and free chapels, and other the premises given, limited, or appointed to the king by this act, and all the mansion-houses, manors, lands, tenements, possessions, and hereditaments, and other the premises whatsoever they be, given, limited, and appointed to the king by this act, and every part and parcel of them, which by authority and virtue of this act been vested, adjudged, and deemed, or shall be in the king's majesty's possession and hands, or which the king shall be intitled unto by virtue of this act, shall be in the order, survey, and governance of our sovereign lord the king's court of the augmentations and revenues of his crown, or in such other court as the king at any time hereafter shall assign, name, or appoint, and so shall and may be granted, letten, and set to farm by the chancellor, officers, and ministers of the same court, or of any other court so to be appointed, in such manner and form as other manors, lands, and tenements appointed to the same court of augmentations and revenues of his grace's crown, or other court so to be appointed, been to be granted or letten: and that all the farms, issues, revenues, and profits coming and growing of the same premises, and of every part thereof, shall be taken and received to the king's use, by the officers and ministers of the same court or courts, in such manner and form as is used and had of other manors, lands, and tenements, and of the issues, revenues, and profits of the same, committed to the order, rule, survey, and governance of the said court of the augmentations and revenues of the king's crown, or any other court so to be appointed; any act, statute, ordinance, custom, or use, heretofore had, made, or used to the contrary notwithstanding.

All chantries, free chapels, &c. Lands shall be in the order of the court of augmentations.

“XXIV. And it is further enacted by the authority aforesaid, that if any of the said masters, wardens, ministers, rulers, governors, priests, incumbents, or owners of any such college, chantry, free chapel, or of any the premises given, limited, or appointed to the king by this act, or of any of them, sithence the three and twentieth day of November in the xxxvii. year of the reign of the said late king, have made any lease under his or their common seal or otherwise, for term of years, life, or lives, of their said colleges, chantries, free chapels, or of other the same premises or of any part thereof, or of any manors, lands, tenements, possessions, or hereditaments whatsoever they be, to them or to any of them united or annexed, belonging or appertaining, upon the which leases the usual and old rents and farms accustomed to be yielded and reserved, or more, by the space of twenty years next before the said three and twentieth day of November, are not reserved and yielded, shall be utterly void and of none effect: and that all other leases and grants heretofore made of any of the premises given, limited, or appointed to the king by this act, shall be as good, available, and effectual in the law, to all intents,

Leases made by the governors, not reserving the old rent, shall be void.
1 Roll. 202

STAT. 1 EDW.
6, c. 14.

Lands whereof
the governors
of any colleges,
&c. were seised
to their own
uses.

Lands, annui-
ties, &c. not
united to the
said colleges,
&c. but granted
by King Henry
8, or by the
king that now
is.

Every person
which had rent
or yearly profit
out of the
lands of any
chantry, &c.
shall enjoy
them.
Dyer, 313.
1 Co. 47.
Het. 28, 41.

If a governor
have com-
pounded for his
first-fruits, the
payment there-
of shall cease.

Money payable
out of the
premises
yearly into the
exchequer.

Assurances
made by King
Henry 8, or
King Edward
6, or by the
licence of

constructions, and purposes, as if this act had never been had or made; any thing in this act, or any other act heretofore had or made, to the contrary thereof in any wise notwithstanding.

“XXV. Provided always, and be it further ordained and enacted by the authority aforesaid, that this act or any thing therein contained shall not extend to any manors, lands, tenements, possessions, or hereditaments, which the said masters, wardens, ministers, chantry priests, incumbents, or other the said governors, officers, ministers, or rulers of the premises or of any of them, hath or is or hereafter shall have or be possessed or seised of in fee-simple, fee-tail general or special, for term of life, term of years, or otherwise, to his or their own proper uses, by inheritance or purchase, and not being at any time united or annexed to his or their said colleges, free chapels, chantries, or other the premises given, limited, or appointed to the king by this act: nor shall extend to any manors, lands, tenements, possessions, rents, annuities, and yearly pension or pensions, or to any yearly sum or sums of money, being not united or parcel of any of the said colleges and other the premises aforesaid, or any of them, heretofore given or granted by the said late king, or given or granted, or hereafter to be given or granted by the king our sovereign lord, to any of the said deans, masters, wardens, ministers, chantry priests, incumbents, governors, or rulers of the premises or of any of them, for term of life only, under his great seal of England, or under the seal of the court of the augmentations and revenues of the king's crown, or any other of the king's seals of any of his courts; any thing contained in this act to the contrary in any wise notwithstanding.

“XXVI. Provided alway, and be it enacted by the authority aforesaid, that as well all and every patron, donor, founder, and giver of any of the said promotions or premises, or giver, donor, or feoffor of any their lands, tenements, possessions, or other hereditaments, as all and every person and persons, bodies politick and corporate, which before the making of this act, lawfully without fraud or covin had or enjoyed any manner of rent or other yearly profits to be taken, perceived, or had of any chantries, colleges, free chapels, or other the premises given, limited, or appointed to the king by this act, or out of any manors, lands, tenements, or other possessions of them or any of them, shall have and enjoy the same in like manner and form as they should or ought to have done, if the said colleges, chantries, free chapels, and other the premises given, limited, or appointed to the king by this act, had still remained and continued *in esse* and full being; any thing in this act mentioned to the contrary in any wise notwithstanding.

“XXVII. Provided also, and be it enacted by the authority aforesaid, that if any such governor, ruler, warden, master, incumbent, minister, or other, having any of the said spiritual promotions or incumbents, have or shall compound for the first-fruits of any such spiritual promotions, according to the laws and statutes of this realm, and the days of payment of any part thereof not expired before the first day of this parliament, that all sums of money so to be due and payable sithence the said first day of this parliament, shall cease and be not paid, asked, or demanded; any bond, recognizance, surety, or other thing had or made to the contrary notwithstanding.

“XXVIII. Provided always, and be it enacted by the authority aforesaid, that all such rents, services, issues, profits, and other sums of money payable out of or for any of the premises, or any of them, in the king's court of exchequer, shall continue and be continually and yearly levied, charged, or paid in the same court, in such manner and form as heretofore hath been used; any law, custom, unity of possession in the king's highness, or other thing to the contrary notwithstanding, and as though the said promotions, manors, lands, tenements, and other the premises, had not come to the king's hands or possession.

“XXIX. And be it further enacted by the authority aforesaid, that all and every letters patents made by the said late King Henry the Eighth, or by the king's majesty that now is, or hereafter to be made by his highness, to any person or persons, or to any archbishop or bishop, of any of the said colleges, chantries, free chapels, or other the premises, or any part or parcel of them, or of any lands,

tenements, or hereditaments belonging or appertaining, or that did belong or appertain to them or to any of them, and all fines, gifts, grants, feoffments, recoveries, and all other assurances and conveyances thereof had or made by the assent, consent, or licence under the great seal of England, of the said late King Henry the Eighth, or of the king's majesty that now is, to any person or persons, bodies politick or corporate, by any chantry priest, master, warden, minister, ruler, governor, or other having any of the said promotions, of any of the said colleges, chantries, free chapels, or other the premises, or any of them, or of any part, parcel, or member of the same, shall stand and be in their forces and effects, and shall be good and effectual in the law for such estates and interests given, granted, limited, or appointed in any of the gifts, grants, assurances, or conveyances thereof had or made, according to their purport, form, and matter, and according to the true intent and meaning of the same assurances, and shall be by authority of this act good, perfect, and available, as well against the king, his heirs and successors, as against the said chantry priests, wardens, masters, rulers, governors, and other having any of the said promotions, and their successors and the successors of every of them, as also against the founders, donors, and patrons of the same, and the ordinary of them and of every of them, and the heirs and successors of every of them; any law, statute, ordinance, or other thing to the contrary thereof notwithstanding.

“XXX. And where divers and sundry bishops, deans, archdeacons, treasurers, prebendaries, chantry priests, masters, provosts, rulers, governors of any deaneries, archdeaconries, treasurerships, prebends, free chapels, chantries, or colleges within this realm of England and other the king's majesty's dominions, or any of the patrons, founders, donors of any of the bishopricks, treasurerships, deaneries, chantries, free chapels, or other the said spiritual promotions, of their voluntary wills or minds, for divers good and reasonable causes and considerations, by deed or deeds enrolled, or by other writings or conveyances, heretofore given and granted to the late king of famous memory, Henry the Eighth, late king of England, and to his heirs, or to our sovereign lord the king that now is, and to his heirs, divers of their deaneries, archdeaconries, treasurerships, prebends, chapels, chantries, and colleges, or any other ecclesiastical or spiritual promotions last before remembered; and all or some part of the manors, lands, tenements, tithes, pensions, annuities, rents, reversions, and other revenues, hereditaments, possessions, emoluments, and profits to the same bishopricks, deaneries, archdeaconries, treasurerships, prebends, chapels, chantries, colleges, and other like promotions, benefices, offices and dignities, or to any of them belonging, appertaining, united or annexed, or which the said bishops, deans, archdeacons, treasurers, chantry priests, masters, provosts, rulers, governors, and other ecclesiastical or spiritual officers, or ministers, or any of the said patrons, donors, or founders, or any of them, had or enjoyed in the right, or by reason of any of the same promotions, offices, or dignities.

“XXXI. Be it enacted by the authority aforesaid, that all and every gifts and grants heretofore made to the said late king, and to his heirs, or to our sovereign lord the king that now is, and to his heirs, by any archbishop, bishop, dean, archdeacon, treasurer, prebendary, master, provost, governor, or other the said ecclesiastical or spiritual person or persons, or by any patrons, donor, or founder of any of the said deaneries, chantries, or other of the said spiritual or ecclesiastical promotions, or of all or any of the manors, lands, tenements, tithes, rents, reversions, pensions, portions, annuities, or other hereditaments, revenues, emoluments, profits, or commodities, to any of the said benefices, offices, prebends, promotions, or dignities belonging, appertaining, united, or annexed, or which any of the same archbishops, bishops, deans, archdeacons, treasurers, masters, provosts, prebendaries, rulers, governors, officers or ministers, patrons, founders or donors, had or enjoyed, or have or enjoy, or ought to have or enjoy, in the right, or by reason or means of any of the same promotions, offices, or dignities, shall be good and effectual in the law to all intents and purposes; saving to all and every person and persons, and bodies politick and corporate, their heirs, successors, and assigns, and to the heirs, successors, and assigns of every of them, (other than the archbishops, bishops,

STAT. 1 EDW.
6, c. 14.

either of them,
of any colleges,
&c. or their
lands.

A confirmation
of all grants
made to the
king of any
spiritual
promotions by
the governors
thereof.

11 Co. 78.

A saving of the
right of others.

STAT. 1 EDW. 6, c. 14. deans, archdeacons, treasurers, prebendaries, rulers, governors, wardens, provosts, givers and grantors of any of the premises, and their heirs, successors, and assigns; and other than such ecclesiastical or spiritual person, bodies politick or corporate, as are or pretend to be founders, donors, patrons, or ordinaries of the premises, or any of them,) all such rights, titles, interests, claims, entries, rents, reversions, remainders, fees, offices, annuities, lands, tenements, hereditaments, profits, commodities, and emoluments, as they or any of them have or should, or ought to have had, of, in, or to the premises next above mentioned, or any part thereof, as if this act had never been had or made; any thing in this act to the contrary in any wise notwithstanding.

This act extendeth not to a parson or vicar. "XXXII. Provided always, that this act, or any thing therein contained, shall not in any wise extend to make good or effectual any gift, grant, bargain, sale, or alienation made by any parson or vicar of their parsonages or vicarages, or of any part or parcel thereof, or of any thing to them or any of them belonging or appertaining.

Lord Cobham for the college of Cobham. "XXXIII. Provided also, that this act, or any thing therein contained, shall not in any wise extend to hinder or prejudice George Brook Knight, Lord Cobham, his heirs or assigns, for or concerning the late college of Cobham, in the county of Kent, or the manors, lands, tenements, or possessions thereof; any thing above mentioned to the contrary in any wise notwithstanding.

This shall not extend to the corporation of a city, borough, or town. "XXXIV. Provided also, and be it enacted by the authority aforesaid, that this present act, nor any thing therein contained, shall in any wise extend or be prejudicial or hurtful to the general corporation of any city, borough, or town within this realm, or any other the king's dominions, ne shall extend to any the lands or hereditaments of them or any of them; any thing herein contained to the contrary in any wise notwithstanding.

Colleges, chantries, &c. within the duchy of Lancaster. "XXXV. Provided also, and be it enacted by the authority aforesaid, that all such of the said colleges, free chapels, chantries, or other the premises, being appointed and given to the king's highness by the authority of this act, as be within the duchy of Lancaster, and all manors, lands, tenements, and hereditaments pertaining or belonging to the same colleges, free chapels, and chantries, shall after the said feast of Easter next coming, be within the survey and order of the court of the duchy of Lancaster, in such manner and form as other the premises be assigned or appointed by authority of this act to be in the survey and order of the court of the augmentations and revenues of the king's crown, or other court by the king to be assigned; and that all commissions that hereafter shall be awarded by virtue and force of this act concerning such colleges, free chapels, chantries, and other the premises as be within the said duchy of Lancaster, shall be awarded under the great seal of England, and shall be certified into the same court of the duchy of Lancaster; any thing abovesaid to the contrary in any wise notwithstanding.

Dyer, 232. "XXXVI. Provided always, and be it enacted by the authority aforesaid, that this act, ne any thing therein containid, shall extend to the college or chantry of Attleborough, in the county of Norfolk, which the said late King Henry the Eighth gave to Robert, late Earl of Sussex, and to his heirs; but that Henry, now Earl of Essex, son and heir to the said late earl, his heirs and assigns, shall and may, by the authority of this act, have and enjoy the said college and chantry, and all manors, lands, tenements, advowsons, tithes, pensions, portions, and other hereditaments thereunto belonging or appertaining; any thing in this act to the contrary in any wise notwithstanding.

The college or chantry of Attleborough in Norfolk. "XXXVII. Provided always, and by the authority aforesaid be it enacted, that the king's majesty, at any time when it shall seem to him good, may give authority to certain his grace's commissioners, to alter the nature and condition of all manner of obits, as well within the universities of Cambridge and Oxford, as in any other place within this his grace's realm of England and Wales, being not suppressed ne annihilate by virtue of this present act, and the same obits so altered to dispose to a better use, as to the relief of some poor men being students, or otherwise.

Altering the nature and condition of obits.

“XXXVIII. Provided also, and be it enacted by authority aforesaid, that it shall not be lawful to any person or persons, bodies politick or corporate, by reason of any remainder, use, or condition, to enter into, claim, or challenge any lands, tenements, or hereditaments, for the non-doing, not naming or non-finding of any such priest or priests, or poor folks as is aforesaid, obit, anniversary, light or lamp from henceforth to be founded or done; any thing herein contained to the contrary in any wise notwithstanding.

“XXXIX. Provided always that this act, nor any thing therein contained, shall in any wise extend to any lands, tenements, possessions, or hereditaments whatsoever, that any master, dean, prebendary, warden, or chantry, or any stipendary priest of any college, chantry, prebend, fraternity, guild, or any other corporations, have or held of any person or persons by copy of court roll, or at will according to the custom of any manor or manors; nor give or grant any copyhold lands to the king's highness.

“XL. And also provided that the king's highness, his heirs or successors, shall not in any wise have, hold, enjoy, or take, by virtue of this act, or any article therein contained, any manner of copyhold lands, tenements, possessions, or hereditaments whatsoever they be; but that all and every of the said persons and incumbents shall have, hold, and enjoy the same during their lives towards their pension and yearly living, paying their rents and doing their customs and services thereof due and accustomed; any thing in this act to the contrary notwithstanding.

“XLI. Provided that this act shall not extend to any lands, tenements, or hereditaments, assigned, appointed, or intended for the finding and maintenance of any chantry priest, or stipendary priest, which by any former right and good title, without fraud or coven, were lawfully recovered from the possession of any such chantry priest or stipendary priest, before the first day of October, in the said seven and thirtieth year of the reign of the said late King Henry the Eighth, which lands, tenements, and hereditaments were not charged nor chargeable to the payment of the perpetual tenth; any thing in this act to the contrary hereof notwithstanding.

“XLII. Provided always, and be it enacted by the authority aforesaid, that all and singular grants, licences, confirmations, and letters patents, which our late sovereign lord King Henry the Eighth, or our sovereign lord the king that now is, have made under the great seal of England to any person or persons, bodies politic or corporate, of any college, chapel, or chantry, now being *in esse* or standing, or now not being *in esse* or not standing, or of any lordships, manors, lands, tenements and hereditaments annexed, united, belonging, or appertaining to any college, chapel, or chantry now being *in esse* or standing, or now not being *in esse* or not standing, or of any other thing or things mentioned or expressed in this act, and all and every matter and thing mentioned, expressed, or contained in any such grant, licence, confirmation, or letters patents, shall from henceforth be deemed, taken, expounded, and judged good and effectual in the law, according to the words, sentences, meanings, intents, form, and effects of the same grants, licences, confirmations, and letters patents, to all intents, constructions, and purposes, as if this act, and the said act made in the said seven and thirtieth year of the said late King Henry the Eighth, had never been had or made; and that this act, or the said act made in the said seven and thirtieth year of the reign of our said late sovereign lord King Henry the Eighth, or any clause, article, sentence, or other thing therein contained, shall not extend to any colleges, chapels, chantries, or other thing or things mentioned in this act, now being *in esse* or standing, or now not being *in esse* or not standing, or to any manors, lands, tenements, possessions, revenues, or hereditaments annexed, united, belonging, or appertaining to any college, chapel, chantry, or other thing mentioned in this act, now being *in esse*, or standing, or now not being *in esse*, or not standing, or to any other thing or things mentioned or expressed in this act, which any person or persons, bodies politic or corporate, have had or obtained by the assent, licence, confirmation, grant, or letters patents of the said late king, or of the king's majesty that now is; nor shall extend to any manors, lands, tenements, revenues, possessions, hereditaments, or

STAT. 1 EDW.
6, c. 14

No person shall take advantage of any condition for not finding of any priest, obit, light, &c. This statute shall give no copyhold land to the king.

Who shall have the copyhold lands.

Lands recovered from a chantry priest by good title.

A confirmation of letters patents made by King Henry 8, or King Edward 6, of any chantry, &c. or of lands united to them.

37 Hen. 8. c. 4.

STAT. 1 EDW.
6, c. 14.

other thing or things mentioned, expressed, or contained in any such licence, confirmation, grant, or letters patents: but that every such person and persons, bodies politick and corporate, their heirs, successors, and assigns, and the heirs, successors, and assigns of every of them, shall have, hold, and enjoy all and every the same colleges, chapels, chantries, manors, lands, tenements, revenues, possessions, and hereditaments, and all and every other thing and things whatsoever, so by them had or obtained by the assent, licence, confirmation, grant, or letters patents of the said late king, or of the king's majesty that now is, according to the words, sentences, form, effect, meaning, and intent of the same licences, confirmations, grants, and letters patents; this act, or the said act made in the said seven and thirtieth year of the reign of the said late King Henry the Eighth, or any clause, article, sentence, matter, or thing mentioned, expressed, or contained in any of the same acts to the contrary thereof in any wise notwithstanding."

STAT. 2 & 3
EDW. 6, c. 1.

V. STAT. 2 & 3 EDWARDI 6, c. 1 (1). A.D. 1548.

"An Act⁽²⁾ for Uniformity⁽³⁾ of Service and Administration of the Sacraments throughout the Realm."

Revived by
1 Eliz. c. 1,
s. 14.
The penalty
for not using
uniformity of
service, and
administration
of sacraments,
&c.

"Where of long time⁽⁴⁾ there hath been had in this realm of England and in Wales divers forms of Common Prayer, commonly called the Service of the Church; that is to say, *The Use of Sarum*⁽⁵⁾, of York, of Bangor, and of Lincoln; and besides the same now of late much more divers and sundry forms and fashions have been used in the cathedral and parish churches of England and Wales, as well concerning the matters or morning prayer and the evensong, as also concerning the holy communion, commonly called the Mass, with divers and sundry rites and ceremonies concerning the same, and in the administration of other sacraments of the church; and as the doers and executors of the said rites and ceremonies, in other form than of late years⁽⁶⁾ they have been used, were pleased therewith:

(1) This statute was confirmed by Stat. 5 & 6 Edw. 6, c. 1, and repealed by 1 Mar. sess. 2, c. 2; which Stat. of 1 Mar. is repealed by Stat. 1 Eliz. c. 2; and this act, so far as it relates to the church, is made perpetual by Stat. 5 Ann. c. 5.

(2) *An Act*.—A bill for a uniformity of service: "Quæ communi omnium procerum assensu, conclusa est except' comite Darby, Episcopis London', Dunelm', Norwicen', Carliolen', Hereford', Wigorn', Westminster', Cicestren', et Domino Dacres, et Domino Windsor." Journ. Proc. Jan. 15.

(3) *Uniformity*.—Vide Stat. 3 & 4 Edw. 6, c. 10. Stat. 13 Eliz. c. 12.

(4) *Of long time*.—In the earlier ages of the church, every bishop had a power to form a liturgy for his own diocese; and, if he kept to the analogy of faith and doctrine, all circumstances were left to his own discretion. Afterwards, the practice was, for the whole province to follow the service of the metropolitan church; which also became the general rule of the church: "Institutio missarum sicut in metropolitana ecclesiâ agitur, ita in Dei nomine, in omnibus provinciis, tam ipsius missæ ordo, quam psallendi, vel ministrandi, consuetudo servetur." De Consecr. Dist. 2, c. 31. And, "De iis, qui contra apostoli voluntatem circumferuntur omni vento doctrinæ, placuit huic sancto concilio, ut metropolitane sedis auctoritate coacti uniuscujusque provincie cives, rectoresque ecclesiarum, unum, eundemque in psallendo teneant modum, quem in metropolitana sede cognoverint institutum: nec ali-

qua diversitate cujusque ordinis, vel officii, à metropolitana se patiantur sede disjungi. Sic enim justum est, ut inde unusquisque sumat regulas magisterii, unde honoris consecrationem accipit, ut juxta majorum decreta, sedes, quæ unicuique sacerdotalis dignitatis est mater, sit ecclesiasticæ magistræ rationis." Dist. 12, c. 13. Conc. Tolet. Which Lyndwood (*De Fer. c. Angl. Ec. v. Us. Sar.*) owns to be the common law of the church, and intimates, that the use of several services in the same province, (as in England,) was not to be warranted, but by long custom.

(5) *The Use of Sarum*.—Lyndwood, (*Ibid.*) speaking of the Use of Sarum, says, "Quasi tota provincia [Cantuariensis] hunc usum sequitur;" and adds, as one reason of it, "Episcopus namque Sarum in collegio episcoporum est præceptor, et temporibus quibus archiepiscopus Cantuariensis solenniter celebrat divina, præsentem collegio episcoporum, chorum in divinis officiis regere debet, de observantiâ, et consuetudine antiquâ."

(6) *Of late years*.—The Latin services, as they had been used in England before, continued during Henry the Eighth's reign, without any alteration, except, some rasures of collects for the Pope, and of the office of Thomas à Becket, and of some other saints, whose days were, by the king's injunctions, no more to be observed. (1 Burn. 292.) But such rasures or deletions were so few, that the old mass-books, breviaries, and other rituals, continued to serve, without new impressions, and Queen Mary, having called in

so other not using the same rites and ceremonies were thereby greatly offended; and albeit the king's majesty, with the advice of his most entirely beloved uncle, the lord protector, and other of his highness' council, hath heretofore divers times assayed to stay innovations or new rites concerning the premises; yet the same hath not had such good success as his highness required in that behalf; whereupon his highness, by the most prudent advice aforesaid, being pleased to bear with the frailty and weakness of his subjects in that behalf, of his great clemency hath not been only content to abstain from punishment of those that have offended in that behalf, for that his highness taketh that they did it of a good zeal; but also to the intent a uniform, quiet, and godly order should be had concerning the premises, hath appointed the Archbishop of Canterbury, and certain of the most learned and discreet bishops, and other learned men of this realm, to consider and ponder the premises; and thereupon having as well eye and respect to the most sincere and pure Christian religion taught by the Scripture, as to the usages in the primitive church, should draw and make one convenient and meet order, rite, and fashion of common and open prayer and administration of the sacraments, to be had and used in his majesty's realm of England and in Wales; the which at this time, by the aid of the Holy Ghost, with one uniform agreement, is of them concluded, set forth, and delivered to his highness, to his great comfort and quietness of mind, in a book entitled 'The Book of the Common Prayer and Administration of the Sacraments, and other Rites and Ceremonies of the Church, after the use of the Church of England.' Wherefore the lords spiritual and temporal, and the commons, in this present parliament assembled, considering as well the most godly travel of the king's highness, of the lord protector, and of other his highness' council, in gathering and collecting the said archbishop, bishops, and learned men together, as the godly prayers, orders, rites, and ceremonies in the said book mentioned, and the considerations of altering those things which be altered, and retaining those things which be retained in the said book, but also the honour of God and great quietness, which by the grace of God shall ensue upon the one and uniform rite and order in such common prayer and rites and external ceremonies to be used throughout England and in Wales, at Calice, and the marches of the same, do give to his highness most hearty and lowly thanks for the same. And humbly prayen, that it may be ordained and enacted by his majesty, with the assent of the lords and commons in this present parliament assembled, and by the authority of the same, that all and singular person and persons that have offended concerning the premises, other than such person and persons as now be and remain in ward in the Tower of London, or in the Fleet, may be pardoned thereof; and that all and singular ministers in any cathedral or parish church, or other place within this realm of England, Wales, Calice, and the marches of the same, or other the king's dominions, shall, from and after the feast of Pentecost next coming, be bounden to say and use the mattens, evensong, celebration of the Lord's Supper, commonly called the Mass, and administration of each of the sacraments, and all their common and open prayer, in such order and form as is mentioned in the same book, and none other or otherwise. And albeit that the same be so godly and good, that they give occasion to every honest and conformable man most willingly to embrace them, yet lest any obstinate person who willingly would disturb so godly order and quiet in this realm should not go unpunished, that it may also be ordained and enacted by the authority aforesaid, that if any manner of parson, vicar, or other whatsoever minister, that ought or should sing or say common prayer mentioned in the said book, or minister the sacraments, shall after the said feast of Pentecost next coming refuse to use the said common prayers, or to minister the sacraments in such cathedral or parish church, or other places as he should use or minister the same, in such order and form as they be mentioned and set forth in the said book; or shall use, wilfully and obstinately standing in the

STAT. 2 & 3
EDW. 6, c. 1.

Innovators not punished, for that they did it upon good zeal.

The Book of Common Prayer, by the aid of the Holy Ghost, is set forth by the bishops and learned men of the realm.

The penalty for not using the Book of Common Prayer, and other rites and ceremonies, according to the use of the Church of England. Using any other manner of prayer.

and destroyed the rased books, required all parishes to furnish themselves with new complete ones, and enacted, (1 Mar. sess. 2, c. 2, s. 3,) that the service should stand as it was most commonly used in the last year of King Henry the Eighth.

STAT. 2 & 3
EDW. 6, c. 1.

The penalty for
depraving the
book or any-
thing contained
therein.

The penalty
for the first
offence.

The penalty for
the second
offence.

The penalty for
the third
offence.

The penalty by
plays, songs,
or tunes, to
deprave the
Book of Com-
mon Prayer, or
to compel any
to use other
prayer.

The penalty
for the first
offence.

The penalty
for the second
offence.

same, any other rite, ceremony, order, form, or manner of mass, openly or privily, or mattens, evensong, administration of the sacraments, or other open prayer than is mentioned and set forth in the said book; (open prayer in and throughout this act, is méant that prayer which is for other to come unto or hear, either in common churches or private chapels or oratories, commonly called the Service of the Church;) or shall preach, declare, or speak any thing in the derogation or depraving of the said book, or any thing therein contained, or of any part thereof; and shall be thereof lawfully convicted according to the laws of this realm, by verdict of twelve men, or by his own confession, or by the notorious evidence of the fact, shall lose and forfeit to the king's highness, his heirs and successors, for his first offence, the profit of such one of his spiritual benefices or promotions as it shall please the king's highness to assign or appoint, coming and arising in one whole year next after his conviction: and also, that the same person so convicted shall for the same offence suffer imprisonment by the space of six months, without bail or mainprise; and if any such person once convict of any such offence concerning the premises, shall after his first conviction eftsoons offend and be thereof in form aforesaid lawfully convict, that then the same person shall for his second offence suffer imprisonment by the space of one whole year, and also shall therefore be *deprived*, ipso facto, of all his spiritual promotions (1); and that it shall be lawful to all patrons, donors, and grantees of all and singular the same spiritual promotions, to present to the same any other able clerk, in like manner and form as though the party so offending were dead; and that if any such person or persons, after he shall be twice convicted in form aforesaid, shall offend against any of the premises the third time, and shall be thereof in form aforesaid lawfully convicted; that then the person so offending and convicted the third time, shall suffer imprisonment during his life. And if the person that shall offend and be convict in form aforesaid concerning any of the premises, shall not be beneficed nor have any spiritual promotion, that then the same person so offending and convict shall for the first offence suffer imprisonment during six months, without bail or mainprise; and if any such person not having any spiritual promotion, after his first conviction shall eftsoons offend in any thing concerning the premises, and shall in form aforesaid be thereof lawfully convicted, that then the same person shall for his second offence suffer imprisonment during his life.

"II. And it is ordained and enacted by the authority abovesaid, that if any person or persons whatsoever, after the said feast of Pentecost next coming, shall in any interludes, plays, songs, rhimes, or by other open words, declare or speak any thing in the derogation, depraving, or despising of the same book or of any thing therein contained, or any part thereof; or shall by open fact, deed, or by open threatenings, compel or cause, or otherwise procure or maintain any parson, vicar, or other minister in any cathedral or parish church, or in any chapel or other place, to sing or say any common and open prayer, or to minister any sacrament otherwise or in any other manner or form than is mentioned in the said book; or that by any of the said means shall unlawfully interrupt or let any parson, vicar, or other ministers in any cathedral or parish church, chapel, or any other place, to sing or say common and open prayer, or to minister the sacraments, or any of them, in any such manner and form as is mentioned in the said book; that then every person being thereof lawfully convicted in form above said, shall forfeit to the king our sovereign lord, his heirs and successors, for the first offence ten pounds. And if any person or persons, being once convicted of any such offence, eftsoons offend against any of the premises, and shall in form aforesaid be thereof lawfully convict, that then the same persons so offending and convict shall for the second offence forfeit to the king our sovereign lord, his heirs and successors, twenty pounds; and if any person, after he in form aforesaid shall have been twice convict of any offence

(1) *Deprived*, ipso facto, of all his spiritual promotions:—Any incumbent refusing to use the Book of Common Prayer, or speaking or preaching anything in derogation thereof, being twice convicted, shall, under

this act, and Stat. 1 Eliz. c. 2, ipso facto, be deprived, without any sentence of deprivation. *Caudrey's case*, 5 Co. 8. Poph. 59. Godolph. Rep. *Deprivation*, 309.

concerning any of the premises, shall offend the third time, and be thereof in form abovesaid lawfully convict, that then every person so offending and convict shall for his third offence forfeit to our sovereign lord the king all his goods and chattels, and shall suffer imprisonment during his life; and if any person or persons, that for his first offence concerning the premises shall be convict in form aforesaid, do not pay the sum to be paid by virtue of his conviction, in such manner and form as the same ought to be paid, within six weeks next after his conviction, that then every person so convict, and so not paying the same, shall for the same first offence, instead of the said ten pounds, suffer imprisonment by the space of three months, without bail or mainprise. And if any person or persons, that for his second offence concerning the premises shall be convict in form aforesaid, do not pay the sum to be paid by virtue of his conviction, in such manner and form as the same ought to be paid within six weeks next after his said second conviction; that then every person so convicted, and not so paying the same, shall for the same second offence, in the stead of the said twenty pounds, suffer imprisonment during six months, without bail or mainprise.

STAT. 2 & 3
EDW. 6, c. 1.

The penalty
for the third
offence.

“III. And it is ordained and enacted by the authority aforesaid, that all and every justices of Oyer and Determiner, or justices of assize, shall have full power and authority in every of their open and general sessions to inquire, hear, and determine all and all manner of offences that shall be committed or done contrary to any article contained in this present act, within the limits of the commission to them directed, and to make process for the execution of the same, as they may do against any person being indicted before them of trespass, or lawfully convicted thereof.

Justices of
oyer, deter-
miner, and
assize shall
have power to
hear and deter-
mine those
offences.

“IV. Provided always, and be it enacted by the authority aforesaid, that all and every archbishop and bishop shall or may at all time and times, at his liberty and pleasure, join and associate himself by virtue of this act to the said justices of Oyer and Determiner, or to the said justices of assize, at every of the said open and general sessions to be holden in any place within his diocese, for and to the inquiry, hearing, and determining of the offences aforesaid.

A bishop may
join with the
justices.

“V. Provided always, that it shall be lawful to any man that understandeth the Greek, Latin, and Hebrew tongue, or other strange tongue, to say and have the said prayers heretofore specified of mattens and evensong in Latin, or any such other tongue, saying the same privately, as they do understand.

Who may use
prayers in ano-
ther language.

“VI. And for the further encouraging of learning in the tongues in the universities of Cambridge and Oxford, to use and exercise in their common and open prayer in their chapels (being no parish churches) or other places of prayer, the mattens, evensong, litany, and all other prayers, (the holy communion, commonly called the Mass, excepted,) prescribed in the said book, in Greek, Latin, or Hebrew; any thing in this present act to the contrary notwithstanding.

“VII. Provided also, that it shall be lawful for all men, as well in churches, chapels, oratories, or other places, to use openly any psalms or prayer taken out of the Bible, at any due time, not letting or omitting thereby the service or any part thereof mentioned in the said book.

“VIII. Provided also, and be it enacted by the authority aforesaid, that the books concerning the said services shall at the costs and charges of the parishioners of every parish and cathedral church be attained and gotten before the feast of Pentecost next following, or before; and that all such parishes and cathedral churches, or other places where the said books shall be attained and gotten before the said feast of Pentecost, shall, within three weeks next after the said books so attained and gotten, use the said service, and put the same in ure according to this act.

When the ser-
vice books shall
be gotten.

“IX. And be it further enacted by the authority aforesaid, that no person or persons shall be at any time hereafter impeached or otherwise molested of or for any of the offences above mentioned hereafter to be committed or done contrary to this act, unless he or they so offending be thereof indicted at the next general sessions, to be holden before any such of the justices of Oyer and Determiner, or

STAT. 2 & 3
EDW. 6, c. 1.

justices of assize, next after any offence committed or done contrary to the tenor of this act.

“X. Provided always, and be it ordained and enacted by the authority aforesaid, that all and singular lords of the parliament, for the said offences above mentioned, shall be tried by their peers.

Chief officers
of cities and
corporate
towns may
hear and deter-
mine these
offences.

“XI. Provided also, and be it ordained and enacted by the authority aforesaid, that the mayor of London, and all other mayors, bailiffs, and other head officers of all and singular cities, boroughs, and towns corporate within this realm, Wales, Calice, and the marches of the same, to the which justices of assize do not commonly repair, shall have full power and authority, by virtue of this act, to inquire, hear, and determine the offences abovesaid, and every of them yearly, within fifteen days after the feast of Easter and St. Michael the Archangel, in like manner and form as justices of assize and Oyer and Determiner may do.

The offences
inquirable and
punishable by
the ecclesiastical
jurisdiction.

“XII. Provided always, and be it ordained and enacted by the authority aforesaid, that all and singular archbishops and bishops, and every of their chancellors, commissaries, archdeacons, and other ordinaries, having any peculiar ecclesiastical jurisdiction, shall have full power and authority, by virtue of this act, as well to inquire in their visitations, synods, and elsewhere within their jurisdiction, at any other time and place, to take accusations and informations of all and every the things above mentioned, done, committed, or perpetrate within the limits of their jurisdiction and authority, and to punish the same by admonition, excommunication, sequestration, or deprivation, and other censures and process, in like form as heretofore hath been used in like cases by the king's ecclesiastical laws.

But once
punished for
one offence.

“XIII. Provided always, and be it enacted, that whatsoever person offending in the premises, shall for the first offence receive punishment of the ordinary, having a testimonial thereof under the said ordinary's seal, shall not for the same offence afterwards be convented before the justices; and likewise receiving for the said first offence punishment by the justices, he shall not for the same offence afterwards receive punishment of the ordinary; any thing contained in this act to the contrary notwithstanding.”

STAT. 2 & 3
EDW. 6, c. 13.

VI. STAT. 2 & 3 EDWARDI 6, c. 13. A.D. 1548.

“An Act for Payment of Tithes (1).”

In what man-
ner tithes ought
to be paid.

27 Hen. 8,
c. 20.
32 Hen. 8, c. 7.
1 Roll. 13, 90,
354.
13 Co. 23, 48.
Savil, 131.
Godb. 211,
pl. 30.
18 Edw. 3,
St. III. c. 7.
45 Edw. 3, c. 3.
5 Hen. 4, c. 11.
2 Inst. 648.
March, 21.
2 Bulst. 85,
183.
1 Bulst. 108.

“Where in the parliament holden at Westminster the iv. day of February, in the xxvii. year of the reign of the late king of most famous memory, King Henry the VIII., there was an act made concerning payment of tithes predial and personal: and also in another parliament holden at Westminster the xxiv. day of July, in the xxxii. year of the reign of the said late King Henry the VIII., another act was made concerning the true payment of tithes and offerings; in which several acts many and divers things be omitted and left out, which were convenient and very necessary to be added to the same: in consideration whereof, and to the intent the said tithes may be hereafter truly paid, according to the mind of the makers of the said acts, be it ordained and enacted by the king our sovereign lord, with the assent of the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, that not only the said acts made in the said xxvii. and xxxii. years of the reign of the said late King Henry the VIII., concerning the true payment of tithes, and every article and branch therein contained, shall abide and stand in their full strength and virtue; but also be it further enacted by the authority of this present parliament, that every of the king's subjects shall from henceforth truly and *justly, without fraud* (2) or guile.

(1) It may be here observed, that Stat. 6 & 7 Gul. 4, c. 71, and Stat. 1 Vict. c. 69, have essentially changed the law respecting tithes, but it has been considered expedient to affix notes to Stat. 2 & 3 Edw. 6, c. 13, illustrative of the law as it existed previously to the enactment of such statutes. *Vide*

Stephens on Clerical Law, tit. TITHES.

(2) *Justly, without fraud*:—Where a man set out the tithes justly, and soon after carried them away, he was held to come within the letter of this statute, and to be guilty of fraud. *Heale v. Sprat*. 2 Inst. 649.

divide, set out, yield, and pay, all manner of their *predial tithes* (1) in their proper kind as they rise and happen, in such manner and form *as hath been of right* (2) yielded and paid *within forty years* (3) next before the making of this act, *or of right or custom* (4) ought to have been paid; and that no person shall from henceforth take or carry away any such or like tithes, which have been yielded or paid within the said forty years, or of right ought to have been paid, in the place or places titheable of the same, before he hath justly divided or set forth for the tithe thereof the tenth part of the same, *or otherwise agreed* for the same tithes *with the parson* (5), vicar, or other owner, proprietary, or fermor of the same tithes; STAT. 2 & 3 EDW. 6, c. 13. Every person shall set forth and pay his predial tithes. 2 Inst. 611. 3 Leon. 204. 1 Mod. 50. Raymond, 14.

(1) *Predial tithes*.—By these words are understood the tithes of such products of the earth as are renewed yearly, either spontaneously, or by culture, as tithes of corn, flax, hay, and the like; (*Norton v. Clarke*, 1 Gwillim, 428;) but they are confined to things of this nature, and are not extended to mixed or personal tithes, as the tithes of cheese, calves, lambs, cherries, and pears. 2 Inst. 649.

(2) *As hath been of right*.—These words relate to tithes to be yielded in specie within forty years. 2 Ibid. 650.

(3) *Within forty years*.—The reason of limiting it to forty years was that, as thirty years in the ecclesiastical law make a prescription for the church, so forty years are a prescription against the church. *Doubitofte v. Curteene*, Cro. Jac. 452. *Sed vide* Stat. 3 & 4 Gul. 4, c. 27, s. 43, & Stat. 2 & 3 Gul. 4, c. 100, as to the period of limitation, by which the ecclesiastical courts must now be guided.

(4) *Or of right or custom*.—*i. e.* by rightful custom, *de modo decimandi*. 2 Inst. 650.

(5) *Or otherwise agreed . . . with the parson*.—In *Alston (Clerk) v. Atlay*, (7 A. & E. 289,) the plaintiff being incumbent of the living of C. which was under the value of 8*l.*, accepted the living of O. with cure of souls. Afterwards, the patron of C. sold the advowson to L., and L. presented a clerk, who was instituted and inducted, and subscribed the articles. It was held, that the living, as against the patron, was void, by plaintiff's acceptance of O., and disannexed from the advowson; that, consequently, it did not pass by the sale; that L.'s presentee was not incumbent; and that plaintiff, not having been ousted, *de facto*, might sue for the tithes; and that it made no difference, as to this, whether the patron of C. or his vendee, knew, or did not know, of the plaintiff's acceptance of O.;—Lord Denman observing, "The question is, whether the plaintiff had ceased to be parson, by the second presentation. That depends upon the question, whether the right to present passed by the sale. In the case of a living actually void at the time of the sale, such right, for that turn, does not pass. It is not contended that the living, here, was void, *de facto*, at the time of sale. The first living not being of the value of 8*l.*, Stat. 21 Hen. 8, c. 13, ss. 9 & 10, does not apply. But, by what may be called a common law adoption of the canon of the council of Lateran, (*vide* Watson's Clergyman's Law, c. 2, p. 5, cit. *Staveland v. Ullithorn*, Hardr. 161,) the living was voidable at the election of

the patron, who might immediately present. It is said, that this is within the same mischief, as if the living were actually void, and that, therefore, the sale did not pass the right to present upon such an avoidance. If we so held, we should be making the law, not declaring it. There is nothing more dangerous than to argue that, because, in one case, the mischief is the same as in another, therefore the law existing as to the latter case, is to be extended to the former, as to which no such law exists, written or unwritten. No case has hitherto gone so far as to enable us to say, that the first living can here be treated as void." *Sed vide* Stat. 1 & 2 Vict. c. 106, s. 11.

In *Hiscocks v. Wilmot*, (Gow's N. P. C. 197,) it was holden, that in an action by a vicar, or his lessee, on Stat. 2 & 3 Edw. 6, c. 13, for not setting out tithes, the plaintiff must either produce the endowment, or prove a prescriptive perception of the tithes;—Mr. Justice Holroyd observing, "Without the production of the endowment, or proof of a prescriptive perception of the small tithes by the vicar and his predecessors, I cannot conclude, as a necessary inference of law, that the vicar is, in this case, entitled to the small tithes. Generally speaking, a vicar is endowed with the small tithes of the vicarage; but his title depends wholly upon the endowment, or upon prescription and usage, which are evidence of an endowment. And it does not follow, as a necessary consequence of law, that the vicar can in all cases claim, against the rector, the small tithes arising within the vicarage. Without evidence, therefore, either of an endowment, or of prescriptive enjoyment, I do not think, that the plaintiff can make out his claim to the small tithes."

In debt, on Stat. 2 & 3 Edw. 6, c. 13, s. 1, for not setting out tithes, when the declaration stated, that they were within forty years next before the statute, of right yielded and payable, and yielded and paid, evidence that the lands had always been remembered to be in pasture, and had never within living memory paid any tithe, was held not to be sufficient to defeat the action. *Mitchell v. Walker*, 5 T. R. 260.

Where a parson had entered into an agreement with the occupiers of land for the retaining their tithes, it was held that, an action could not be maintained for not setting out the tithes, until the agreement or composition had been determined. *Wyburd v. Tuck*, 1 B. & P. 465.

Compositions were not apportionable under Stat. 11 Geo. 2, c. 19. *Williams v. Powell*

STAT. 2 & 3 under the pain of forfeiture of *treble value*(1) of the tithes so taken or carried
EDW. 6, c. 13. away.

Hardres, 315. 1 Vent. 126. Carth. 361. Cro. Eliz. 608, 621, 766. Cro. Car. 513.

The penalty for carrying of corn or hay before tithe be set forth, or for letting the parson to carry it.

“II. And be it also enacted by the authority aforesaid, that at all times whensoever, and as often as the said predial tithes shall be due, and at the titling time of the same, it to be lawful to every party to whom any of the said tithes ought to be paid, or his deputy or servant, to *view and see*(2) their said tithes to be justly and truly set forth and severed from the nine parts, and the same *quietly to take and carry away*(3): and if any person carry away his corn or hay, or his other predial tithes, before the tithe thereof be set forth; or willingly withdraw his tithes of the same or of such other things whereof predial tithes ought to be paid; or *do stop or let the parson*, vicar, proprietor, owner, or other their deputies or farmers, to *view, take, and carry away their tithes*(4) as is above said; by reason

Co. pl. f. 161.
2 Bulst. 228,
285.
3 Bulst. 278.

(Clerk), 10 East, 69; sed vide *Aynsley v. Wordsworth*, 2 V. & B. 331.

In *Bradshaw & Swanton*, (Carth. 70,) prohibition was prayed to the Consistory court upon the suggestion of a composition, made for all manner of tithes for two years, and the libel was for tithes arising within such time; but the prohibition was denied, and it was resolved, that no prohibition will lie upon any composition, whether for life or years, for any tithes; and that therefore the proper remedy was to appeal to the Arches, if the Consistory court should refuse a plea of composition.

A new trial was granted, where the declaration omitted to state, that the tithes were payable, and of right ought to be paid, and there was no evidence of their ever having been paid. *Mansfield (Lord) v. Clarke*, 5 T. R. 264, n. Et vide *Kinaston v. Clark*, Ibid. 265, n.

In *Butt (Clerk) v. Howard*, (4 B. & A. 655,) a declaration in debt for tithes, under Stat. 2 & 3 Edw. 6, c. 13, omitting to state, that the tithes had been yielded and paid, and of right ought to have been paid, within forty years next before the passing of the act, was held to be bad, even after verdict.

It seems that a lessee and farmer of tithes, could not have declared against an occupier, under Stat. 2 & 3 Edw. 6, c. 13, as owner and proprietor. *Stevens v. Aldridge*, 5 Price, 334.

Evidence that the parishioners had treated with a proprietor for a composition, was not alone sufficient to establish his possession of the tithes in an action on this statute. *Wyburd v. Tuck*, 1 B. & P. 458.

(1) *Treble value*.—To be recovered, not in the ecclesiastical, but in the temporal courts, by action of debt; and the forfeiture belonged, not to the king, but to the party grieved. *Dagg v. Penkevon*, Cro. Jac. 70. *Rex v. Elliot (Sir John)*, Cro. Car. 608.

But besides the treble value nothing was to be recovered in the temporal court; that is, neither the tithes themselves, nor any satisfaction for them; that being out of the jurisdiction of those courts, and wholly in the spiritual court. Ibid. *Penn's case*, 2 Brownl. 7. *Honycomb v. Swete (Clerk)*, Cro. Jac. 668. Which was the reason why in all suits upon this statute, the action was not laid for subtraction of tithes, but for a contempt of the statute, in not setting them out;

and being a contempt, the action died with the person, and could not be maintained against the executor; though it is also true, that where the suit was continued against executors, a prohibition hath been denied. And the executor might have had an action upon this statute, for tithes not set forth, during the life of the testator. *Holl v. Bradford*, 1 Sid. 88. *Mr. Justice Moreton's case*, 1 Vent. 30. *Wilks v. Russel*, Raym. (Sir T.), 95. 1 Keb. 682.

Nor could either damages or costs be recovered with the treble value; because the statute had not expressly given them; until costs were particularly given by Stat. 8 Gul. 3, c. 11, where the single value did not exceed 20 nobles. *Dagg v. Penkevon*, Cro. Jac. 70. *Day v. Peckwell*, Mo. (Sir F.), 915.

It was optional with the plaintiff to issue a writ of inquiry or not, in an action of debt founded on Stat. 2 & 3 Edw. 6, c. 13, brought to recover the treble value of tithes. *Bale v. Hodgetts*, 1 Bing. 182.

It has been considered, that an action for the treble value was not within the Statute of Limitations.

(2) *View and see*.—In *Gale & Ewer*, (Com. 23,) where the question was, whether the occupier was bound to give notice to the incumbent, before he set out the tithe, and made the severance, it was determined, that he was not bound; for though the ecclesiastical law required such notice, the common law required no such thing; and as the statute only enacted “it shall be lawful to view,” this proved, that the intent of the Legislature was not that the parishioners should give notice. So prohibition was granted.

(3) *Quietly to take and carry away*.—An action on the case might have been maintained at common law, for obstructing the way of the party taking his tithes; but where a farmer *bonâ fide* stopped up an old way, the rector could not claim the use of it for his convenience. *James (Clerk) v. Dods*, 2 C. & M. 266.

(4) *Do stop or let the parson . . . to view, take, and carry away their tithes*.—In an action on the Stat. 2 & 3 Edw. 6, c. 13, for the treble value of tithe corn, omitted to be set out, it was not enough for the defendant to show the existence, in fact, of a custom in the parish to set out the eleventh instead of the tenth mow; for the validity, as well as existence, of such a custom, was pro-

whereof the said tithe or tenth is lost, impaired, or hurt; that then upon due proof thereof made before the spiritual judge or any other judge to whom heretofore he might have made complaint, the party so carrying away, withdrawing, letting, or stopping, shall pay the *double value* (1) of the tenth or tithe so taken, lost, withdrawn, or carried away, over and besides the *costs* (2), charges, and expenses of the suit in the same: the same to be recovered before the ecclesiastical judge according to the king's ecclesiastical laws.

STAT. 2 & 3
EDW. 6, c. 13.

Godb. 245,
pl. 342.
Moor, 528.
Hob. 218.
Cro. Jac. 57,
68, 70, 318.

2 Roll. 54. Het. 123. March, 57.

perly triable in this form of action, though penal in its nature, being given to the party grieved, and his only remedy at common law was for the subtraction of the tithe due to him. *Phillips v. Davies*, 8 East, 178.

In debt upon Stat. 2 & 3 Edw. 6, c. 13, for not setting out a tenth, as the tithe of hay, the plaintiff was entitled to recover upon his common law right, unless there was evidence of some certain good *modus* or customary payment in lieu of the common law tithe; and though the plaintiff gave in evidence a terrier of 1696, stating a custom to take the eleventh cock of hay in a certain advanced state of preparation; and though his own and the defendant's witnesses stated other varying modes of payment; yet the terrier not being conclusive, and the jury not finding the eleventh cock of hay renderable, or other specific customary mode of tithing, the plaintiff was held entitled to recover. *Blundell (Clerk) v. Maudsley*, 15 East, 641.

Where a composition for tithes had been long paid by the farmer, and two years before an action of debt brought on Stat. 2 & 3 Edw. 6, c. 13, for not setting out the tithes, the vicar, in a conversation with the farmer, demanded his tithes vicarial, on which the other tendered him 40s., (the annual composition,) which the vicar refused to take, but assigned no reason for his refusal; this was held to be no evidence of a notice to determine the proposition, which notice ought to be unequivocal; and it was held also, that the farmer not having denied the vicar's right to tithe in kind before the action brought, was not precluded from taking the objection to the action at the trial, for want of a proper notice to determine the composition, analogous to a notice to quit land, by putting the vicar to the strict proof of his right to tithe in kind. *Fell (Clerk) v. Wil-son*, 12 East, 83.

In debt for subtraction of tithes of any particular article, the plaintiff, though he alleged the tithe of that article to have been "granted, yielded, and paid, and of right due and payable," on the land in question forty years next before the making of the statute of Edward 6, need not have proved, that the particular article was cultivated there at that time; but it was incumbent on the defendant to prove, that it was not. *Hallewell (Clerk) v. Trappes*, 2 N.R. 173. 2 Taunt. 55.

A layman, lessee of the tithes of certain closes, which the rector let by auction in separate lots every year, proved a sufficient title to enable him to recover on the Stat. 2 & 3 Edw. 6, for not setting out tithes, if he proved, that he received payment for tithes in a former year. *Ganson v. Wells*, 8 Taunt. 542.

In an action on Stat. 2 & 3 Edw. 6, c. 13, by the plaintiff, as owner of the tithe of hay, against the defendant, as occupier of a close, for not setting out the tithe, copies of a bill and answer, in a suit by the vicar for tithe of hay against S. L., then occupier of the close, and from whom defendant purchased, denying the vicar's right, and setting up a right in the ancestor of plaintiff, on which the vicar abandoned the suit, were holden evidence against the defendant. *Dartmouth (Countess) v. Roberts*, 16 East, 334.

(1) *Double value*:—Where double value was claimed under this statute, it was requisite to mention it in the libel, otherwise prohibition might have been issued; (2 Inst. 650; *Anon.* March, 157;) and the reason why only the double value, &c., was by this branch to be recovered in the ecclesiastical court, whereas by the former branch, the treble could be recovered, was, that in the ecclesiastical court, the tithes themselves might have been recovered, (which in the temporal court could not have been done,) and therefore the whole value recovered in the ecclesiastical court was equivalent to the treble forfeiture at the common law. But then the libel must have been so ordered, as not to be grounded directly upon the statute for more than the double value, for if the single damages, (*i. e.* the value of the tithes,) were also grounded upon it, this would have been interpreted a suing in the spiritual court for treble value, and a prohibition would have gone.

(2) *Costs*:—The plaintiff was held to be entitled to full costs in an action on the statute of Edward 6, for treble value of tithes not set out, where there was a verdict for him, subject to a reference, and the arbitrator directed a verdict to be entered for 11. 10s., the treble value. *Pedley v. Frampton*, 2 Chitt. 155.

In an action of debt for the penalty of the Stat. 2 & 3 Edw. 6, c. 13, for not setting out tithes, with a count in the declaration for the single value; after a demurrer to the declaration, the parties submitted to arbitration, and the arbitrator awarded the single value to be less than 20 nobles (6l. 13s. 4d.): it was held, that the plaintiff was not entitled to costs on the counts for the penalty, under the Stat. 8 & 9 Gul. 3, c. 11, s. 5, the value not having been found by a jury; but the court allowed him to have the costs taxed on the count for the single value. *Barnard v. Moss*, 1 Hen. Black. 107.

Where the proceeding in the cause was under Stat. 2 & 3 Edw. 6, c. 13, a motion to enforce payment of costs in a suit for subtraction of tithes, notwithstanding an appeal under Stat. 32 Hen. 8, c. 7, was rejected. *Fife v. Bhunt*, 2 Curt. 914.

STAT. 2 & 3
EDW. 6, c. 13.

Tithe of cattle
feeding in a
waste where
the parish is
not known.

Lands dis-
charged of
tithe by pre-
scription or
composition.

2 Co. 44 13

“III. And be it further enacted by the authority aforesaid, that all and every person which hath or shall have any beasts or other cattle titheable, going, feeding, or depasturing in any waste or common ground, whereof the parish is not certainly known, shall pay their tithes for the increase of the said cattle so going in the said waste or common, to the parson, vicar, proprietor, portionary, owner, or other their farmers or deputies of the parish, hamlet, town, or other place, where the owner of the said cattle inhabiteth or dwelleth.

“IV. Provided always, and be it enacted by the authority aforesaid, that no person shall be sued or otherwise compelled to yield, give, or pay any manner of tithes for any manors, lands, tenements, or hereditaments, which by the laws and statutes of this realm, or by any *privilege*(1) or *prescription*(2), are not chargeable

(1) *Privilege*:—Which was acquired either by the bulls of popes, or canons of general councils, or the grants of exemption to particular orders of religious.

(2) *Prescription*:—The difference between custom and prescription is this: Custom is that which gives right to a province, county, hundred, city, or town, and is common to all within the respective limits, in pleading of which it is alleged, that in such a county, &c., there is, and time out of memory hath been, such a custom used, and approved therein.

Prescription is that, which gives a right to some particular person, with respect to some particular house, farm, or other thing, in pleading of which it is alleged, that all they whose estate he hath in such land, have time out of mind paid so much yearly, &c., in full satisfaction of all tithes, arising on those lands.

To make a good prescription by the canon law, (Extra. 1. i., t. 23, c. 10, v. *Pacifica*; Ibid. 1. 2, t. 26, c. 5, v. *Noverit*; Ibid. 1. 2, t. 26, cc. 10, 15,) the essential conditions are: 1. That it be *pacifica et continua*. 2. That the person who prescribes be *bonæ fidei possessor*. 3. That no part of it be *tempore hostilitatis*. 4. Nor *tempore vacationis ecclesiæ*.

Custom and prescription are either *de non decimando*, or *de modo decimandi*.

i. *De non decimando*; concerning which, the general rule is, that none but spiritual persons and corporations, being by common law capable of tithes in pernaney, may so prescribe, as to be wholly freed from tithes, without any recompense or consideration for them. But this general rule is delivered in the books of law under several exceptions, as, 1. “That the king, as *mixta persona*, may prescribe *de non decimando*; by the same reason, that, as such, he is capable of tithes; but it hath been adjudged, that a churchwarden, though his office is a kind of spiritual office, may not prescribe generally in *non decimando* for lands given for the reparation of the church. *Hertford (Earl of) v. Leech*, Jon. (Sir W.), 387. *Pigot v. Heron*, Mo. (Sir F.), 483. 1 Rol. Abr. *Dismes* (H), 653. 2. That the lessee, tenant at will, and copyholder, of a spiritual person, though a layman, shall in this respect enjoy the exemption of the lessor, &c., who is supposed to reap the benefit of it, in reserving the greater rents, by reason of such exemption. *Le Seigneur Cromwel’s*

case, 2 Co. 78. *Crouch v. Fryer*, Cro. Eliz. 785. 3. That a county or part of a county, may well plead a custom *de non decimando*, in respect of this or that particular tithe; as hath been pleaded and allowed in the case of tithe milk of ewes, and of tithe of underwood in the wild of Kent, and in forty parishes in the wild of Sussex. But a single parish may not prescribe *de non decimando* for particular tithes, nor may any larger district plead a custom absolutely, to have their lands freed from the payment of all tithes, without anything in lieu. And lest this allowance of a custom *de non decimando* to laymen, in any case, should seem to break in upon the general rule, a distinction hath been set afoot, that it is for such kind of tithes as are due by custom only, as of wood, &c., which they will not allow to be due of common right. 1 Rol. Abr. *Dismes* (H), 653, 654.”

In the case of the Corporation of Bury St. Edmund’s v. Evans, (Com. 643,) upon the question, whether a layman could prescribe in *non decimando* against a lay improprator, the court resolved, that there was no foundation for such a distinction, that the defendant might prescribe against a lay improprator, any more, than against an ecclesiastical person, which it was admitted he could not.

In *Hick v. Woodson*, (2 Salk. 655; Carth. 392; 1 Ld. Raym. 137,) upon a prohibition the plaintiff declared of a custom in such a hundred to pay no tithe for agistment of cattel-barren. But consultation was awarded, because agistment is due of common right; and the court took this difference, that a hundred or a county cannot prescribe in a *non decimando* for a thing, that is in its nature *de jure* titheable; for as no one single person, or his estate, can, no more, by the same reason, can the hundred, which consists but of many single person’s estates. “But of things which in their nature are not titheable *de jure*, a hundred or county may prescribe in a *non decimando*, because they are discharged in such case without a custom to the contrary, and they do but insist on their ancient right, and that custom hath not prevailed against it.”

Under this head of prescriptions it may not be improper to add some ancient determinations concerning prescription for and against the church.

“Placuit huic sanctæ, magnæque synodo, ut res, et privilegia, quæ Dei ecclesiis ex

longa consuetudine pertinent, et sive à divæ recordationis imperatoribus, sive ab aliis Dei cultoribus in scriptis donata, et ab eis per annos triginta possessa sunt, nequaquam à potestate præsulum eorum quæcunque persona secularis per potestatem subtrahat, aut per argumenta quælibet auferat; sed sint omnia in potestate, ac jussu præsulis ecclesiæ, quæcunque intra triginta annorum spatium ab ecclesiis possessa fuisse noscantur. Quisquis ergo secularium contra præsentem definitionem egerit, tanquam sacrilegus judicetur; et donec se correxerit, et ecclesiæ propria privilegia, seu res restituerit, anathema sit." Caus. 16, q. 3, c. 8.

"Si de terra, quam habetis in parochia canonicorum de plautio, per triginta annos eis decimas persolvistis, eas sibi de cætero integrè persolvatis: Licet enim privilegiorum romanæ ecclesiæ beneficio fratrum cisterciensis ordinis indultum fuerit, quòd de laboribus suis nullas decimas persolvere debeant; de privilegio tamen indulto tanto tempore vobis detrahare voluistis; cum liberum sit unicuique suo juri renunciare; eoque modo non potestis vos in hac parte tueri." Extra. l. 5, t. 33, c. 6.

"Sanctorum patrum sanctiones statuantes confirmaverunt, et nos irrefragabiliter confirmamus, ut omnes possessiones ad singulas provincias nostrorum fratrum pertinentes, à quibus per triginta annos possessæ sunt, quietè, et sincerè absque synodali proclamatione perpetuo teneantur." Extra. l. 2, t. 26, c. 3.

"Illud autem te scire volumus et tenere, quòd adversus ecclesias, minorem præscriptionem quàm quadraginta annorum, romana ecclesia non admittit, licet quidam canones comprobent tricennem; et ecclesia se potest adversus ecclesias quadragenarià temporis præscriptione tueri de re illà quam inconcussè quadraginta annis noscitur possedisse. Verum si de præscriptione et interruptione inter partes fuerit mota questio, ab utraque parte testes recipi debent; et si probata fuerit interruptio, præscriptio non tenebit."

"ii. *Modus decimandi*. '*Modus decimandi* is when lands, tenements, or hereditaments, have been given to the parson and his successors, or an annual certain sum, or other profit, always, time out of mind, to the parson and his successors, in full satisfaction and discharge of all the tithes in kind of such a place.' The case *De Modo Decimandi*, 13 Co. 40. And this may be pleaded by the lord of a manor for the tithes of his manor, on account of lands of the gift of one who was lord of the manor, and held by the parson and his successors time out of mind, and by a parish or hamlet for this or that sort of tithe, by reason of lands enjoyed by the parsons, time whereof, &c., within such parish or hamlet; and lastly, by any private person, for his own lands, or part thereof, in consideration of a certain sum of money, or other recompence.

"But to make a good custom or prescription, it must have these four qualifications: i. The *modus* must be something for the benefit and interest of the parson, and therefore the finding straw for the body of the

church, the finding a rope for a bell, the paying five shillings to the parish clerk, the paying a quit rent to the lord of the manor; when these have been urged as discharges from tithes in kind, the *modus's* have been held not to be good. *Case of Skinner*, March, 65.

"ii. The *modus* must not be, one tithe paid in consideration of another, as, not tithes of other kinds, to be discharged of tithes for dry cattel, not so much for every cow and calf, for tithe of herbage. *Ingolsby v. Johnson*, Cro. Eliz. 786. 12 Co. 45. *Norton v. Briggs*, 1 Ld. Raym. 242. But where the question was, whether ten fleeces of wool and two lambs for all tithes, was a good prescription, the court of Exchequer was divided, and *Ward* (Chief Baron), with *Smith*, held, that it was the same thing as a *modus* in money, provided the payment was to be made whether there were sheep or no. *York (Archbishop of) v. Newcastle (Duke of)*, 2 Salk. 656.

"iii. It must be something in kind different from the thing that is due, and therefore a load of hay in lieu of tithe hay, or certain sheaves of corn for all tithes of corn, is not a good prescription; (*Brooksby's case*, Cro. Eliz. 173;) but this holds only (as the books tell us) in case the things are *de jure* titheable, and not by custom only; (*York (Archbishop of) v. Newcastle (Duke of)*, 2 Salk. 656;) nor do they seem to disallow it, if it be to pay part of the same thing in another manner, as to pay thirty eggs for all eggs, which he is bound to pay whether he has hens or no, and to pay at a certain time.

"iv. It must be something certain and durable; (*Cowper v. Andrews*, Hob. 40;) because the tithe in kind is an inheritance certain, and it is against nature, that it should be extinguished by a recompence not as certain and durable, at least, though not so valuable. For this reason, fourpence to be paid yearly, by two persons inhabiting two such houses, in consideration of all tithes, was adjudged ill, (*Perry v. Soam*, Cro. Eliz. 139,) because the houses may decay, or none live in them, as was also, for the same reason, a pretended *modus* to pay four shillings for every day's ploughing of wheat, and two shillings for every day's ploughing of barley, it being uncertain how much every day's ploughing was. *Took v. Ledgierd*, 1 Keb. 612. Upon the like foundation of uncertainty, rests the custom of having all the milk so many mornings and evenings from the 9th of May, till a young lamb yeaned should be heard to bleat, in lieu of tithe milk; which the court disallowed, because by such a *modus* the parson may have nothing; as, suppose a lamb should be heard to bleat before the 9th of May, and so the payment of two shillings in the pound, of the improved rent in lieu of all tithes, was held to be nought; for that is to rise and fall as the land is let, and the parson cannot know it; whereas, every *modus* ought to be as certain, as the duty which is destroyed by it. *York (Archbishop of) v. Newcastle (Duke of)*, 2 Salk. 657. *Startup v. Dodderidge*, 2 Ld. Raym. 1158.

"In *Byne v. Dodderidge*, (1 Ld. Raym.

STAT. 2 & 3
EDW. 6, c. 13.

STAT. 2 & 3 with the payment of any such tithes, or that be discharged by any *composition*
EDW. 6, c. 13. *real* (1).

696,) the *modus* suggested was, that they used to pay 2s. in the pound of the rent reserved, and the court declared, "1. That this cannot be a *modus*, it amounting to as much as the tithes in kind, but it may be a composition. 2. A custom cannot be applied to rents reserved from time to time upon frequent new reservations."

"In *Carleton v. Brightwell*, (2 P. Wms. 462,) it was insisted on, that the inhabitants of such a tenement, with the lands usually enjoyed therewith, had been accustomed to pay such a *modus* for tithe corn. To which it was said by the court, "This is quite uncertain, the house may fall down and be uninhabited, and then no *modus* will be payable; also, nothing can be more uncertain than lands usually enjoyed with the tenement, since the lands let with a farm-house may probably be often shifted."

"In *Chapman v. Monson*, (2 P. Wms. 565,) the *modus* under dispute was, that every occupier of land within such a parish, living out of the parish, should pay fourpence an acre for all pasture land within the parish, but if he live within the parish, should pay tithes in kind; and the *modus* was declared to be good. And to the objection, that by this rule, foreigners were more favoured than the parishioners, it was answered, in summing up the evidence, that they who have not the benefit of the parson's care, should answer the less duty to him; but declared at the same time, that though every *modus* must be supposed to have had a reasonable commencement, yet as to the necessity of showing now, that it is reasonable, seemed not to be so clear; because this *modus* having been from time immemorial, none can know, but that there were such circumstances in those ancient times, as might make such a composition reasonable, though at present they may not be discoverable. It is enough, at this time of day, that before the restrictive statutes the parson, patron, and ordinary, might bind the revenues of the parson, and that all these *modus's* must have had their commencement from an instrument signed by all the three; but that there could be no colour to say, that because such instrument in so great a length of time may be lost, therefore the *modus* shall be lost also.

"As every consideration will not make a good *modus*, so a *modus*, though founded upon good consideration, may be several ways discharged, and tithes become due in kind. As, 1. Where land is converted to other uses; as where the prescription is for hay and grass specially in so many acres of land, if the land is converted into a hop garden, or tillage, the prescription is gone. 1 Rol. Abr. *Dimes* (E), 651. 2. By the alteration or destruction of the thing, for which the *modus* was paid; (1 Rol. Abr. *Dimes* (F), 652;) as, where two fulling mills were under the same roof, and turned into a corn mill; where also there was one pair of stones in a mill, and another pair was added; and where the water-course was altered by the owner, and the mill was pulled down and re-

edified; in all these cases it was adjudged, that the *modus* was gone. 3. By non-payment of the consideration, or payment of tithes in kind, for so long a time, as to destroy the possibility of making proof, that such custom or prescription was; but an interruption for some short time only will not discharge it, especially if made by the lessee to the prejudice of the lessor." *Fessee v. Parker*, 2 Bulst. 240. Gibson's Codex, 674, 675.

(1) *Composition real*.—This is, in the case of archbishops and bishops previously to Stat. 1 Eliz. c. 19, and in the case of all other ecclesiastical corporations sole and aggregate, previously to Stat. 13 Eliz. c. 10, where the incumbent, together with the patron and ordinary, made an agreement, by deed executed under their hands and seals, that certain lands should be discharged from the payment of tithes *in specie*, in consideration of a recompense to the incumbent, either in money, or in lands, to him and his successors for ever, or in some other thing for their benefit and advantage. This is set forth in the canon law, (Extra. l. i., t. 36, c. 2,) as follows: "Statuimus ut si super decimis inter vos, et aliquam personam ecclesiasticam, de assensu episcopi, vel archiepiscopi sui compositio facta fuerit, rata, et inconcussa persistat."

The nature and cognizance of such compositions will best appear from the following writ, which is in the Register: (Reg. f. 38 (b):) "Rex, tali judici salutem. Monstravit nobis A. tenens quandam partem manerii de D. quod licet E. nuper dominus manerii prædicti per quoddam scriptum indentatum dedisset et concessisset F. nuper personæ ecclesiæ de D. quatuor acras terræ, cum pertinentiis in eodem manerio, habend' et tenend' eidem F. et successoribus suis personis ecclesiæ prædictæ imperpetuum, et idem F. per prædict' scriptum de assensu et voluntate episcopi Lincolnie diocessani loci prædicti et I. tunc patroni ecclesiæ prædictæ, concessisset pro se et successoribus suis, quod idem E. hæredes et assignati sui imperpetuum essent quieti de decimis vitulorum e lacticiniorum in manerio supradicto, pro dictis quatuor acris terræ sic sibi datis et concessis, idemq; E. hæredes et assignati sui semper hactenus à tempore concessionis prædictæ de decima vitulorum et lacticiniorum infra manerium prædict' quieti esse consuevissent; G. tamen nunc persona ecclesiæ prædictæ tenens prædictas quatuor acras terræ, prædict' A. assignatum prædicti Edwardi, super decimam hujusmodi vitulorum et lacticiniorum in eodem manerio sibi præstandam trahit in placitum coram, &c. Christianitatis et ipsum eâ occasione multipliciter inquietat, in enervationem concessionis et donationis prædictarum, et prædicti A. dispendium non modicum et gravamen. Et quia discussio hujusmodi donationis et concessionis de laico feodo in regno nostro inarum in curia nostra et non alibi tractari et fieri debet; vobis prohibemus ne placitum aliquod laicum feodum in regno nostro tangens tene-

"V. Provided always, and be it enacted by the authority aforesaid, that all such *barren heath or waste ground* (1), other than such as be discharged for the payment of tithes by act of parliament, which before this time have lain barren and paid no tithes *by reason of the same barrenness* (2), and now be or hereafter shall be improved and converted into arable ground or meadow, shall from henceforth, after the end and term of *seven years* (3) next after such improvement fully ended and determined, pay tithe for the corn and hay growing upon the same; any thing in this act to the contrary in any wise notwithstanding.

"VI. Provided always, and be it enacted by the authority aforesaid, that if any such barren, waste, or heath ground, hath before this time been charged with the payment of any tithes, and that the same be hereafter improved or converted into arable ground or meadow; that then the owner or owners thereof shall, during seven years next following from and after the same improvement, pay

atis in curia Christianitatis, nec quicquam in hac parte, quod in enervationem dicti scripti aut donationis et concessionis prædictarum, quæ in curia nostra et non alibi tractari debent, sicut prædictum est, cedere poterit, attentetis seu attentari faciatis quovis modo, T., &c."

But since Stat. 1 Eliz. c. 19, and Stat. 13 Eliz. c. 10, no real compositions, any more than alienations, can be made, since all grants are thereby expressly restrained and made void, which are not according to the tenour of those statutes. Where a real composition hath been made, if the lands discharged thereby be transferred or granted to another, the feoffee or grantee shall have the benefit of it. *Sydowne v. Holme, Jon.* (Sir W.), 369.

(1) *Barren heath or waste ground*.—By this was understood, ground that would not bear corn without very great cost in the manuring. *Witt v. Buck*, 3 Bulst. 166.

The rule of law for determining what was barren ground within Stat. 2 & 3 Edw. 6, c. 13, was, whether the land was of such a pasture as to require an extraordinary expense in the manuring or tilling to bring it into a proper state of cultivation, and not whether, it was not in its nature so fertile as, after being ploughed and sown, to produce of itself without manuring or tillage, a crop worth more than the expense of ploughing, sowing, and reaping. *Warwick v. Collins*, 2 M. & S. 349.

But land which was of a good natural quality, was liable to tithe immediately, notwithstanding Stat. 2 & 3 Edw. 6, c. 13, s. 5, although the expense attending the breaking it up and liming it, exceeded the return made to the farmer in the several first years of cultivation. *Ibid.* 5 *Ibid.* 166.

(2) *By reason of the same barrenness*.—All the books agree, that the land exempted by this clause, must have been such, as was barren in its own nature, and could not, without extraordinary cost and charge, have been made fruitful; i. e., saith Coke, "*quoad agriculturam*: for albeit it doth yield some fruit, yet if it be barren land, *quoad agriculturam*, as to tillage, which this branch meant to advance and encourage, it is within this act." 2 Inst. 655. *Berry v. Perry*, 3 Bulst. 65.

Powell, Justice, (2 Ld. Raym. 991,) having laid down this doctrine of barrenness *suapte naturâ*, adds, "and not land, upon which wood or the like grew before, which is after-

wards burnt, and the land converted into tillage."

From this necessary condition of a natural barrenness, divers lands, which at first sight seemed to be within the act, have been denied the benefit of it, by express resolutions and judgments. As, 1, marsh and sandy land gained from the sea; (2 Inst. 656;) 2, land that hath been overflowed for a term of years and is regained; (*Sherington v. Flewood*, Cro. Eliz. 475;) 3, fenny lands drained; (*Anon. Mo.* (Sir F.), 430;) 4, lands full of thorns and bushes made arable, or meadow land, by grubbing; (*Sherington v. Flewood*, *Ibid.* 909; Cro. Eliz. 475; 2 Inst. 656;) 5, land that hath been barren by neglect only. In all these cases, although the owners are at great charges in recovering and improving; yet the lands recovered and improved, not being barren in their own nature, but by accident only, were not entitled to the benefit of this clause, but were titheable immediately. And therefore, (as to the third article,) when an act was made for draining of certain fens, (4 Jac. 1, c. 13, s. 3,) a special proviso was added, to free them from paying any manner of tithes, until the feast of St. Michael the Archangel next ensuing the end of seven years, after the time limited for the draining thereof.

Whether land was barren or not, was triable at common law, and not in the spiritual court; but it must have been first pleaded there, and then if the spiritual court would not allow the plea, prohibition might have been granted. *Anon.* 1 Keb. 253. *Cookson's case*, *Ibid.* 387.

(3) *Seven years*.—The seven years during which heath or waste ground, which had lain barren and paid no tithes by reason of the barrenness, but which was afterwards improved and converted into arable ground or meadow, was exempt from tithe by the Stat. 2 & 3 Edw. 6, c. 13, s. 5, began to run from the time when some act had been done to make the land more productive than it was before; and therefore where barren land had been allotted and inclosed by commissioners in 1821, under an Inclosure Act, and the allottee in that year turned on his cattle, but did no act to render the land more productive; it was held, that the seven years did not then begin to run, and that he was not liable to pay tithe of corn in 1828. *Ross v. Smith* (Clerk), 1 B. & Ad. 907

STAT. 2 & 3
EDW. 6, c. 13.
The tithe of
barren heath or
waste ground.
Dyer, 170.
Cro. Eliz. 475.
Moor, 909.
Cro. Car. 208.

STAT. 2 & 3
EDW. 6, c. 13.

Who shall pay
their personal
tithes.

Handicrafts-
men having
used to pay
tithes.

The ordinary
may examine
him that re-
fuseth to pay
his tithes.

Payment of
offerings.

Tithe of fish.

Payment of
tithe by houses.
Latch, 89.

such kind of tithe as was paid for the same before the said improvement; any thing in this act to the contrary in any wise notwithstanding.

“VII. And be it also further enacted by the authority aforesaid, that every person exercising merchandises, bargaining and *selling*(1), clothing, handicraft, or other art or faculty, being such kind of persons, and in such places, as heretofore within these forty years have accustomedly used to pay such personal tithes, or of right ought to pay, (other than such as been common *day-labourers*(2),) shall yearly at or before the feast of Easter *pay*(3) for his personal tithes the tenth part of his clear gains, his charges, and expenses, according to his estate, condition, or degree, to be therein abated, *allowed*(4), and deducted.

“VIII. Provided always, and be it enacted, that in all such places where handicrafts-men have used to pay their tithes within these forty years, the same custom of payment of tithes to be observed and to continue; any thing in this act to the contrary notwithstanding.

“IX. And be it also enacted by the authority aforesaid, that if any person refuse to pay his personal tithes in form aforesaid, that then it shall be lawful to the ordinary of the same diocese where the party that so ought to pay the said tithes is dwelling, to call the same party before him, and by his discretion to examine him by all lawful and reasonable means, other than by the parties' own corporal oath, concerning the true payment of the said personal tithes.

“X. Provided always, and be it enacted by the authority aforesaid, that all and every person and persons which by the laws or customs of this realm ought to make or pay their offerings, shall yearly from henceforth well and truly content and pay his or their offerings to the parson, vicar, proprietor, or their deputies or farmers of the parish or parishes where it shall fortune or happen him or them to dwell or abide; and that at such four *offering-days*(5), as at any time heretofore within the space of four years last past hath been used and accustomed for the payment of the same, and in default thereof to pay for their said offerings at Easter then next following.

“XI. Provided also, and be it enacted by the authority aforesaid, that this act, or any thing therein contained, shall not extend to any parish which stands upon and towards the sea-coasts, the commodities and occupying whereof consisteth chiefly in fishing, and have by reason thereof used to satisfy their tithes by fish; but that all and every such parish and parishes shall hereafter pay their tithes according to the laudable customs, as they have heretofore of ancient time within these forty years used and accustomed, and shall pay their offerings as is aforesaid.

“XII. Provided always, and be it enacted by the authority aforesaid, that this act, or any thing therein contained, shall not extend in any wise to the inhabitants of the city of London and Canterbury, and the suburbs of the same, ne to any other town or place that hath used to pay their tithes by their houses, otherwise than they ought or should have done before the making of this act; any thing contained in this act to the contrary in any wise notwithstanding.

(1) *Selling*:—The parson of a parish in Bristow, (*Dolley v. Davies*, 2 Bulst. 141,) libelled in the spiritual court against an inn-keeper to have tithes of the profits of his kitchen, stable, and wine cellar, and set forth in his libel, that he made great gain in selling of his beer, having bought it for 500*l.*, and sold it for 1000*l.*, of which gain he ought to have tithe *per communem legem Angliæ*. Upon which occasion, the clerk of the papers informed the court, that when one had libelled for tithes of the gains of 10*l.* for 100*l.* put out, a prohibition was granted; and it was also granted in this case.

(2) *Day-labourers*:—It was resolved in *Ellis & Drake*, (1 Rol.Abr. *Dismes*(A), 646,) that servants of the plough should not pay any tithes of their wages, there being, (as was

then said,) as much reason, that the servants of the plough, as that the cattle of the plough, should be exempt from tithes.

(3) *Pay*:—To the church in which he receives the sacraments: “*Noveris igitur, quòd æquum est, ut illi ecclesiæ decimæ personales reddantur ab eis, in qua ecclesiastica percipiunt sacramenta.*”

(4) *Allowed*:—This is the rule of the canon law: “*Scias, quòd in istis decimis merè personilibus — deducuntur expensæ, tam in re, quàm circa rem, et extra rem, factæ.*” Lyndw. de Dec. Quoniam. c. Negotiationis.

(5) *Offering-days*:—Christmas, Easter, Whitsuntide, and the feast of the dedication of the parish church, were the usual days of offering.

"XIII. And be it further enacted by authority aforesaid, that if any person do substract or withdraw any manner of tithes, obventions, profits, commodities, or other duties beforementioned, or any part of them, contrary to the true meaning of this act, or of any other act heretofore made, that then the party so substracting or withdrawing the same, may or shall be convented and sued in the king's ecclesiastical court, by the party from whom the same shall be substracted or withdrawn, to the intent the king's judge ecclesiastical shall and may then and there hear and determine the same according to the king's ecclesiastical laws; and that it shall not be lawful unto the parson, vicar, proprietor, owner, or other their farmers or deputies, contrary to this act, to convent or sue such withholder of tithes, obventions, and other duties aforesaid, before any other judge than ecclesiastical. And if any archbishop, bishop, chancellor, or other judge ecclesiastical, give any sentence in the foresaid causes of tithes, obventions, profits, emoluments, and other duties aforesaid, or in any of them, (and no appeal ne prohibition hanging,) and the party condemned do not obey the said sentence, that then it shall be lawful to every such judge ecclesiastical to excommunicate the said party so as afore condemned and disobeying; in the which sentence of excommunication, if the said party excommunicate wilfully stand and endure still excommunicate by the space of forty days next after, upon denunciation and publication thereof in the parish church, or the place or parish where the party so excommunicate is dwelling or most abiding, the said judge ecclesiastical may then at his pleasure signify to the king in his court of chancery, of the state and condition of the said party so excommunicate, and thereupon to require process *de excommunicato capiendo* to be awarded against every such person as hath been so excommunicate.

"XIV. Be it further enacted by the authority aforesaid, that if any party at any time hereafter, for any *matter or cause*(1) *before rehearsed*(2), limited, or appointed by this act, to be sued or determined in the king's ecclesiastical court, or before the ecclesiastical judge, do sue for any prohibition in any of the king's courts where *prohibitions*(3) before this time have been used to be granted, that then in every such case the same party, before any prohibition shall be granted to him or them, shall bring and deliver to the hands of some of the justices or judges of the same court where such party demandeth the prohibition, the very true copy of the libel depending in the ecclesiastical court, concerning the matter wherefore the party demandeth the prohibition, subscribed or marked with the hand of the same party; and under the copy of the said libel shall be written the suggestion wherefore the party so demandeth the said prohibition: and in case the said suggestion, by two honest and sufficient witnesses at the least, be not *proved*(4) true

STAT. 2 & 3
Edw. 6, c. 13.
Suits for withholding of tithes shall be in the ecclesiastical court.
1 Bulst. 67.
See 4 Bur. 2095.

Excommunication of the party condemned.

A copy of the libel shall be delivered to the judges before a prohibition granted.
1 Leon. 286.
2 Leon. 212.

Dyer, 242.
Cro. Eliz. 736.
Cro. Car. 208.

(1) *Matter or cause*.—If the suggestion had been upon a personal contract or agreement for tithes, it need not have been proved within the six months, according to this statute, which extends only to *modus's*, and not to suggestions upon leases or contracts. *Tanner v. Small*, Yelv. 102, 119. *Anon. Litt. 297*. So it hath been held by some, (*Reynolds v. Hayes*, 1 Roll. 55; *Strowde v. Hoskins*, Jon. (Sir W.), 231,) but others hold this clause to be of general extent; affirming particularly, that it took place in suggestions of arbitrements, exemptions on Stat. 31 Hen. 8, barren lands, &c. And by the tenour of this clause, it seems to be of the same extent with the obligation to bring in the libel and suggestion, and (by consequence) must be general.

In *Foy v. Lister*, (2 Salk. 554; 2 Ld. Raym. 1171,) the court agreed, that this statute extended to suits for small as well as great tithes.

(2) *Before rehearsed*.—This act extended only to prædial and personal tithes, but inasmuch as it rehearses Stat. 27 Hen. 8, c.

20, and Stat. 32 Hen. 8, c. 7, both which statutes extend unto all kinds of tithes, viz. prædial, personal, and mixed, and to offerings also; therefore this branch also extended to them all. 2 Inst. 662.

(3) *Prohibitions*.—Vide Stat. 1 Gul. 4, c. 21.

(4) *Proved*.—This is to be understood under two limitations; one with regard to the degrees of proof, the other with regard to the clearness of the evidence. *Austin v. Pigot*, Cro. Eliz. 736. Mo. (Sir F.), 911. i. With regard to the degrees, it was sufficient, that enough was proved upon which to ground a prohibition, though the suggestion was not shown to be strictly and wholly true; so when the suggestion was for twenty acres of pasture, and as many acres of wood, in lieu of tithes, and proof was only made of the wood; for wool and lamb, and the witnesses only proved as to the lamb; for 100 acres, when there were only 60; for 20s. by way of *modus*, when the sum was 40s. In these cases the proofs were adjudged to be sufficient, because enough was proved to show, that

STAT. 2 & 3
EDW. 6, c. 13.

A consultation
granted for
default of
proving a
suggestion.
Carth. 463.
Het. 147.
1 Roll. 55.
2 Roll. 125.
Moor, 573,
pl. 788.

Of what things
a judge eccle-
siastical shall
not hold plea.
13 Edw. 1,
St. I. c. 5.
9 Edw. 2,
St. I. cc. 1, 2, 5.
1 Edw. 3,
St. II. c. 11.
18 Edw. 3,
St. III. c. 7.
45 Edw. 3, c. 3.
2 Inst. 663.

No tithes of
marriage goods
shall be paid in
Wales, &c.

in the court where the said prohibition shall be so granted, *within* (1) *six months* (2) next following after the said prohibition shall be so granted and awarded, that then the party that is letted or hindered of his or their suit in the ecclesiastical court by such prohibition, shall upon his or their request and suit, without delay, have a *consultation* (3) granted in the same case in the court where the said prohibition was granted; and shall also recover double costs and damages against the party that so pursued the said prohibition, the said costs and damages to be assigned or assessed by the court where the said consultation shall be so granted; for which costs and damages the party to whom they shall be awarded may have an action of debt, by bill, plaint, or information, in any of the king's courts of record, wherein the defendant shall not wage his or their law, nor have any essoin or protection allowed or admitted.

"XV. Provided always, and be it enacted by the authority aforesaid, that this act, or any thing therein contained, shall not extend to give any minister or judge ecclesiastical any jurisdiction to hold plea of any matter, cause or thing, being contrary or repugnant to or against the effect, intent, or meaning of the statute of *Westminster Second* (4), the fifth chapter, the statutes of *Articuli cleri* (5), *Circumspecte agatis* (6), *Silva cædua* (7), the treatise *De regiâ prohibitione* (8), ne against the statute of *Anno primo Edwardi Tertii, the tenth chapter* (9), or any of them, ne yet hold plea in any matter whereof the king's court of right ought to have jurisdiction; any thing herein contained to the contrary in any wise notwithstanding.

"XVI. Provided nevertheless, where heretofore such a custom hath been in many parts of Wales, that of such chattel and other goods as hath been given with the marriage of any person, their tithes have been exacted and levied by the parsons and curates in those parts: which custom being dissonant from any part of this realm, as it seemed when the said country of Wales was through civil dissension uncultured, for want of other sufficient profits that might otherwise grow to the curates and ministers there, to have been for that time tolerable: so now the country being well manured and husbanded, and the tithe is duly paid there of corn, hay, wool, and cheese, and of other increase of all manner of cattle, as it is commonly in all other parts of this realm, the same custom seems to be grievous and unreasonable, specially where the benefices are else sufficient for the finding of the said ministers and curates: that it be therefore enacted by the authority aforesaid, that from and after the first day of May next coming no such tithes of marriage

the court Christian ought not to have holden plea thereof, but if proof was neither made of the *modus* laid, nor of any other *modus*, then the suggestion was not proved. *Case de Prohibition*, Yelv. 55. *Webb v. Petts*, Noy, 44. *Goddard & Tiler's case*, Hetl. 100.

ii. As to the clearness of the evidence, it was sufficient in this case, if the witnesses declare, as to the matter of the suggestion, that they believed it, or had known it so, or had heard it, or that there was a common fame of it. *Ford v. Weedham*, Noy, 28. *Wall-singhams & Stone's case*, Litt. 155. *Bennet & Snell*, Palm. 377.

(1) *Within*.—If there had been no certainty in the first proof, it could not have been supplied by good proof after the six months, but if good proof was made within the time, it might have been certified or recorded after the time. *Ibid*.

(2) *Six months*.—i.e. six kalendar months, (not to be reckoned by twenty-eight days to the month,) and to be computed from the *teste* of the writ: which months were to be in term, and the vacation no part of the time, as it was held in *Copley v. Collins*, Hob. 179. *Sharp v. Hubbard*, 2 Mod. 58. *Foy v. Lister*, 2 Ld. Raym. 1172. But in *Skin-*

ner's case, the proof was declared to be good, although in time of vacation, and the case in *Moore* (*Anon. Mo.* (Sir F.), 573,) was denied. *Skinner's case*, Noy, 30. *Foy v. Lister*, 2 Salk. 554.

(3) *Consultation*.—After which the party might have had a new prohibition upon the same libel; (*Strowde v. Hoskins*, Jon. (Sir W.), 231; *Pool v. Gardner*, Carth. 463;) inasmuch as the Stat. 50 Edw. 3, (*antè* 73,) against prohibition after consultation, extended not to those consultations for defect of proof within six months, but only to consultations which were granted upon the matter of the suggestion. *Sed vide* Stat. 1 Gul. 4, c. 21.

(4) *Westminster Second*.—Stat. 13 Edw. 1, St. I., c. 5, s. 4, *antè* 18.

(5) Statutes of *Articuli cleri*.—*Antè* 33–40.

(6) *Circumspecte agatis*.—Stat. 13 Edw. 1, St. IV. c. 1, *antè* 24.

(7) *Silva cædua*.—Stat. 45 Edw. 3, c. 3, *antè* 72.

(8) *De regiâ prohibitione*.—My Lord Coke says this is the treatise entitled, "Prohibitio formata super Articulis."

(9) *Anno primo Edwardi Tertii, the tenth chapter* [St. II.]:—*Antè* 44.

goods be exacted or required of any person within the said dominion of Wales, or marches of the same; any thing in this act contained, or any other act, custom, or prescription had or made to the contrary hereof notwithstanding.”

STAT. 2 & 3
EDW. 6, c. 13.

VII. STAT. 2 & 3 EDWARDI 6, c. 19(1). A.D. 1548.

“An Act touching Abstinence from Flesh in Lent, and other usual Times.”

STAT. 2 & 3
EDW. 6, c. 19.

“Albeit the king’s subjects now having a more perfect and clear light of the Gospel and true Word of God, through the infinite mercy and clemency of Almighty God, by the hands of the king’s majesty, and his most noble father of famous memory, promulgate, shewed, declared, and opened, and thereby perceiving that one day or one kind of meat of itself is not more holy, more pure, or more clean than another, for that all days and all meats be of their nature of one equal purity, cleanness, and holiness, and that all men should by them live to the glory of God, and at all times and for all meats give thanks unto Him, of which meats none can defile Christian men or make them unclean at any time, to whom all meats be lawful and pure, so that they be not used in disobedience or vice; yet forasmuch as divers of the king’s subjects, turning their knowledge therein to satisfy their sensuality, where they should thereby increase in virtue, have of late time more than in times past broken and contemned such abstinence, which hath been used in this realm upon the Fridays and Saturdays, the Embring days, and other days, commonly called Vigils, and in the time commonly called Lent, and other accustomed times: the king’s majesty, considering that due and godly abstinence is a mean to virtue, and to subdue men’s bodies to their souls and spirit, and considering also specially that fishers and men using the trade of living by fishing in the sea, may thereby the rather be set on work, and that by eating of fish much flesh shall be saved and increased, and also for divers other considerations and commodities of this realm, doth ordain and enact, with the assent of the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, that all manner of statutes, laws, constitutions, and usages, concerning any manner of fasting or abstinence from any kinds of meats heretofore in this realm made or used, shall from the first day of May next ensuing lose their force and strength, and be void and of none effect, &c.”

[Expired.]
Eating of flesh
on certain days
and times
forbidden.
5 & 6 Edw. 6,
c. 3.

Embring days,
Lent.

All laws con-
cerning fasting
repealed.

VIII. STAT. 2 & 3 EDWARDI 6, c. 20(2). A.D. 1548.

“An Incumbent, for not paying of his Tenths due to the King, the same being demanded, shall be deprived of that Benefice.”

STAT. 2 & 3
EDW. 6, c. 20.

“Where in the parliament holden upon prorogation at Westminster the third day of November, in the six and twentieth year of the reign of the most excellent prince, King Henry the Eighth, father to our sovereign lord the king’s majesty that now is, amongst other things concerning the payment of one annual pension of the tenth part of all possessions of the church, spiritual and temporal, granted to the king’s highness and his heirs, it was enacted, ordained, and established, that every ecclesiastical person, and other, having any ecclesiastical promotion or dignity, specified in the said act, which did not duly pay the said tenth part, and by reason thereof were certified by the archbishop, bishop, or other authorized in the said act, should upon such certificate, made according to the tenor of the said act, be judged deprived *ipso facto* of all such dignities and promotions spiritual, that any such incumbent making such default, had at the time of any such certificate made, or at any time after, as by the said act more plainly may appear.

“II. Forasmuch as the pain limited in the said statute, in such form and manner as in the same is expressed, is very sore and dangerous unto all the king’s faithful and obedient subjects of the clergy, whereof divers sithen the making of the said statute, intending none otherwise than most willingly, and with good

The inconveni-
ences ensuing
by the Stat. of
26 Hen. 8, c. 3,
touching de-

(1) *Vide* Stat. 5 Eliz. c. 5, s. 15. Stat.
27 Eliz. c. 11. Stat. 35 Eliz. c. 7, ss. 8 &
22.

(2) Repealed by Stat. 2 & 3 P. & M. c. 4.
Revived by Stat. 1 Eliz. c. 4. *Vide* Stat. 2
& 3 Ann. c. 11.

STAT. 2 & 3
EDW. 6, c. 20.

privation of all
a man's spiri-
tual livings for
lack of pay-
ment of the
tenth of one.

The penalty
for default of
payment of
tenths shall be
the forfeiture
of that only
benefice out of
the which the
same is due.

heart, that payment should be made of the said tenths by them due, without fraud or delay, to such officers, and at such times as by the said statute is appointed and declared, by the default and negligence of their farmers, and other whom they have trusted to make payment thereof, and by divers other sinister means, being certified or making default of payment thereof, have incurred the pain and danger of the said statute, with the loss and deprivations of all the spiritual promotions whereof they were then incumbents, being also made unable to take any other, to the utter undoing of such persons, and the like peril and danger of many other the king's most humble and faithful subjects of the clergy, against whom the like things may be practised and attempted hereafter: for the moderation of which pain, and to the end that the king's majesty, our sovereign lord that now is, and his heirs and successors, may be truly answered and satisfied of the said yearly pension or annual rent of the tenth part, united and knit to his imperial crown in manner and form as in the said act is contained:

"III. The king's said faithful and most obedient subjects, the clergy of this realm, do most humbly beseech his majesty, that it may be enacted and established by his highness, the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, that if any sum of the said annual pension being once due, and demanded according to the manner and form specified in the said act, be not truly contented and paid unto such archbishop or bishop, or their ministers and officers, or to such other person or persons, or their ministers or servants, as shall have the charge of collection thereof, every year yearly at the time of the said act expressed, and thereupon certificate made into the king's majesty's court of first-fruits and tenths, in writing under the seals of any archbishop or bishop, or of such as be limited and charged to the collection of the said pension by the said former act; then every incumbent so making default and certified, shall be judged deprived *ipso facto* of that only dignity, benefice, or other ecclesiastical promotion, by what name soever it be called, whereof such certificate shall be made; so that such dignity, benefice, or other ecclesiastical promotion, whereof any incumbent making such default of payment shall be judged deprived as is aforesaid, shall be clearly void and destitute of incumbent in the law, to all intents and purposes as if such incumbent making such default of payment were dead in deed.

"IV. And that no incumbent making such default of payment shall be therefore made unable to take or enjoy any other benefice or promotion spiritual, or incur any penalty, forfeiture, or loss to be paid by them, their executors, or assigns for the same default, other than in this present act is heretofore expressed; any thing in the said former act, or any other statutes or acts, contained to the contrary notwithstanding.

"V. Provided alway, that the said former act concerning the payment of the said yearly rent and pension, amounting to the tenth part of every such dignity, benefice, or promotion spiritual, and every other act touching the same, and all articles, clauses, and sentences in them or any of them mentioned, expressed, or contained, now being in his or their force and effect, other than such as by this present act be already qualified or moderated, shall stand and abide in all his or their full strength, effect, and virtue; any thing in this present act contained notwithstanding."

STAT. 2 & 3
EDW. 6, c. 21.

All laws pro-
hibiting spiri-
tual persons to
marry, who by
God's law may
marry, shall be
void.

IX. STAT. 2 & 3 EDWARDI 6, c. 21 (1). A.D. 1548.

"An Act to take away all positive Laws made against Marriage of Priests."

"Although it were not only better for the estimation of priests, and other ministers in the church of God, to live chaste, sole, and separate from the company of women, and the bond of marriage, but also thereby they might the better intend to the administration of the Gospel, and be less intricated and troubled with the charge of household, being free and unburdened from the care and cost

(1) Enforced by Stat. 5 & 6 Edw. 6, c. Made perpetual by Stat. 2 Jac. 1 c. 25.
12. Repealed by Stat. 1 Mar. sess. 2 c. 2. s. 50.

of finding wife and children, and that it were most to be wished, that they would willingly and of their selves endeavour themselves to a perpetual chastity and abstinence from the use of women: yet forasmuch as the contrary hath rather been seen, and such *uncleanness* (1) of living, and other great inconveniences, not meet to be rehearsed, have followed of compelled chastity, and of such laws as have prohibited those (such persons) the godly use of marriage; it were better and rather to be suffered in the commonwealth, than those which could not contain, should after the counsel of Scripture live in holy marriage, than feignedly abuse with worse enormity outward chastity or single life:

“II. Be it therefore enacted by our sovereign lord the king, with the assent of the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, that all and every law and laws positive, canons, constitutions, and ordinances heretofore made by authority of man only, which do prohibit or forbid marriage to any ecclesiastical or spiritual person or persons, of what estate, condition, or degree they be, or by what name or names soever they be called, which by God’s law may lawfully marry, in all and every article, branch, and sentence, concerning only the prohibition for the marriage of the persons aforesaid, shall be utterly void and of none effect: and that all manner of forfeitures, pains, penalties, crimes, or actions which were in the said laws contained, and of the same did follow concerning the prohibition for the marriage of the persons aforesaid, be clearly and utterly void, frustrate, and of none effect, to all intents, constructions, and purposes, as well concerning marriages heretofore made by any of the ecclesiastical or spiritual persons aforesaid, as also such which hereafter shall be duly and lawfully had, celebrate, and made betwixt the persons which by the laws of God may lawfully marry.

“III. Provided alway, and be it enacted by the authority aforesaid, that this act, or any thing therein contained, shall not extend to give any liberty to any person to marry without asking in the church, or without any ceremony being appointed by the order prescribed and set forth in the book intituled, ‘The Book of Common Prayer, and Administration of the Sacraments, &c.,’ any thing above mentioned to the contrary in any wise notwithstanding.

“IV. Provided also, and be it enacted by the authority aforesaid, that this act, or any thing therein contained, shall not extend to alter, change, revoke, repeal, or otherwise to disannul any decree, judgment, sentence, or divorce heretofore had or made, but that all and every such decree, judgment, sentence, and divorce, shall remain and be of such like force, effect, strength, and degree, to all intents, constructions, and purposes, as they were in before the making of this act, and as though this act had never been had ne made; this act or any thing therein contained to the contrary in any wise notwithstanding.”

X. STAT. 2 & 3 EDWARDI 6, c. 23 (2). A.D. 1548.

“The Repeal of an Act made in the thirty-second Year of King Henry the Eighth, which was made, that Marriage contracted in the Face of the Church, and consummate with Bodily Knowledge, to be deemed lawful, any former Contract notwithstanding.”

“Whereas in the xxxij. year of the reign of the late king of famous memory, King Henry the Eighth, because that many inconveniences had chanced in this realm by breaking and dissolving of good and lawful marriages, yea, whereupon also sometime issue and children had followed, under the colour and pretence of a former contract made with another, the which contract divers times was but very slenderly proved, and often but surmised by the malice of the party who desired to be dissolved from the marriage which they liked not, and to be coupled with

STAT. 2 & 3
EDW. 6, c. 21.

The benefits which would ensue if priests and ministers did live chaste, sole, and unmarried.

No marriage without asking in the church.

Decrees and divorces heretofore made.

STAT. 2 & 3
EDW. 6, c. 23.

Part of the Statute of Precontracts repealed.

(1) *Uncleanness*:—Exclusive of the abominations detected by the commissioners for visiting of religious houses in the reign of Henry 8; it appears from the metropolitical visitation of Archbishop Warham, that in the

two dioceses of Bangor and St. David’s, above eighty priests were actually presented for incontinence. Warham, Reg. f. 222, 227, &c.

(2) *Vide Stat. 1 Eliz. c. 1. Stat. 5 & 6 Gul. 4, c. 54*

STAT. 2 & 3
EDW. 6, c. 23.

another, there was an act made, that all and every such marriages, as within the church of England should be contracted and solemnized in the face of the church, and consummate with bodily knowledge, or fruit of children or child being had between the parties so married, should be by the authority of the said parliament deemed, judged, and taken to be lawful, good, just, and indissoluble, notwithstanding any precontract or precontracts of matrimony not consummate with bodily knowledge, which either of the persons so married, or both, had made with any other person or persons before the time of contracting that marriage which is solemnized or consummated, or whereof such fruit is ensued or may ensue, as by the same act more plainly may appear: sithence the time of which act, although the same was godly meant, the unruliness of men hath ungodly abused the same, and divers inconveniences (intolerable in manner to Christian ears and eyes) followed thereupon, women and men breaking their own promises and faiths made by the one unto the other, so set upon sensuality and pleasure, that if after the contract of matrimony they might have whom they more favoured and desired, they could be content by lightness of their nature to overturn all that they had done afore, and not afraid in manner, even from the very church-door and marriage-feast, the man to take another spouse, and the spouse to take another husband, more for bodily lust and carnal knowledge, than for surety of faith and truth, or having God in their good remembrance, contemning many times also the commandment of the ecclesiastical judge, forbidding the parties having made the contract to attempt to do any thing in prejudice to the same:

A repeal of so much of the statute of 32 Hen. 8, c. 38, as maketh that marriage indissoluble, which is solemnized in the church, and consummated with bodily knowledge and fruit of child. 15 Vin. 622.

“II. Be it therefore enacted by the king’s highness, the lords spiritual and temporal, and the commons, in this present parliament assembled, that as concerning precontracts, the said former statute shall from the first day of May next coming cease, be repealed, and of no force or effect, and be reduced to the estate and order of the king’s ecclesiastical laws of this realm, which immediately before the making of the said statute in this case were used in this realm: so that from the said first day of May, when any cause or contract of marriage is pretended to have been made, it shall be lawful to the king’s ecclesiastical judge of that place to hear and examine the said cause: and (having the said contract sufficiently and lawfully proved before him) to *give sentence for matrimony* (1), commanding solemnization, cohabitation, consummation, and tractation, as becometh man and wife to have, with inflicting all such pains upon the disobedients and disturbers thereof, as in times past before the said statute the king’s ecclesiastical judge by the king’s ecclesiastical laws ought and might have done, if the said statute had never been made; any clause, article, or sentence in the said statute to the contrary in any wise notwithstanding.

“III. Provided always, and be it enacted, that this act do not extend to disannul, dissolve, or break any marriage that hath or shall be so solemnized and consummated before the said first day of May next ensuing, by title or colour of any precontract, but that they be and be deemed of like force and effect, to all

(1) *Give sentence for matrimony*:—In *Collins & Jesset*, (6 Mod. 155; 2 Salk. 437,) it was said by Chief Justice Holt, and agreed to by the whole bench, “That if a contract be *per verba de presenti*, it amounts to an actual marriage, which the very parties themselves cannot dissolve by release or other mutual agreement, for it is as much a marriage in the sight of God, as if it had been *in facie ecclesie*, with this difference, that if they cohabit, before marriage *in facie ecclesie*, they are for that punishable by ecclesiastical censures, and if, after such contract, either of them lies with another, they will punish such offender as an adulterer.”

To which he added, the rest (except *Powell*) assenting, “That if the contract be *per verba de futuro*, and after, either of the parties so

contracting, without a previous release or discharge of the contract, marry another, it will be good cause with them of a dissolution of a second marriage, and of decreeing the first contract’s being perfected into a marriage.”

In case of a contract *per verba de futuro*, prosecution may be either in the spiritual court, concerning the point, whether precontract or not, or in the temporal court, for damages, but not in both. *Ibid*.

If there be an express promise by the man, and it appear that the woman countenanced it, and by her actions at that time behaved herself so, as if she agreed to the matter, though there be no actual promise, yet that shall be sufficient evidence of a promise on her side. *Ibid*. 172.

intents, constructions, and purposes, as if this act had never been had ne made; any thing in this present act notwithstanding. STAT. 2 & 3 EDW. 6, c. 23.

“IV. Provided also, that this act do not extend to make good any of the other causes to the dissolution or disannulling of matrimony, which be in the said act spoken of and disannulled, but that in all other causes and other things therein mentioned, the said former act of the xxxij. year of the late king of famous memory do stand and remain in its full strength and power; any thing in this act notwithstanding.” A confirmation of the residue of the said statute of 32 Hen. 8, c. 38.

XI. STAT. 2 & 3 EDWARD 6, c. 39 (1). A.D. 1548.

“*The King's general and free Pardon confirmed by Parliament.*”

[Clerks convict shall be discharged upon the general pardon, without other suit. . . . Stealing of any goods or chattels out of churches excepted.]

STAT. 2 & 3 EDW. 6, c. 39.

XII. STAT. 3 & 4 EDWARD 6, c. 10 (2). A.D. 1549.

“An Act (3) *for the abolishing and putting away of divers Books and Images.*”

STAT. 3 & 4 EDW. 6, c. 10.

“Where the king's most excellent majesty hath of late set forth and established by authority of parliament, in uniform, quiet, and godly order for common and open prayer, in a book, entitled ‘The Book of Common Prayer and Administration of the Sacraments, and other Rites and Ceremonies of the Church, after the Church of England,’ to be used and observed in the said church of England, agreeable to the order of the primitive church, much more comfortable unto his loving subjects than other diversity of service, as heretofore of long time hath been used, being in the said book ordained, nothing to be read but the very pure word of God, or which is evidently grounded upon the same; and in the other, things corrupt, untrue, vain, and superstitious, and, as it were, a preparation to superstition; which, for that they be not called in, but permitted to remain undefaced, do not only give occasion to such perverse persons as do impugn the order and godly meaning of the king's said Book of Common Prayer, to continue in their old accustomed superstitious service, but also minister great occasion to diversity of opinions, rites, ceremonies, and services: be it therefore enacted by the king our sovereign lord, the lords spiritual and temporal, and the commons, in the present parliament assembled, that all books called Antiphoners, Missals, Grailes, Processionals, Manuals, Legends, Pies, Portuasses, Primers in Latin or English, Couchers, Journals, Ordinals, or other books or writings whatsoever heretofore used for service of the church, written or printed in the English or Latin tongue, other than such as are or shall be set forth by the king's majesty, shall be by authority of this present act clearly and utterly abolished, extinguished, and forbidden for ever to be used or kept in this realm, or elsewhere, within any the king's dominions.

Certain books and images shall be abolished. 2 & 3 Edw. 6, c. 1. 3 Jac. 1, c. 5.

“II. And be it further enacted by the authority aforesaid, that if any person or persons, of what estate, degree, or condition soever he, she, or they be, body politick or corporate, that now have or hereafter shall have in his, her, or their custody, any the books or writings of the sorts aforesaid, or any images of stone, timber, alabaster, or earth, graven, carved, or painted, which heretofore have been taken out of any church or chapel, or yet stand in any church or chapel, and do not before the last day of June next ensuing deface and destroy, or cause to be defaced and destroyed, the same images and every of them, and deliver, or cause to be delivered, all and every the same books to the mayor, bailiff, constable, or churchwardens of the town where such books then shall be, to be by them delivered over openly within three months next following after the said delivery, to

Images taken out of, or yet remaining in churches, shall be destroyed.

Popish books shall be first delivered to the

(1) Expired.

(2) Repealed by Stat. 1 Mar. St. II. c. 2, which act is repealed by Stat. 1 Jac. 1, c. 25, s. 48.

(3) *An Act*:—“Allata à domo communi billa,” for the abolishing and putting away

of divers books and images; “Conclusa, dissentien’, Comite Derby, Episcopis Dunelm’, Coven’ et Lichen’, Carliolen’, Wigorn’, Westm’, et Cicestr’, et Dominis Morly, Sturton, Windsor, et Wharton.” Journ. Proc.

STAT. 3 & 4
EDW. 6, c. 10.

mayor, &c.,
and then by
him to the
bishop, &c., to
be burnt or
otherwise
defaced.

The penalty of
mayor, &c., or
bishop, &c.,
omitting their
duty herein.

Justices of
assize and
peace shall
hear and deter-
mine these
offences.

Primers set
out by Hen. 8,
being purged,
may be still
retained.

Images upon
tombs shall
still remain.

STAT. 3 & 4
EDW. 6, c. 11.

the archbishop, bishop, chancellor, or commissary of the same diocese, to the intent the said archbishop, bishop, chancellor, or commissary, and every of them, cause them immediately either to be openly burnt or otherwise defaced and destroyed; shall for every such book or books willingly retained in his, her, or their hands or custody within this realm, or elsewhere within any the king's dominions, and not delivered as is aforesaid, after the said last day of June, and be thereof lawfully convict, forfeit and lose to the king our sovereign lord for the first offence xx. s., and for the second offence shall forfeit and lose (being thereof lawfully convict) iv. *l.* and for the third offence shall suffer imprisonment at the king's will.

"III. And be it further enacted by the authority aforesaid, that if any mayors, bailiffs, constables, or churchwardens, do not, within three months after receipt of the same books, deliver, or cause to be delivered, such books so by them received, to the archbishop, bishop, chancellor, or commissary of their diocese; and if the said archbishops, bishops, chancellors, or commissaries, do not, within forty days after the receipt of such books, burn, deface, and destroy, or cause to be burned, defaced, or destroyed, the same books and every of them; that then they and every of them so offending, shall lose and forfeit to our sovereign lord the king, being thereof lawfully convict, xi. *l.* The one half of all such forfeitures shall be to any of the king's subjects that will sue for the same in any of the king's courts of record, by bill, plaint, action of debt, or information; in which action no essoin, protection, wager of law, or other delay shall be allowed.

"IV. And for better execution of the same act, be it enacted by the authority aforesaid, that as well justices of assize in their circuits, as justices of peace within the limits of their commission in the general sessions, shall have full power and authority to inquire of the offences aforesaid, and to hear and determine the same, in such form as they may do in other such like cases.

"V. Provided also, and be it enacted by the authority aforesaid, that any person or persons may use, keep, have, and retain any Primers in the English or Latin tongue, set forth by the late king of famous memory, King Henry the Eighth, so that the sentences of invocation or prayer to saints in the same Primers be blotted or clearly put out of the same; any thing in this act to the contrary notwithstanding.

"VI. Provided always, that this act, or anything therein contained, shall not extend to any image or picture set or graven upon any tomb in any church, chapel, or church-yard, only for a monument of any king, prince, nobleman, or other dead person, which hath not been commonly reputed and taken for a saint, but that such pictures and images may *stand and continue* (1) in like manner and form as if this act had never been had nor made; any thing in this act to the contrary in any wise notwithstanding."

XIII. STAT. 3 & 4 EDWARDI 6, c. 11 (2). A.D. 1549.

"An Act that the King's Majesty may nominate and appoint two-and-thirty Persons (3) to peruse and make Ecclesiastical Laws."

(1) *Stand and continue*:—"And this shall not be done by any person on his own authority, but he ought to have the licence of the ordinary." *Frances v. Ley*, Cro. Jac. 366.

"And," Dr. Godolphin says, "if any shall do so without the licence of the ordinary, he shall bind him to his good behaviour, but the meaning is only, that *he may be bound to his good behaviour*, not by the ordinary, but by a temporal judge, as in *Pricket's case*, where the offender was bound to his good behaviour, not by the ordinary, but by the lord chief justice of the court of King's Bench." 2 Burn's E. L. by Phillimore, 337.

(2) Expired.

(3) *Persons*:—"There was a nomination of eight persons pursuant to this statute, and the method taken for carrying on this work, and the progress made in it, on the foot of Henry the Eighth's scheme, are thus set forth in the preface to the *Reformatio Legum* (p. *penult.*): "*Nec longum erat, quin regis voluntati satisfactum sit. Res enim, tanquam pensum, in varias distributa operas, felicitate non minori, quam celeritate, confecta est, hoc observato ordine; ut duo hi et triginta in quatuor classes æquâ proportionē ita dividerentur, ut in singulis octonariis duo episcopi duo item theologi, rursusque duo juris utriusque, similiter et communis juris, consulti totidem contine-*

XIV. STAT. 3 & 4 EDWARDI 6, c. 12(1). A.D. 1549.

STAT. 3 & 4
EDW. 6, c. 12.

"Such Form and Manner (2) of making and consecrating of Archbishops, Bishops, Priests, Deacons, and other Ministers of the Church, as by six Prelates, and six other Men of this Realm learned in God's Law, by the King to be appointed and assigned, or by the most number of them, shall be devised for that purpose, and set forth (3) under the Great Seal before the first of April next coming, shall be lawfully exercised and used (4), and none other."

XV. STAT. 3 & 4 EDWARDI 6, c. 24(5). A.D. 1549.

STAT. 3 & 4
EDW. 6, c. 24.

"An Act of the King's Majesty's most free and general Pardon."

"A confirmation by Parliament of the king's pardon of all heresies, treasons, rebellions, murder, felonies, offences, trespasses, &c., saving such which in the said pardon be excepted."

XVI. STAT. 5 & 6 EDWARDI 6, c. 1(6). A.D. 1552.

STAT. 5 & 6
EDW. 6, c. 1.

"An Act for the Uniformity of Service and Administration of Sacraments throughout the Realm."

"Where there hath been a very godly order set forth by the authority of parliament, for common prayer and administration of the sacraments, to be used in the mother tongue within the church of England, agreeable to the word of God and the primitive church, very comfortable to all good people desiring to live in Christian conversation, and most profitable to the estate of this realm, upon the

Uniformity of prayer and administration of sacraments shall be used in the church.

rentur. Interquos sic denique conventum est, ut quod in singulis classibus conclusum et definitum esset, id per reliquas classes considerandum atque inspicendum transmitteretur. Quanquam verò, ex hoc ipso omni numero, octo potissimum selecta fuerunt capita, quibus prima operis præformatio, quasque materiæ præparatio committeretur; quorum nomina, regis in Edovardi epistolâ comprehensa, videre liceat. . . . Summæ negotii præfuit Tho. Cranmerus Archiepiscopus Cantuariensis. Orationis lumen et splendorem addidit Gualterus Hadonius, vir disertus, et in hac ipsa juris facultate non imperitus. Quin nec satis scio, an Joannis Checi, viri singularis, eidem negotio adjuvix adfuerit manus. Quo factum est, ut cultiori stylo concinnatæ sint istæ leges, quàm pro communi cæterarum legum more. . . . Nec dubium, quin parlamentari auctoritate sanctiones istæ constabilitæ, atque in publicum usum consecratæ fuissent, si vita regi paulò longior suppetisset."

"This design of a body of ecclesiastical laws, having been defeated by the death of King Edward 6, rested until the year 1562, when it was proposed in convocation to move her majesty, that certain learned men, bishops and others, might be appointed to set down ecclesiastical orders and rules in all ecclesiastical matters for the good government of the church of England, as should by them be thought most meet. And the same in this present session of parliament, whatsoever they shall order or set down within one year next, to be effectual, and for law confirmed by act of parliament, at or in this session.

"Afterwards, by the endeavours of Archbishop Parker, it was set afoot in the parliament of the 13 Eliz., and by a leading

member recommended to the consideration of the House of Commons; but, after that, no additional trouble seems to have been taken with it." Gibson's Codex, 952. D'Ewes, 167.

(1) Expired. *Sed vide* 1 Mar. Sess. 2, c. 2. Stat. 2 Jac. 1, c. 25, s. 48.

(2) *Form and Manner*.—The bishop employed by Pope Innocent the Eighth, to revise and correct the Roman pontificals, complains of the difficulties of the work, as arising from the vast variety: "Rei enim vetustate, ecclesiarum multitudine, temporum et prælatorum varietate, effectum est, ut vix duo aut tres codices inveniantur, qui idem tradunt, eodem modo; quot libri, tot varietates; ille deficit, hic superabundat; alius nihil omnino de eâ re habet; raro aut nunquam conveniunt." Gibson's Codex, 100.

(3) *Set forth*.—The printed form, which was agreed upon, in accordance with the tenour of this statute, was in many respects essentially the same with that, which was confirmed by parliament in the 5 & 6 of Edw. 6, except the *introite's*, and the putting of the pastoral staff into the hands of the bishop, with some other minor circumstances, which were omitted.

(4) *Lawfully exercised and used*.—Heath, bishop of Worcester, one of the six bishops appointed for devising of the new form, refused to subscribe it, when finished, and for such his refusal was committed to the Fleet.

(5) Expired.

(6) *Vide* Stat. 8 Eliz. c. 1. Stat 13 Eliz. c. 12.

Repealed by Stat. 1 Mar. sess. 2, c. 2, which is repealed by Stat. 1 Eliz. c. 2, and Stat. 1 Jac. 1, c. 25, s. 48; and this act is now made perpetual by Stat. 5 Ann. c. 5, as to the establishment of the church.

STAT. 5 & 6
EDW. 6, c. 1.

which the mercy, favour, and blessing of Almighty God is in no wise so readily and plenteously poured as by common prayers, due using of the sacraments, and often preaching of the gospel, with the devotion of the hearers: and yet this notwithstanding, a great number of people in divers parts of this realm, following their own sensuality, and living either without knowledge or due fear of God, do wilfully and damnably before Almighty God abstain and refuse to come to their parish churches and other places where common prayer, administration of the sacraments, and preaching of the word of God, is used upon Sundays and other days ordained to be holy-days.

March, 95.

Every person shall resort to his parish church or chapel upon Sundays and holidays.

“II. For reformation hereof, be it enacted by the king our sovereign lord, with the assent of the lords and commons in this present parliament assembled, and by the authority of the same, that from and after the feast of All Saints next coming, all and every person and persons inhabiting within this realm, or any other the king’s majesty’s dominions, shall diligently and faithfully (having no lawful or reasonable excuse to be absent) endeavour themselves to resort to their parish church or chapel accustomed; or upon reasonable let thereof, to some usual place where common prayer and such service of God shall be used in such time of lett, upon every Sunday and other days ordained and used to be kept as holy-days; and then and there to abide orderly and soberly during the time of the common prayer, preachings, or other service of God there to be used and ministered; upon pain of punishment by the censures of the church.

“III. And for the due execution hereof, the king’s most excellent majesty, the lords temporal, and all the commons, in this present parliament assembled, doth in God’s name earnestly require and charge all the archbishops, bishops, and other ordinaries, that they shall endeavour themselves, to the uttermost of their knowledges, that the due and true execution thereof may be had throughout their dioceses and charges, as they will answer before God for such evils and plagues wherewith Almighty God may justly punish his people for neglecting this good and wholesome law.

They which come not to church may be punished by the censures of the church.

“IV. And for their authority in this behalf, be it further likewise enacted by the authority aforesaid, that all and singular the same archbishops, bishops, and all other their officers exercising ecclesiastical jurisdiction, as well in place exempt as not exempt, within their dioceses, shall have full power and authority by this act to reform, correct, and punish by censures of the church, all and singular persons which shall offend within any their jurisdictions or dioceses, after the said feast of All Saints next coming, against this act and statute; any other law, statute, privilege, liberty, or provision heretofore made, had, or suffered to the contrary notwithstanding.

The Book of Common Prayer, with the form of consecrating bishops, priests, deacons.
1 Edw. 6, c. 2.

“V. And because there hath arisen in the use and exercise of the aforesaid common service in the church heretofore set forth, divers doubts for the fashion and manner of the ministration of the same, rather by the curiosity of the minister and mistakers, than of any other worthy cause; therefore, as well for the more plain and manifest explanation hereof, as for the more perfection of the said order of common service, in some places where it is necessary to make the same prayers and fashion of service more earnest and fit to stir Christian people to the true honouring of Almighty God; the king’s most excellent majesty, with the assent of the lords and commons, in this present parliament assembled, and by the authority of the same, hath caused the aforesaid order of common service, entitled ‘The Book of Common Prayer,’ to be faithfully and godly perused, explained, and made fully perfect, and by the aforesaid authority hath annexed and joined it, so explained and perfected, to this present statute: adding also a form and manner of making and consecrating of archbishops, bishops, priests, and deacons, to be of like force, authority, and value as the same like foresaid book, entitled ‘The Book of Common Prayer,’ was before, and to be accepted, received, used, and esteemed in like sort and manner, and with the same clauses of provisions and exceptions, to all intents, constructions, and purposes, as by the act of parliament made in the second year of the king’s majesty’s reign was ordained, limited, expressed, and appointed for the uniformity of service and administration of the sacraments

2 & 3 Edw.
6, c. 1.

throughout the realm, upon such several pains as in the said act of parliament is expressed. And the said former act to stand in full force and strength, to all intents and constructions, and to be applied, practised, and put in ure, to and for the establishing of 'The Book of Common Prayer,' now explained and hereunto annexed, and also the said form of making of archbishops, bishops, priests, and deacons hereunto annexed, as it was for the former book.

"VI. And by the authority aforesaid it is now further enacted, that if any manner of person or persons inhabiting and being within this realm, or any other the king's majesty's dominions, shall after the said feast of All Saints willingly and wittingly hear and be present at any other manner or form of common prayer, of administration of the sacraments, of making of ministers in the churches, or of any other rites contained in the book annexed to this act, than is mentioned and set forth in the said book, or that is contrary to the form of sundry provisions and exceptions contained in the aforesaid former statute, and shall be thereof convicted according to the laws of this realm, before the justices of assize, justices of Oyer and Determiner, justices of peace in their sessions, or any of them, by the verdict of twelve men, or by his or their own confession or otherwise, shall for the first offence suffer imprisonment for six months, without bail or mainprise; and for the second offence, being likewise convicted as is above said, imprisonment for one whole year; and for the third offence, in like manner, imprisonment during his or their lives. And for the more knowledge to be given thereof, and better observation of this law, be it enacted by the authority aforesaid, that all and singular curates shall, upon one Sunday every quarter of the year, during one whole year next following the foresaid feast of All Saints next coming, read this present act in the church at the time of the most assembly, and likewise once in every year following; at the same time declaring unto the people, by the authority of the Scripture, how the mercy and goodness of God hath in all ages been showed to his people in their necessities and extremities, by means of hearty and faithful prayers made to Almighty God, especially where people be gathered together with one faith and mind to offer up their hearts by prayer, as the best sacrifices that Christian men can yield."

STAT. 5 & 6
EDW. 6, c. 1.

The penalties
for being present
at any other common
prayer or
sacraments.
Altered as to
the penalty by
1 Eliz. c. 2.
ss. 7, 8.

XVII. STAT. 5 & 6 EDWARDI 6, c. 2(1). A.D. 1552.

[*An Act for the Provision and Relief of the Poor.*]

STAT. 5 & 6
EDW. 6, c. 2.

XVIII. STAT. 5 & 6 EDWARDI 6, c. 3(2). A.D. 1552.

[*An Act for the keeping Holy-Days and Fasting-Days.*]

STAT. 5 & 6
EDW. 6, c. 3.

"*Forasmuch* as (3) at all times men be not so mindful to laud and praise God, so ready to resort and hear God's holy word, and to come to the holy commu-

Which days
only in the

(1) Obsolete.

(2) Partly repealed by Stat. 3 & 4 Gul. 4, c. 42, s. 43.

(3) *Forasmuch* as:—The basis upon which the law stood in this particular, from the 28th year of the reign of Henry 8, will appear from the decree made in convocation that year, and confirmed by the king's authority; the tenour of which is as follows:

"A copy of thacte made for thabrogacion of certayne holy dayes, according to the transumpete late sent by the King's Hyghnes to all Bysshops, with his Graces strayght commandement, to signifie his farther pleasure to all Colleges, Religious Houses, and Curates, within theyr Diocese, for the publication, and also effectual and universal observation of the same. An. 1536." Coll. Can. 167.

"For as moch as the number of holy-dayes is so excessvely growen, and yet dayly

more and more by mens devocyon, yea rather supersticyon, was like further to encrease, that the same was and sholde be not onely prejudiciall to the common weale, by reason that it is occasion as well of moche slouth and ydelnes, the very nouryshe of theves, vacaboundes, and of dyvers other unthryftynesse and inconvenyencies, as of decaye of good mysteres and artes, utyle and necessary for the common welthe, and losse of mans fode, many tymes, beyng clene destroyed through the superstitious observance of the said holy-dayes, in not takyng thopportunitie of good and serene wheather offered upon the same in time of harvest, but also pernycious to the soules of many men, whiche beyng entysed by the lycencyous vacacyon and libertie of those holy-dayes, do upon the same commonly use and practyse more excesse, ryote, and superfluitie than upon any other dayes; and

STAT. 5 & 6
EDW. 6, c. 3.

year shall be
holy-days, and
which shall
be fasting-
days.

This act is not
on the Roll.

Wherefore
some days are
more called
holy-days than
other.

nion and other laudable rites, which are to be observed in every Christian congregation, as their bounden duty doth require; therefore, to call men to remembrance of their duty, and to help their infirmity, it hath been wholesomely provided, that there should be some certain times and days appointed, wherein the Christians should cease from all other kind of labours, and should apply themselves only and wholly unto the aforesaid holy works, properly pertaining unto true religion; that is, to hear, to learn, and to remember Almighty God's great benefits, his manifold mercies, his inestimable gracious goodness, so plenteously poured upon all his creatures, and that of his infinite and unspeakable goodness, without any man's desert; and in remembrance hereof, to render unto him most high and hearty thanks, with prayers and supplications for the relief of all our daily necessities; and because these be the chief and principal works wherein man is commanded to worship God, and to properly pertain unto the first table; therefore, as these works are most commonly, and also may well be called God's service, so the times appointed specially for the same, are called holy-days; not for the matter and nature either of the time or day, nor for any of the saints' sake, whose memories are had on those days, (for so all days and times considered are God's creatures, and all of like holiness,) but for the nature and condition of those godly and holy works, wherewith only God is to be honoured, and the congregation to be edified, whereunto such times and days are sanctified and hallowed; this is to say, separated from all profane uses, and dedicated and appointed, not unto any saint or creature, but only unto God and his true worship; neither is it to be thought that there is any certain time or definite number of days prescribed in holy scripture, but that the appointment both of the time and also of the

sith the sabbath-day was ordeyned for man's use, and therefore ought to gyve place to the necessitie, and behove of the same whan soever that shall occurre; mouch rather any other holy-day institute by man. It is therefore by the Kyng's Hyghnes auctoryty, as supreme head in earth of the Church of Englande, with the common assente and consent of the prelates and clergy of this his realme in convocacyon, lawfully assembled and congregate, among other thynges decreed, ordeyned, and established.

"Fyrst, that the feest of dedicacyon of the church shall in all places throughout this realm be celebrated and kept on the fyrst Sunday of the moneth of Octobre for ever, and upon none other day. Item, that the feest of the patrone of every church within this realm, called commonly the church holy-day, shall not from henceforth be kepte or observed as a holy-day, as heretofore hath been used, but that it shall be lafull to all and singular persons resydent or dwellynge within this realme, to go to their work, occupacyon, or mystery, and the same truly to exercise and occupy upon the said feest, as upon any other workey-day, excepte the said feest of the church holy-day be such as must be ells universally observed, as a holy-day by this ordinance following.

"Also, that all those feestes or holy-days which shall happen to occurre, eyther in the harvest time, which is to be compted from the fyrst day of July unto the xxix. day of Septembre, or ells in the terme time at Westmynster, shall not be kepte or observed from henceforth as holy-dayes, but that it may be lafull for every man to go to his work or occupation upon the same as upon any other workyeday; except alwayes the feestes of the Apostles, of our blessed Lady,

and of Saynt George. And also such feestes as wherein the King's Judges at Westmynster Hall do not vse to sytte in judgment, all which shall be kepte holy and solempne of every man, as in tyme past have been accustomed. Provided alwayes, that it may be lafull unto all preestes and clerkes, as well secular as regular, in the foresayd holy-dayes now abrogate, to synge or saye their accustomed servyce for those holy-dayes in their churches, so that they do not the same solempnely, nor do ryng to the same after the manner used in hygh holy-dayes, ne do commande or indict the same to be kepte or observed as holy-dayes.

"Finally, that the feest of the Nativitie of our Lord, of Easter, of the Nativitie of Saynt John the Baptyste, and of Saynt Mychaell, shall be from henceforth compted, and accepted, and taken for the iiii. general offering dayes.

"And for further declaracyon of the premysses, be it known, that Easter terme begynneth always the xviii. day after Easter, rekenyng Easter-day for one, and endeth the Monday next after thascencyon day. Trinite terme begynneth alwayes the Wednesday next after thoctaves of Trinite Sonday, and endeth the xi. or xii. day of July. Mychelmas terme beginneth the ix. or x. day of October, and endeth the xxviii. or xxix. day of November. Hillary terme begynneth the xxiii. or xxiv. day of January, and endeth the xii. or xiii. day of February.

"In Easter terme upon thascencyon daye. In Trinite terme upon the Nativite of Saynt John Baptist. In Mychelmas terme upon Alhollon day. In Hillary terme upon Candlemas-day, the kyng's judges at Westmynster do not syt in judgment, nor upon any Sondays."

number of the days, is left by the authority of God's word to the liberty of Christ's church, to be determined and assigned orderly in every country, by the discretion of the rulers and ministers thereof, as they shall judge most expedient to the true setting forth of God's glory, and the edification of their people: be it therefore enacted by the king our sovereign lord, with the assent of the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, that all the days hereafter mentioned shall be kept and commanded to be kept holy-days, and none other; that is to say, all Sundays in the year, the days of the feast of the Circumcision of our Lord Jesus Christ, of the Epiphany, of the Purification of the Blessed Virgin, of Saint Matthie the Apostle, of the Annunciation of the Blessed Virgin, of Saint Mark the Evangelist, of Saint Philip and Jacob the Apostles, of the Ascension of our Lord Jesus Christ, of the Nativity of Saint John Baptist, of Saint Peter the Apostle, of Saint James the Apostle, of Saint Bartholomew the Apostle, of Saint Matthew the Apostle, of Saint Michael the Archangel, of Saint Luke the Evangelist, of Saint Simon and Jude the Apostles, of All Saints, of St. Andrew the Apostle, of Saint Thomas the Apostle, of the Nativity of our Lord, of Saint Stephen the Martyr, of Saint John the Evangelist, of the Holy Innocents, Monday and Tuesday in Easter-week, and Monday and Tuesday in Whitsun-week; and that none other day shall be kept and commanded to be kept holy-day, or to abstain from lawful bodily labour.

“II. And it is also enacted by the authority aforesaid, that every even or day next going before any of the aforesaid days of the feasts of the Nativity of our Lord, of Easter, of the Ascension of our Lord, Pentecost, and the Purification and the Annunciation of the aforesaid Blessed Virgin, of All Saints, and of all the said feasts of the Apostles, (*other than* (1) of Saint John the Evangelist, and Philip and Jacob,) shall be fasted, and commanded to be kept and observed, and that none other even or day shall be commanded to be fasted.

STAT. 5 & 6
EDW. 6, c. 3.

All these days
shall be kept
holy-days, and
none other.

Which days
shall be com-
manded and
kept fasting-
days.

(1) *Other than*.—“Omnium apostolorum vigiliæ sunt in observatione jejunii celebrandæ, præter vigiliis Apostolorum Philippi et Jacobi, et Beati Johannis Evangelistæ; quoniam ipsorum solennitas infra solennitatem Paschalem, istius autem infra Natalem Domini, celebratur.” Decret. l. 3, tit. 46, c. 2. 1 Spel. 518.

It may be here observed, that “by the rubric, the tables of vigils, and fasts, and days of abstinence, to be observed in the year, is as followeth: (which although not in words, yet in substance is the same with what is above expressed:) *viz.* the evens or vigils before the Nativity of our Lord, the Purification of the Blessed Virgin Mary, the Annunciation of the Blessed Virgin, Easter-day, Ascension-day, Pentecost, St. Matthias, St. John Baptist, St. Peter, St. James, St. Bartholomew, St. Matthew, St. Simon and St. Jude, St. Andrew, St. Thomas, All Saints. And if any of these feasts fall upon a Monday, then the vigil or fast day shall be kept upon the Saturday, and not upon the Sunday, next before it.

“Vigil was so called *a vigilis*, because thereupon people were not only to fast, but to watch or wake by night and pray.

“The days of fasting or abstinence prescribed by the rubric, are as follows: ‘1. The forty days of Lent. 2. The Ember-days, at the four seasons; being the Wednesday, Friday, and Saturday after the first Sunday in Lent, the feast of Pentecost, September the 14th, and December the 13th. 3. The Rogation-days; being the Monday, Tuesday,

and Wednesday, before Holy Thursday, or the Ascension of our Lord. 4. All the Fridays in the year, except Christmas-day.

“The Ember-days were fasts observed in the church very early, and particularly by the church of England in the Saxon times, who called them *ymbryne dagas*, from whence (and not from embers, or from the Greek *ημεραι*, as some have conjectured,) our name of Ember-days is to be derived. The Saxon *ymbryne* (says Dr. Marshal) signifies a circle, a circuit, or course; and therefore they may be not improperly called the circular fasts, or fasts in course, being observed in the four seasons on which the circle of the year turns, and accordingly called by the canonists *jejunia quatuor temporum*, or fasts of the four quarters of the year.

“Respecting the Rogation-days Dr. Grey says, ‘The Rogation-days were so called from the extraordinary prayers and supplications which, with fasting, were at this time offered to God by devout Christians.’ Grey, Abr. Cod. 101.

“But Dr. Godolphin says, (Repert. 129.) ‘the Rogation-days had their names from certain rules or ordinances for abstinence, or days of fasting, which the Bishop of Rome recommended to be observed by the Western churches, before that he assumed the power of compulsion; and which therefore he called by the gentle name of *rogation*; and thence the week of abstinence, a little before the feast of Pentecost, was called the Rogation-week, the time of abstinence being appointed at the beginning by that ordinance which was

STAT. 5 & 6
EDW. 6, c. 3.

Punishment of
offenders by
the ecclesias-
tical law.

Abstinence
from flesh in
Lent, Fridays,
and Saturdays.
2 & 3 Edw. 6,
c. 10.

[Expired.]

When the
Saturday shall
be fasted
instead of the
Sunday.

In what cases
some persons
may labour
upon the holy-
day.

Knights of the
Garter may
solemnize
St. George's
feast.

STAT. 5 & 6
EDW. 6, c. 4.

The penalty for
striking or
drawing a

"III. And it is enacted by the authority aforesaid, that it shall be lawful to all archbishops and bishops in their dioceses, and to all other having ecclesiastical or spiritual jurisdiction, to inquire of every person that shall offend in the premises, and to punish every such offender by the censures of the church, and to enjoin him or them such penance as shall be to the spiritual judge by his direction thought meet and convenient.

"IV. Provided always, that this act, or any thing therein contained, shall not extend to abrogate or take away the abstinence from flesh in Lent, or on Fridays and Saturdays, or on any other day which is already appointed so to be kept, by virtue of an act made and provided in the third year of the reign of our sovereign lord the king's majesty that now is, saving only of those evens or days whereof the holy-day next following is abrogated by this statute; any thing abovementioned to the contrary in any wise notwithstanding.

"V. Provided also, and be it enacted by the authority aforesaid, that when and so often as it shall chance any of the said feasts (the evens whereof be by this statute commanded to be observed and kept fasting-day) to fall upon the *Monday* (1); that then, as it hath always been heretofore accustomedly used, so hereafter the Saturday then next going before any such feast or holy-day, and not the Sunday, shall be commanded to be fasted for the even of any such feast or holy-day; any thing in this statute before mentioned or declared to the contrary in any wise notwithstanding.

"VI. Provided always, and it is enacted by the authority aforesaid, that it shall be lawful to every husbandman, labourer, fisherman, and to all and every other person or persons, of what estate, degree, or condition he or they be, upon the holy-days aforesaid, in harvest, or at any other time in the year when necessity shall require, to labour, ride, fish, or work any kind of work, at their free wills and pleasure; any thing in this act to the contrary in any wise notwithstanding.

"VII. Provided always, and be it enacted by the authority aforesaid, that it shall be lawful to the knights of the right honourable Order of the Garter, and to every of them, to keep and celebrate solemnly the feast of their order, commonly called St. George's feast, yearly from henceforth the xxij. xxij. and xxiv. days of April, and at such other time and times as yearly shall be thought convenient by the king's highness, his heirs and successors, and the said knights of the said honourable order, or any of them, now being, or hereafter to be; any thing in this act heretofore mentioned to the contrary notwithstanding."

XIX. STAT. 5 & 6 EDWARDI 6, c. 4 (2). A.D. 1552.

"Against Quarrelling and Fighting in Churches and Church-yards (3)."

"Forasmuch as of late divers and many outrageous and barbarous behaviours and acts have been used and committed by divers ungodly and irreligious persons, by quarrelling (4), brawling (5), fraying, and fighting openly in churches and church-

called *rogatio*, and not *lex*, *decretum*, *statutum*, or the like.'" 2 Burn's E. L. by Philimore, 313.

(1) *Upon the Monday*:—"Sanctorum quoque vigiliæ, quorum festivitates oportet secundâ feriâ celebrari, in præcedenti sunt Sabbato jejundandæ." Decret. l. 3, tit. 46, c. 2.

(2) Partly repealed by Stat. 9 Geo. 4, c. 31.

(3) *Vide etiam* Stat. 27 Geo. 3, c. 44.

The object of Stat. 5 & 6 Edw. 6, c. 4, was not to protect private individuals from personal offence, but to protect the church and churchyards from profanation, and to preserve order and decency in the meetings which may be held within them; in fact, to

prevent them from being converted into scenes of human passion and malice, of disturbance and violence.

Such statute leaves nothing to the discretion of the judge, but the duration of the suspension, *ab ingressu ecclesie*. *Huet v. Dash*, 2 Lee (Sir G.), 511.

The ecclesiastical court has jurisdiction in offences of brawling, independently of Stat. 5 & 6 Edw. 6, c. 4. *Taylor v. Morley*, 1 Curt. 482. *Jenkins v. Barrett*, 1 Hagg. 15.

(4) *By quarrelling*:—"Qui in templo pugnaverit, 120 solidis noxam sarcito." Leg. Inæ. c. 6.

(5) *Brawling*:—It has been held, that this offence is committed by expostulations and

remonstrances uttered to a clergyman about to ascend the pulpit for the purpose of preaching; (*Clinton v. Hatchard*, 1 Add. 96;) and an objection to the jurisdiction of the court to entertain a suit for "brawling" by letters of request, over-ruled. *Dave v. Williams*, 2 Ibid. 130. *Clinton v. Hatchard*, 1 Ibid. 96.

Articles against a parishioner for "brawling," &c. by reading a "notice of vestry" in church, during divine service, without *due* authority, have been admitted. *Dave v. Williams*, 2 Ibid. 130.

On debating the admissibility of articles, in a suit for brawling, the question is, whether they contain a substantive charge of brawling and riot in a sacred place. *Jarman v. Bagster*, 3 Hagg. 356.

Where articles against a clergyman for quarrelling and brawling, and for insulting, disrespectful, and disobedient conduct in the church, were only in part proved, the court monished him to be more careful, and condemned him in 75*l. nomine expensarum*. *Taylor v. Morley*, 1 Curt. 480.

In all cases of brawling in church, where *two* persons are implicated, which is *most* to blame, is immaterial; each is bound to abstain; and each, failing to abstain, incurs a like penalty: and it is unimportant whether the party proceeded against, or the promoter of the suit, was the first aggressor. *Palmer v. Roffey*, 2 Add. 141. *England v. Hurcomb*, Ibid. 306.

Any party may promote articles under this statute, (*Huet v. Dash*, 2 Lee (Sir G.), 514,) but the words of brawling must be set forth, and great strictness must be observed in the statement, it being a criminal suit; the articles therefore must be so specific, as to afford the accused an opportunity for defence, and the judge of considering, whether it is a fit case for the promotion of his office, but it is enough to show words of brawling used by the defendant. *Hutchins v. Denziloe*, 1 Consist. 182. *Lee v. Mathews*, 3 Hagg. 174. *Jarman v. Bagster*, Ibid. 356. *Footte v. Richards*, 1 Lee (Sir G.), 266.

On proof of violent conduct, and great personal abuse, at a vestry held in a room within the church, the court suspended the defendant *ab ingressu ecclesiæ*, for fourteen days; but, under the circumstances, condemned him only in 35*l. nomine expensarum*. *Jarman v. Wise*, 3 Hagg. 360.

The court will sometimes inquire into the motives of the promoter, but it will presume proper motives, unless there be strong proof to the contrary. Ibid.

Provocation is no defence to a criminal suit for brawling in a church at a vestry meeting: and in *North v. Dickson*, (1 Ibid. 730,) the defendant for such an offence, was suspended for a fortnight *ab ingressu ecclesiæ*, and condemned in costs.

Brawling and smiting, at a vestry attended by only five persons, and held in a room situate within the churchyard, are, *ratione loci*, offences within Stat. 5 & 6 Edw. 6, c. 4, though of a very slight ecclesiastical character. In such a case, where the promoter, a private individual, was proceeding vindictively, and had in the articles exaggerated

the smiting, and suppressed his own brawling expressions, which provoked the smiting—the judge directed the matter to stand over for private arrangement; but that failing, the court on a subsequent day pronounced the brawling and smiting proved, decreed the defendant to be imprisoned twenty-four hours for smiting, and ultimately condemned him in costs. *Lee v. Matthews*, 3 Ibid. 169.

In a vestry meeting for civil purposes, as a full latitude of discussion must be allowed, mere coarse expressions do not constitute "brawling;" but on proof of an act of "smiting," the court is bound, whatever may be the origin of the dispute, to proceed to award punishment under Stat. 5 & 6 Edw. 6, c. 4, and Stat. 53 Geo. 3, c. 127. *Hoile v. Scales*, 2 Ibid. 566.

But it is questionable whether one who chides and brawls in a vestry-room, partly in and partly out of a church-yard, incurs thereby the penalties of Stat. 5 & 6 Edw. 6, c. 4, s. 1. *Williams v. Goodyer*, 2 Add. 463.

It is likewise doubtful, whether the gross abuse of a minister, while presiding at a meeting of his parishioners in vestry, be not an ecclesiastical offence, and punishable, *as such*, by the general ecclesiastical law; although it be not liable to be dealt with, as a "chiding and brawling" within Stat. 5 & 6 Edw. 6, c. 4, by reason, that the vestry was *clearly* not held in a consecrated place, *i. e.* within a church or church-yard. Ibid.

Proceedings under Stat. 5 & 6 Edw. 6, c. 4, s. 1, must be supported by *two* witnesses on the specific charge. *Hutchins v. Denziloe*, 1 Consist. 181. But it is not necessary, that the witnesses should depose, that the party proceeded against chided, brawled, and quarrelled; it is sufficient if they prove, that words of brawling were used. *Footte v. Richards*, 1 Lee (Sir G.), 265.

Where articles against a churchwarden, for "quarrelling, chiding, and brawling by words," and for "smiting," have been pronounced not to be proved; an order has been made, that the costs shall be paid by the promoter. *Cory v. Byron*, 2 Curt. 396.

Where articles against a clergyman for brawling have been sustained, the court is not empowered to require a certificate of good behaviour during suspension. *Burder v. Langley*, 1 Eccles. Notes of Cases, 542.

Where articles against the defendant, (a churchwarden,) for brawling in church, were pronounced to be proved; and the defendant was suspended, and condemned in *full costs*; the case was held to afford no ground for mitigated costs. *Palmer v. Roffey*, 2 Add. 141.

In articles against three defendants for brawling in a church, which were held as having been proved, the defendants were suspended and condemned in *full costs*,—the case of no one of the three, either looking to his own conduct, or to that of the promoter, being held to be a case for mitigated costs. *England v. Hurcomb*, Ibid. 306.

In *Field v. Cosens*, (3 Hagg. 178,) a defendant, on giving an affirmative issue, was suspended *ab ingressu ecclesiæ* for a month,

STAT. 5 & 6
EDW. 6, c. 4.
weapon in a
church or
church-yard.
Het. 86.

yards (1): therefore it is enacted by the king our sovereign lord, with the assent of the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, that if any person whatsoever shall, at any time after the first day of May next coming, by words only, quarrel, chide, or brawl in any church or church-yard, that then it shall be lawful unto the ordinary of the place where the same offence shall be done, and proved by two lawful witnesses, to *suspend* (2) every person so offending; that is to say, if he be a layman, *ab ingressu ecclesiæ*, and if he be a clerk, from the ministration of his office, for so long time as the said ordinary shall by his discretion think meet and convenient, according to the fault.

The penalty for
smiting in a
church, &c.

"II. And further it is enacted by the authority aforesaid, that if any person or persons after the said first day of May shall *smite or lay* (3) *violent*

and condemned in costs for brawling on two occasions at a vestry held in the chancel.

Where articles against the defendant, (a sidesman,) for brawling in church, were pronounced to be proved; the defendant was suspended and condemned in the sum of 50*l. nomine expensarum*, this being held (in contradistinction to a former case arising out of the same *general* transaction) to be a case, in which the prosecutor was *not* entitled to his *full* costs. *Palmer v. Tjhou*, 2 Add. 196.

Articles for brawling, at a vestry held in the vestry-room within the church-yard, being proved, the court suspended the defendant *ab ingressu ecclesiæ* for one week, but did not condemn him in the whole costs, in consequence of irritating expressions having been proved to have been used by the promoter. *Williams v. Hall*, 1 Curt. 597.

Where a suit for brawling in church was instituted before the commissary of the bishop of the diocese, it was holden, that it might be removed by letters of request into the court of Arches. *Exp. Williams*, 4 B. & C. 313.

(1) *Churches and church-yards*:—Where a person of the name of *Detthick*, (Cro. Eliz. 224.) struck another in the church-yard of St. Paul's, London, the court were clearly of opinion, that cathedral churches were within the meaning of this statute.

In *Wenmouth v. Collins*, (2 Ld. Raym. 850.) a prohibition was prayed, to stay a suit in the ecclesiastical court, for brawling in the belfry, and striking a man there, upon suggestion of this statute, and that all statutes are construable by the common law. But the court denied a prohibition, "because this offence was conusable in the ecclesiastical court before this statute, *ratione loci*; and that the statute, though it provides a penalty, does not alter the jurisdiction."

(2) *To suspend*:—Prohibition to the spiritual court was prayed upon this statute, because costs were there given, and it was denied; "the costs being there *pro expensis litis*; otherwise, if it had been *pro damnis*." *Large v. Alton*, Cro. Jac. 462.

(3) *Lay*:—Churchwardens, or perhaps private persons, who whip boys for playing in the church, or pull off the hats of those who obstinately refuse to take them off themselves, or gently lay their hands on those who disturb the performance of any part of divine service, and turn them out of the

church, are not within the meaning of this statute.

In *Reynolds v. Monkton*, (2 M. & Rob. 384.) it was held, that churchwardens have a discretionary power to appropriate the pews in the church amongst the parishioners, and may remove persons intruding on seats already appropriated;—Mr. Baron Rolfe, in summing up to the jury, stating, "I think that the churchwardens have a right to exercise a reasonable discretion in directing where the congregation shall sit; and if the defendant used no unnecessary force, he had a right to remove the plaintiff from the pew in question to another seat. If, in the exercise of a fair discretion, the churchwardens thought it more convenient, that the pew should be occupied by Gaylard's family, and not by the plaintiff, and if the removal could be effected without public scandal, or the disturbance of divine service, the defendant was justified. You are to say, whether any unnecessary violence was used."

In *Williams v. Glenister*, (2 B. & C. 699.) where the parish clerk refused to read in church, a notice which was presented to him for that purpose, and the person presenting it, read it himself at a time when no part of the church service was actually going on; it was held, that although a constable might be justified in removing him from the church, and detaining him until the service was over, yet he could not legally detain him afterwards in order to take him before a magistrate;—Chief Justice Abbott observing, "It appears to me that the 1 Mar. St. II. c. 3, merely gave to the common law, cognizance of an offence which was before punishable by the ecclesiastical law; in order to be within that statute, the party must maliciously, wilfully, or of purpose, molest the person celebrating divine service. Had the notice been read by the plaintiff, whilst any part of the service was actually going on, we might have thought that he had done it on purpose to molest the minister; but the act having been done during an interval, when no part of the service was in the course of being performed, and the party apparently supposing, that he had a right to give such a notice, I am not prepared to say, that the 1 Mar. St. II. c. 3, warranted his detention, in order that he might be taken before a justice of peace. Neither does the case come within the Toleration Act, 1 G. & M. c. 18. That only applies where the thing is done wilfully, and

hands (1) upon any other, either in any church or church-yard, that then *ipso facto* (2) every person so offending shall be deemed excommunicate, and be excluded from the fellowship and company of Christ's congregation.

"III. And also it is enacted by the authority aforesaid, that if any person after the said first day of May shall maliciously strike any person with any weapon in any church or church-yard, or after the same first day of May shall draw any weapon (3) in any church or church-yard, to the intent to strike another with the same weapon, that then every person so offending, and thereof being convicted by verdict of xii. men, or by his own confession, or by two lawful witnesses, before the justices of assize, justices of Oyer and Determiner, or justices of peace in their sessions, by force of this act, shall be adjudged by the same justices before whom such person shall be convicted, to have one of his ears cut off. And if the person or persons so offending have none ears, whereby they should receive such punish-

STAT. 5 & 6
EDW. 6, c. 4.

The penalty for drawing or smiting with a weapon in the church, &c.
2 Leon. 188.
Cro. Jac. 462.
Cro. Eliz. 224, 231.
Cro. Car. 464.
1 Roll. 90.
Dyer, 275, pl. 48.
See 1 Bur. 243.

of purpose maliciously, to disturb the congregation or misuse the preacher. The detention of the plaintiff after the time when the service ended, was therefore illegal, and we ought not to disturb the verdict, which has been found."

(1) *Shall smite or lay violent hands*:—If one be assaulted in a church, or within a church-yard, he may not beat the other or draw a weapon there, although the other assaulted him, and it be therefore in his own defence, for it is a sanctified place, and he may be punished for that by this statute. And it is the same in any of the king's courts, or within view of the courts of justice; because a force in that case is not justifiable, though in a man's own defence. *Frances v. Ley*, Cro. Jac. 367.

A threatening posture is not *smiting* under the statute. *Jenkins v. Barrett*, 1 Hagg. 15.

(2) *Ipso facto*:—But notwithstanding that the words of the statute be so expressed, that he who smites another shall *ipso facto* be deemed excommunicate, yet there ought to be a precedent conviction at law, which must be transmitted to the ordinary, or else the excommunication must be declared in the spiritual court upon the proper proof of the offence there, for it is implied in every penal law, that no one shall incur the penalty thereof, till he be found guilty upon a lawful trial; also it must be intended in the construction of this statute, that the excommunication ought to appear judicially, because otherwise there could be no absolution.

In *Wilson (Clerk) v. Greaves*, (1 Burr. 240,) a prohibition was moved for on this clause, and the suggestion was, that there ought to have been a previous conviction at law. But it was held: that it was not necessary upon this clause, because it was an offence at common law, and a man might be indicted for it; but besides this, he might be *ipso facto* excommunicated by the ordinary. If there be a conviction at law, the ordinary can use it as a proof of the fact, but he can proceed without any such previous conviction. And the proceedings of the two courts being *diverso intuitu*, it was no objection, that a man would be twice punished for the same offence, because this is common in many cases, for the temporal courts proceed to punish, the ecclesiastical to amend.

But there must be a sentence declaratory, at least in the spiritual court, otherwise the

excommunication would not have effect; for no *excommunicat' capiend'* could issue without a *significavit* from the spiritual judge, and no *significavit* could issue, but upon some proceedings before the said judge, nor otherwise could the party ever be absolved. *Bilson v. Chapman*, C. T. H. 190. And a plea of *excommunication* in the plaintiff *ipso facto*, because he had smitten, &c., without showing an excommunication by the ordinary, or under his seal, was ruled to be ill. *Sonham v. Trundle*, Cro. Eliz. 919.

In *Hutchins v. Denziloe*, (1 Consist. 181,) Lord Stowell observed, "This is a proceeding on the statute of Edward 6, an act certainly made on the exigency of the times at the Reformation, when there prevailed great heats and animosities on religion, which were likely enough to break out in churches. The act did not create the offence, as it subsisted by the common law before the statute was enacted, and there is no doubt that the ecclesiastical court had a right to interfere to correct or punish any act of disturbance of the public worship. A party may now proceed either upon the statute or upon the ancient law, for wherever (*Wenmouth v. Collins*, 2 Ld. Raym. 850,) the statute leaves an offence as it found it, and only introduces additional punishment, a party may proceed on either." Vide etiam *Newbery v. Goodwin*, 1 Phill. 282. *Jenkins v. Barrett*, 1 Hagg. 15. *Exp. Williams*, 4 B. & C. 313.

(3) *Or . . . shall draw any weapon*:—It has been holden, that if a man took up a stone in the church-yard, and offered to throw it at another, or having a hatchet or axe in his hand, offered to strike another therewith, it was not an offence within these words; for these are not such weapons as may properly be said to be drawn, as a sword or dagger. *Watson's Clergyman's Law*, c. 34.

In a criminal suit for smiting, under Stat. 5 & 6 Edw. 6, c. 4, it was held, that the proof must not admit of a doubt, and where two concurrent sentences pronounced the smiting proved, but the evidence was not conclusive, such sentences were reversed, and both parties left to pay their own costs. *Scales v. Hoile*, 3 Hagg. 371.

Wilson (Clerk) v. Greaves, (1 Burr. 240,) will illustrate what constituted the offence of smiting at common law.

STAT. 5 & 6 EDW. 6, c. 4. ment as is before declared, that then he or they to be marked and burned in the cheek with an hot iron, having the letter F therein, whereby he or they may be known and taken for fray-makers and fighters; and besides that, every such person to be and stand *ipso facto* excommunicated, as is aforesaid."

STAT. 5 & 6 EDW. 6, c. 9. XX. STAT. 5 & 6 EDWARDI 6, c. 9 (1). A.D. 1552.
"An Act for the taking away of the Benefit of the Clergy from certain Offenders."

STAT. 5 & 6 EDW. 6, c. 10. XXI. STAT. 5 & 6 EDWARDI 6, c. 10 (2). A.D. 1552.
"An Act for the avoiding of Clergy from divers Persons."

STAT. 5 & 6 EDW. 6, c. 11. XXII. STAT. 5 & 6 EDWARDI 6, c. 11 (3). A.D. 1552.
"An Act for the Punishment of divers Kinds of Treasons."

[Any spiritual person offending against Stat. 5 & 6 Edw. 6, c. 11, by slandering the king, shall forfeit the profits of his promotions during life; but the king shall provide for the cure.]

STAT. 5 & 6 EDW. 6, c. 12. XXIII. STAT. 5 & 6 EDWARDI 6, c. 12 (4). A.D. 1552.
"An Act touching the Declaration of a Statute made for the Marriage of Priests, and for the Legitimation of their Children."

The marriage of priests and other spiritual persons shall be adjudged lawful.
 2 & 3 Edw. 6, c. 21.

"Albeit that at the session of this parliament holden by prorogation at Westminster the fourth day of November in the second year of the reign of the king's majesty that now is, it was ordained and enacted by the authority of the same parliament, that all and every law and laws positive, canons, constitutions, and ordinances, before that made by the authority of man only, which then did prohibit and forbid marriage to any ecclesiastical and spiritual person or persons, of what estate, condition, or degree they then were, or by what name or names soever they then were called, which by God's law might lawfully marry, and all and every article, branch, and sentence concerning only the prohibition for the marriage of the persons aforesaid, should be utterly void and of none effect: and that all manner of forfeitures, pains, penalties, crimes, or actions, which were in the said laws contained, or of the same did follow, concerning the prohibition for the marriage of the persons aforesaid, should be clearly and utterly void, frustrate, and of none effect, to all intents, constructions, and purposes, as well concerning marriage afore that time made by any of the ecclesiastical or spiritual persons aforesaid, as also such which thereafter should be duly and lawfully had, celebrated, and made betwixt the persons which by the laws of God might lawfully marry: yet since the making of the said act, divers evil disposed persons perversely taking occasion of certain words and sentences in the same act comprised, have and do untruly and very slanderously report of priests' matrimony, saying that the same statute is but a permission of priests' matrimony, as usury and other unlawful things be now permitted, for the eschewing of greater inconvenience and evils, so that thereby the lawful matrimony of priests, in the opinion of many, and the children procreate and born in such lawful matrimony rather be of a greater number of the king's subjects accounted as bastards, than lawfully born, to the great slander, peril, and disherison of such children: which untrue slanderous reproach of holy matrimony doth not only redound to the high dishonour of Almighty God, but also to the king's majesty's dishonour, and his high court of parliament, and the learned clergy of this realm, who have determined the same to be most lawful by the law of God in their convocation, as well by their common assent, as by the subscription of their hands: and that most of all is to be

(1) Repealed by Stat. 7 & 8 Geo. 4, c. 27.

(2) Repealed by Stat. 7 Geo. 4, c. 64.

(3) Expired.

(4) Repealed by Stat. 1 Mar. sess. 2, c. 2,

but revived, and made perpetual by Stat. 1 Jac. 1, c. 25, s. 50.

lamented, through such uncomely railings of matrimony and slanderous reproaches of the clergy, the word of God is not heard with reverence, followed with diligence, the godly proceedings of the king's majesty not received with due obedience, and thereby the wealthy men of this realm discouraged to nourish and bring up their children in learning, so as it is to be feared, lest in place of good learning and knowledge shall creep in ignorance, and for learned men, unlearned ambitious men and flatterers, to the great displeasure of Almighty God, and to the peril of the whole state of God's true religion within this realm, if speedy remedy be not provided herein :

STAT. 5 & 6
EDW. 6, c. 12.

"II. Therefore it is enacted by the king our sovereign lord, with the assent of the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same parliament, that the matrimony of all and every priest and other ecclesiastical and spiritual person and persons heretofore had, celebrated, and made, and the matrimony of every priest and other ecclesiastical and spiritual person, which shall hereafter duly be had, celebrated, and made, shall be adjudged, deemed, and taken for true, just, and lawful matrimony, to all intents, constructions, and purposes : and that all and every children and child born in any such matrimony, shall be deemed, judged, reputed, and taken, to all intents, constructions, and purposes, to be born in lawful matrimony, and to be legitimate and inheritable to lands, tenements, and other hereditaments, from and by any of their fathers, mothers, and other ancestors, in like manner and form, to all intents, constructions, and purposes, as any other children born in lawful matrimony betwixt any of the king's lay-subjects be inheritable : and that by the authority aforesaid, as well all and every priest and other ecclesiastical and spiritual person and persons be and shall be enabled to be tenants by the curtesy, after the death of their wives, of such lands, tenements, and other hereditaments as their wives shall happen to be seised of, of estate in fee-simple or estate in fee-tail general, during the espousals ; as also every wife of every such priest and other ecclesiastical person, shall be enabled to claim, demand, have, and enjoy dower of the lands, tenements, and other hereditaments, whereof her husband during the espousals between them were seised, of estate in fee-simple or fee-tail general in his own right, in like manner and form, to all intents, constructions, and purposes, as any other husband or wife may or might claim, demand, have, or enjoy ; any law, statute, ordinance, canon, constitution, prescription, or custom had, made, exercised, or used in this realm, to the contrary in any wise notwithstanding.

Priests' children shall be legitimate, and inherit their ancestors' lands.

Priests shall be tenants by the curtesy, and their wives endowable of their lands.

"III. Provided alway, that this act, nor any thing therein contained, shall extend to give liberty to any person to marry without asking in the church, or without the ceremonies according to the Book of Common Prayer and Administration of the Sacraments, nor shall make any such matrimony already made, or hereafter to be made good, which are prohibited by the law of God for any other cause.

Asking in the church.

"IV. Provided also, that this act, nor any thing therein contained, shall extend to alter, change, revoke, repeal, or otherwise to disannul any decree, judgment, or sentence of divorce heretofore had or made, or to change or alter the possession or inheritance of any lands or tenements already descended ; but that they and every of them shall remain, continue, and be of such like force, effect, strength, and degree, to all intents, constructions, and purposes, as they were before the making of this act ; this act or any thing therein contained to the contrary in any wise notwithstanding."

Divorces already made.

XXIV. STAT. 5 & 6 EDWARDI 6, c. 13 (1). A.D. 1552.

STAT. 5 & 6
EDW. 6, c. 13.

"An Act for the Declaration of an Act made in the thirty-first Year of King Henry the Eighth, touching Religious Persons. Every Religious Person shall be inheritable to his Ancestor only from the time of his Deraignment. No Religious Person shall inherit by force of any former Right grown before his Deraignment."

STAT. 5 & 6
EDW. 6, c. 16.

XXV. STAT. 5 & 6 EDWARDI 6, c. 16. A.D. 1552.

"Against buying and selling of Offices."

The penalty
for buying or
selling some
sort of offices.
3 Bulst. 91.
1 Roll. 157,
236.
2 Salk. 468.
3 Lev. 289.
2 Vent. 187,
213, 267.

Hob. 75.
Cro. Jac. 269.

"For the avoiding of corruption which may hereafter happen to be in the officers and ministers in those courts, places, or rooms, wherein there is requisite to be had the true administration of justice or services of trust; and to the intent that persons worthy and meet to be advanced to the place where justice is to be ministered, or any service of trust executed, should hereafter be preferred to the same, and no other:

"II. Be it therefore enacted by the king our sovereign lord, the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, that if any person or persons at any time hereafter bargain or sell *any office* (1), or offices, or deputation of any office, or offices, or any part or parcel of any of them, or receive, have, or take any money, fee, reward, or any other profit, directly or indirectly, or take any promise, agreement, covenant, bond, or any assurance to receive or have any money, fee, reward, or other profit, directly or indirectly, for any office or offices, or *for the deputation* (2) of any office or offices or any part of any of them; or to the intent that any person should have, exercise, or enjoy any office or offices, or the deputation of any office or offices, or any part of any of them; which office or offices, or any part or parcel of them, shall in any wise touch or concern the administration or *execution of justice* (3), or the receipt, controlment, or payment of any of the king's highness'

(1) *Any office*:—It was resolved in the *case of Dr. Trevor*, (3 Inst. 148; 12 Co. 78; Cro. Jac. 269,) concerning the chancellorship of Landaff, that offices in ecclesiastical, as well as temporal courts, are within this statute. For although they concern matters principally *pro salute animarum*, yet they also concern matters about matrimony and legitimation, which touch the inheritance of the subjects, and about matters of legacy for chattels real and personal, and in that respect, are courts of justice.

The rule in the Canons of 1640, is thus: The holy synod doth decree and ordain, that "no reward shall be taken for any chancellor's, commissary's, or official's place, under the heaviest censures of the church." Can. xi. 1640.

(2) *For the deputation*:—In *Culliford v. De Cardonell*, (2 Salk. 466,) the defendant was made deputy to the plaintiff in his office, and if he pay the plaintiff half the profits, then, &c. The defendant pleaded this statute; but the determination of the court was, "This bond is not within the statute, because the condition is not to pay him so much in gross, but half the profits, which must be sued for in the principal's name, for they belong to him, though out of them a share is to be allowed to the deputy for his service." But in *Godolphin v. Tudor*, (Ibid. 468,) where the deputy was to have the fees, and in consideration thereof was to pay 200*l.* per annum, and save the principal harmless; this was declared to be within the statute. And it was declared by the court, "that where an office is within the statute, and the salary is certain, if the principal make a deputation, reserving a lesser sum out of the salary, it is good. So, if the profits be uncertain, arising from fees, if the principal make a deputation, reserving a sum certain out of the fees and profits of the office, it is good; for in these cases, the deputy

is not to pay, unless the profits rise to so much. And though a deputy, by his constitution, is in place of his principal, yet he has no right to the fees, they still continue to be the principal's; so that, as to him, it is only reserving a part of his own, and giving away the rest to another. But where the reservation or agreement is not to pay out of the profits, but to pay generally a certain sum, it must be paid, at all events; and such bond is void by the statute."

The doctrine in *Lyndwood*, (Lyndw. Steph. Ne Prælati, c. Ut omnis, v. *Ad firmam*, 282,) upon this head, is as follows: "Si habens jurisdictionem spirituale assignet alicui pro suo salario certam summam, sic quod officialis respondeat sibi pro integro lucro, hoc bene licet; si autem habens jurisdictionem talem velit eam committere alteri sic ut solvat sibi certum precium, et pro labore suo sibi retineat residuum hoc non licet; imò recipiens tali modo officio suo privandus est, et à clero perpetuò amovendus."

(3) *Execution of justice*:—In the above cited case of *Dr. Trevor*, it was resolved, that the offices of commissary and register were included within this statute; and therefore, in *Woodward v. Fox*, (2 Vent. 187, 267; 3 Lev. 289,) which was concerning the office of register to the Archdeaconry of Huntingdon, the question, whether the grant of a registership, in consideration of money, was void by this statute, was waved and given up by the defendant, because it had been so resolved in *Dr. Trevor's case*, forasmuch as it concerned administration of justice.

And my Lord Coke, in his report of *Dr. Trevor's case*, having particularly named the offices of the chancellor and register, leaves it with an *et cætera*, and thereby implies it to have been the sense of the judges, that all other ecclesiastical officers, who are any way concerned in the administration of justice, are likewise included in this statute.

treasure, money, rent, revenue, account, aulnage, auditorship, or surveying of any of the king's majesty's honours, castles, manors, lands, tenements, woods, or hereditaments; or any of the king's majesty's customs, or any other administration, or necessary attendance to be had, done, or executed in any of the king's majesty's custom house or houses; or the keeping of any of the king's majesty's towns, castles, or fortresses, being used, occupied, or appointed for a place of strength and defence; or which shall concern or touch any clerkship to be occupied in any manner of court of record, wherein justice is to be ministered; that then all and every such person and persons that shall so bargain or sell any of the said office or offices, deputation or deputations, or that shall take any money, fee, reward, or profit, for any of the said office or offices, deputation or deputations of any of the said offices, or any part of any of them, or that shall take any promise, covenant, bond, or assurance for any money, reward, or profit, to be given for any of the said office or offices, deputation or deputations of any of the said office or offices, or any part of any of them, shall not only lose and forfeit all his and their right, interest, and estate which such person or persons shall then have, of, in, or to any of the said office or offices, deputation or deputations, or any part of any of them, or of, in, or to the gift or nomination of any of the said office or offices, deputation or deputations, for the which office or offices, or for the deputation or deputations of which office or offices, or for any part of any of them, any such person or persons shall so make any bargain or sale, or take or receive any sum of money, fee, reward, or profit, or any promise, covenant, or assurance to have or receive any fee, reward, money, or profit: but also that all and every such person or persons, that shall give or pay any sum of money, reward, or fee, or shall make any promise, agreement, bond, or assurance for any of the said offices, or for the deputation or deputations of any of the said office or offices, or any part of any of them, shall immediately, by and upon the same fee, money, or reward given or paid, or upon any such promise, covenant, bond, or agreement had or made for any fee, sum of money, or reward to be paid as is aforesaid, be adjudged a *disabled person*(1) in the law, to all intents and purposes, to have, occupy, or enjoy the said office or offices, deputation or deputations, or any part of any of them, for the which such person or persons shall so give or pay any sum of money, fee, or reward, or make any promise, covenant, bond, or other assurance, to give or pay any sum of money, fee, or reward.

"III. And be it also enacted by the authority aforesaid, that all and every such bargains, sales, promises, bonds, agreements, covenants, and assurances, as be before specified, *shall be void*(2), to and against him and them by whom any such bargain, sale, bond, promise, covenant, or assurance, shall be had or made.

"IV. Provided alway, that this act, or any thing therein contained, shall not in any wise *extend*(3) to any office or offices, whereof any person or persons is or

STAT. 5 & 6
EDW. 6, c. 16.

The bargains
and assurances
shall be void.
Cro. Eliz. 529.
Stiles, 29.
To what offices
this statute

(1) *Disabled person*.—In the case of *Sir Arthur Ingram*, (3 Inst. 154; *Rex v. Norwich* (Bishop of), Cro. Jac. 386; Hob. 75,) it was resolved by the Lord Chancellor *Egerton*, and Chief Justice *Coke*, to whom the king had referred it, that the disability here intended, is such, that the person is utterly disabled, during life, to take the same office, although it afterwards becomes void by the death of any other, and a new grant be made unto him, and that it is such a disability as the king himself cannot dispense with. But the statute not having said, who shall dispose of the office, upon such forfeiture and disability; that point came under consideration in *Woodward v. Fox*, (2 Vent. 188, 267,) and two things were resolved: 1. That the right of disposing the registership so forfeited, devolved to the crown. 2. That the king might make a new register, before office found, or the

appearing of the title by any matter of record.

(2) *Shall be void*.—In *Betts & Gale*, (3 Keb. 813,) the obligation was, to pay 40*l.* per annum, so long as he should have and exercise the office of register of the Archdeacon of Chichester; but the court would not allow the bond to be void on this statute, because the money was not expressly said to be made payable for the office. The thing forbidden, is, the taking any bond, to receive profit directly or indirectly for any office: and if a bond be given to receive 40*l.* per annum for the office, it would be the receiving of profit directly for it. But it should seem that 40*l.* to be paid yearly, so long as he should exercise the office, savours strong enough of a payment for that office, to be called the receiving of profit, indirectly.

(3) *Extend*.—This statute, respecting the sale of offices, does not extend to Jamaica or to the colonies. *Rex v. Vaughan*, 4 Burr.

STAT. 5 & 6
EDW. 6, c. 16.
shall not
extend.

Acts done by
an officer
removable
shall be good.

shall be seised of any *estate of inheritance*(1); nor to any office of parkership, or of the keeping of any park, house, manor, garden, chase, or forest, or to any of them; any thing in this act heretofore mentioned to the contrary thereof in any wise notwithstanding.

“V. Provided also, that if any person or persons do hereafter offend in any thing contrary to the tenor and effect of this act, yet that notwithstanding all judgments given, and all other act and acts executed or done by any such person or persons so offending by authority or colour of the office or deputation which ought to be forfeited, or not occupied, or not enjoyed by the person so offending as is aforesaid, after the said offence so by such person committed or done, and before such person so offending for the same offence be removed from the exercise, administration, and occupation of the said office or deputation, shall be and remain good and sufficient in law to all intents, constructions, and purposes, in such like manner and form as the same should or ought to have remained and been if this act had never been had or made.

A bargain for
an office before
the first day of
March, &c.

“VI. Provided also, that this act, or any thing therein contained, shall not in any wise extend to any bargain, sale, gift, grant, nomination, bond, covenant, promise, agreement, or assurance, whatsoever it be, of or for any the office or offices, deputation or deputations aforesaid, or any part of any of them had, made, done, concluded, or agreed before the first day of March next coming, but that the same bargain, sale, gift, grant, nomination, bond, covenant, promise, agreement, or assurance had, made, done, concluded, or agreed before the said first day of March, shall always remain, continue, and be in such force, strength, and effect, as if this act had never been had or made; any thing before in this act mentioned to the contrary thereof in any wise notwithstanding.

Offices given
by the two chief
justices or
justices of
assize.

“VII. Provided always, and be it enacted by the authority aforesaid, that this act, or any thing therein contained, shall not in any wise extend or be prejudicial or hurtful to any of the chief justices of the king's courts commonly called the King's Bench or Common Pleas, or to any of the justices of assize that now be or hereafter shall be, but that they and every of them may do in every behalf, touching or concerning any office or offices to be given or granted by them or any of them, as they or any of them might have done before the making of this act; any thing above mentioned to the contrary in any wise notwithstanding.”

STAT. 7 EDW.
6, c. 1.

XXVI. STAT. 7 EDWARDI 6, c. 1(2). A.D. 1553.

“An Act for the true answering of the King's Majesty's Revenues.”

[Bishops not to be made accountable for tenths otherwise than as they had been accustomed.]

STAT. 7 EDW.
6, c. 2.

XXVII. STAT. 7 EDWARDI 6, c. 2. A.D. 1553.

“An Act for the establishing, uniting, or dissolving of certain Courts newly erected by the King that dead is.”

STAT. 7 EDW.
6, c. 4.

XXVIII. STAT. 7 EDWARDI 6, c. 4 (3). A.D. 1553.

“An Act that all Patentees of Collectorships of Tenths be bound by Recognizance.”

STAT. 7 EDW.
6, c. 14:

XXIX. STAT. 7 EDWARDI 6, c. 14 (4). A.D. 1553.

[An Act concerning the King's general Pardon.]

[Except burglaries of churches, and robberies of goods in churches.]

2494. *Culliford v. Cardonell*, 1 Com. 2, n. (2).

(1) *Estate of inheritance*:—Means only offices of which subjects are seised of estates of inheritance. *Huggins v. Bambridge*, Willes, 246.

Vide Stephens on Nisi Prius, 1253, 1254. 2 Burn's E. L. by Phillimore, 44-46.

(2) Expired.

(3) *Vide* Stat. 2 & 3 Ann. c. 11. Super-
seded by Stat. 1 & 2 Vict. c. 20.

(4) Expired.

STATUTA MARIÆ.⁽¹⁾

A.D. 1553.

I. Stat. 1 Mar. Sess. 1, c. 1	....	Page 345	V. Stat. 1 Mar. Sess. 2, c. 5	....	Page 350
II. Sess. 2, c. 1	....	346	VI. Sess. 3, c. 9	....	350
III. c. 2	....	346	VII. c. 10	....	350
IV. c. 3	....	347			

I. STAT. 1 MARIÆ, SESS. 1, c. 1 (2). A.D. 1553.

STAT. 1 MAR.
SESS. 1, c. 1.

"An Act repealing and taking away certain Treasons, Felonies, and Cases of Præmunire."

"Forasmuch as the state of every king, ruler, and governor of any realm, dominion, or commonalty, standeth and consisteth more assured by the love and favour of the subject toward their sovereign ruler and governor, than in the dread and fear of laws made with rigorous pains and extreme punishment for not obeying of their sovereign ruler and governor; and laws also justly made for the preservation of the commonweal, without extreme punishment or great penalty, are more often for the most part obeyed and kept, than laws and statutes made with great and extreme punishments, and in special such laws and statutes so made, whereby not only the ignorant and rude unlearned people, but also learned and expert people, minding honesty, are often and many times trapped and snared, yea, many times for words only, without other fact or deed done or perpetrated:

The state of a king standeth more assuredly by the love of his subjects, than in fear of laws.

"II. The queen's most excellent majesty, calling to remembrance that many, as well honourable and noble persons, as other of good reputation within this her grace's realm of England, have of late (for words only, without other opinion, fact, or deed) suffered shameful death not accustomed to nobles: her highness therefore of her accustomed clemency and mercy, minding to avoid and put away the occasion and cause of like chances hereafter to ensue, trusting her loving subjects will, for her clemency to them shewed, love, serve, and obey her grace the more heartily and faithfully, than for dread or fear of pains of body, is contented and pleased that the severity of such like extreme, dangerous, and painful laws, shall be abolished, annulled, and made frustrate and void.

"III. Be it therefore ordained and enacted by the queen our sovereign lady, with the assent of the lords spiritual and temporal, and of the commons, in this present parliament assembled, and by the authority of the same, that from henceforth none act, deed, or offence, being by act of parliament or statute made treason, petty treason, or misprision of treason, by words, writing, ciphering, deeds, or otherwise whatsoever, shall be taken, had, deemed, or adjudged to be high treason, petty treason, or misprision of treason, but only such as be declared and expressed to be treason, petty treason, or misprision of treason, in or by the act of parliament or statute made in the xxv. year of the reign of the most noble king of famous memory, King Edward the Third⁽³⁾, touching or concerning treason or the declarations of treasons, and none other; nor that any pains of death, penalty, or forfeiture in any wise ensue or be to any offender or offenders, for the doing or committing any treason, petty treason, or misprision of treason, other than such as be in the said statute made in the said xxv. year of the reign of the said King Edward the Third, ordained and provided; any act or acts of parliament, statute or statutes, had or made at any time heretofore, or after the said xxv. year of the

No act or offence shall be treason, petty treason, or misprision, but such as be declared by the statute of 25 Edw. 3, St. V. c. 2.

(1) If a statute speak of the king, generally and indefinitely in his politic capacity, it will extend to all his successors, and to a queen, if the crown descend to a female. 12

Co. 110.

(2) Vide Stat. 6 Geo. 4, c. 25, s. 3.

(3) Antè 58.

STAT. 1 MAR. SESS. 1, c. 1. reign of the said late King Edward the Third, or any other declaration or matter to the contrary in any wise notwithstanding.

Certain persons exempted out of the benefit of this statute.

"IV. Provided always, and be it ordained and enacted by the authority aforesaid, that this act of parliament, or any thing therein mentioned, shall not in any wise extend to give any manner of benefit, advantage, or commodity to any person or persons, being the last day of September last past arrested or imprisoned for treason, pety treason, or misprision of treason, or to any person or persons heretofore being indicted of treason, pety treason, or misprision of treason, or being outlawed or attainted of treason, pety treason, or misprision of treason, before the said last day of September last past, or being commanded to keep his or their house or houses, or other men's houses, or otherwise excepted out of the queen's highness' most gracious pardon given the day of her coronation, but that they and every of them, for any the offences before mentioned, perpetrated, committed, or done by them or any of them, before the said last day of September, shall suffer such pains of death, losses, and forfeitures of lands and goods, as in cases of treason, as though this act had never been had ne made; any thing in this act to the contrary in any wise notwithstanding.

All offences made felony, or in the case of *præmunire* since anno 1 Hen. 8, repealed.

"V. And be it further ordained and enacted by the authority aforesaid, that all offences made felony, or limited or appointed to be within the case of *præmunire*, by any act or acts of parliament, statute or statutes, made sithence the first day of the first year of the reign of the late king of famous memory King Henry the Eighth, not being felony before, nor within the case of *præmunire*, and also all and every branch, article, and clause mentioned or in any wise declared in any of the same statutes, concerning the making of any offence or offences to be felony, or within the case of *præmunire*, not being felony nor within the case of *præmunire* before, and all pains and forfeitures concerning the same, or any of them, shall from henceforth be repealed, and utterly void and of none effect."

STAT. 1 MAR. SESS. 2, c. 1.

II. STAT. 1 MARIE, SESS. 2, c. 1. A.D. 1553.

"An Act declaring the Queen's Highness to have been born in a most just and lawful Matrimony; and also repealing all Acts of Parliament and Sentence of Divorce had or made to the contrary."

STAT. 1 MAR. SESS. 2, c. 2.

III. STAT. 1 MARIE, SESS. 2, c. 2 (1). A.D. 1553.

"A Repeal of the Statute of 1 Edw. 6, c. 1, made against such as shall speak unreverently of the Body and Blood of Christ; and of the Statute of 1 Edw. 6, c. 2, touching the Election of Bishops; and of the Statute of 2 Edw. 6, c. 1, concerning the Uniformity of Service, and Administration of the Sacraments; and of the Statute of 2 & 3 Edw. 6, c. 21, made to take away all positive Laws ordained against the Marriage of Priests; and of the Statute of 3 & 4 Edw. 6, c. 10, made for the abolishing of divers Books and Images; and of the Statute of 3 & 4 Edw. 6, c. 12, made for the ordering of Ecclesiastical Ministers, and of the Statute of 5 & 6 Edw. 6, c. 1, made for the Uniformity of Common Prayer and Administration of the Sacraments; and of the Statute of 5 & 6 Edw. 6, c. 3, made for the keeping of Holy-days and Fasting-days(2); and of the Statute of 5 & 6 Edw. 6, c. 12, touching the Marriage of Priests and Legitimation of their Children. All such Divine Service and Administration of Sacraments as were most commonly used in England in the last Year of Henry 8, shall be used through the Realm, after the twentieth Day of December, A.D. 1553, and no other Kind of Service nor Administration of Sacraments."

(1) Repealed by Stat. 1 Eliz. c. 2. Stat. 1 Jac. 1, c. 25, s. 48.

(2) *Holy-days and Fasting-days*:—"In the 1st of Queen Elizabeth, a bill to revive the act of parliament made anno 5 Edw. 6, for keeping of holy-days and fasting-days, was brought into parliament, but passed not; so

that the repeal of Queen Mary remained upon this act till Stat. 1 Jac. 1, c. 25, by which her repeal was repealed; and it is a rule, that by repealing of a repeal, the first act is revived." 2 Inst. 686.

"In the mean while, the kalendar, before the Book of Common Prayer had directed

IV. STAT. 1 MARIE, SESS. 2, c. 3. A.D. 1553.

STAT. 1 MAR.
SESS. 2, c. 3.*"An Act against Offenders of Preachers and other Ministers in the Church."*

"Forasmuch as it is most necessary, in every Christian commonwealth, to provide that tranquillity and peace may be preserved and continued amongst the people, and specially in holy church, in the time of divine service, the administration of sacraments, and sacramentals, as before this time it hath been accustomed in holy church within this realm; and that all things being contrary thereunto, or that are, or may be in disturbance thereof, may by foresight be eschewed and avoided, and remedy therefore in due time provided, as well for the preservation of the queen's highness' peace, as for a universal quietness and order to be used within this realm.

"II. Be it therefore enacted by the queen our sovereign lady, the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that if any person or persons of their own power and authority, at any time or times after the xx. day of December next coming, do or shall willingly and of purpose, by open and overt word, fact, act, or deed, maliciously or contemptuously molest, let, disturb, vex, or trouble, or by any other unlawful ways or means disquiet or misuse any preacher or preachers that now is, or that at any time or times hereafter shall be, licensed, allowed, or authorized to preach by the queen's highness, or by any archbishop or bishop of this realm, or by any other lawful ordinary, or by any of the universities of Oxford and Cambridge, or otherwise lawfully authorized or charged by reason of his or their cure, benefice, or other spiritual promotion or charge, in any of his or their open sermon, preaching, or collation, that he or they shall make, declare, preach, or pronounce, in any church, chapel, churchyard, or in any other place or places, used, frequented, or appointed, or that hereafter shall be used, or appointed to be preached in.

"III. Or if any person or persons, after the said xx. day of December next coming, shall maliciously, willingly, or of purpose molest, let, disturb, vex, disquiet, or otherwise trouble, any parson, vicar, parish priest, or curate, or any lawful priest, preparing, saying, doing, singing, ministering, or celebrating the mass, or other such (1) divine service, sacraments, or sacramentals, as was most commonly

what holy-days should be observed, and in the articles published by the queen in the seventh year of her reign, one was, that there be none other holy-days observed, besides the Sundays, but only such, as be set out for holy-days, as in the Stat. anno 5 & 6 Edw. 6, and in the new kalendar authorized by the queen's majesty, who appears in other instances, (as she did probably in this,) to have greatly disliked the parliament's intermeddling in matters of religion, the ordering of which she reckoned one great branch of the royal supremacy." Gibson's Codex, 245.

"The whole statute of which this repeal is a part, was, as previously observed, repealed by Stat. 1 Jac. 1, c. 25, s. 48, in these words: 'And be it further enacted by the authority of this present parliament, that an act made in the 1st year of the reign of Queen Mary, entitled, An Act for the repeal of certain Statutes made in the time of King Edward the Sixth, shall stand repealed and void.' From whence it was moved and urged, at a grand committee of lords and commons, (12 Co. 7,) that Queen Mary's repeal being repealed, King Edward's act remained still in force, and that by consequence all bishops made contrary to the tenour of that act since the said repeal, 1 Jac. 1, were illegally made, having been made by election, and not by donation, or

by the single authority of the king's letters patents. But upon consideration had of this matter by command of the king, it was answered and resolved by *Popham* (Chief Justice), *Coke* (Attorney), the Chief Baron, and other Justices, then attendant on parliament, that although the said act 1 Mar. be repealed, yet the act 1 Edw. 6, is not now in force, but remains repealed; and that, principally for this cause, that the foregoing act, 25 Hen. 8, c. 20, which directs the making of bishops by election, (though repealed by 1 & 2 P. & M. c. 8,) was revived, expressly and by name in 1 Eliz. c. 1, s. 7, and by consequence did revive and re-establish the ancient method of election and confirmation. From hence it follows, (says my Lord Coke,) that the act of 1 Eliz. reviving the 25 Hen. 8, hath repealed the act of 1 Edw. 6." Gibson's Codex, 113, 114. 12 Co. 8.

(1) *Other such*:—In *Paul Moore's case*, (Jon. (Sir T.), 159,) who was committed to gaol upon this statute for disturbing a minister in saying common prayer; it was urged in his behalf, that the statute was made only against those who should give disturbance in the celebration of the mass, or of such service as was in use *ann. ult.* Henry 8. But the court resolved, that "it extends to the divine service now established, and that the word (such) hath not reference

The penalty of disturbing of preachers and ministers in the church.
2 & 3 Edw. 6, c. 1.
5 & 6 Edw. 6, c. 1.

Disturbing by word or deed a preacher in his sermon.
2 Bulst. 47, 53.
Aleyn, 50.

Molesting a priest preparing or celebrating mass or other service.
1 Mod. 168.
Jones (Sir T.), 159.

STAT. 1 MAR.
SESS. 2, c. 3.

Abusing the
blessed sacra-
ment of the
body and blood
of Christ, or
breaking any
altar or
crucifix.

frequented and used in the last year of the reign of the late sovereign lord King Henry the Eighth, or that at any time hereafter shall be allowed, set forth, or authorized by the queen's majesty.

"IV. Or if any person or persons, at any time or times after the said xx. day of December, shall contemptuously, unlawfully, or maliciously, of their own power or authority, pull down, deface, spoil, abuse, break, or otherwise unreverently handle or order, the most blessed, comfortable, and holy sacrament of the Body and Blood of our Saviour Jesus Christ, commonly called the Sacrament of the Altar, being or that shall be in any church or chapel, or in any other decent place, or the pix or canopy wherein the same sacrament is or shall be; or unlawfully, contemptuously, or maliciously, of their own power and authority, pull down, deface, spoil, or otherwise break any altar or altars, or any crucifix or cross, that now or hereafter shall be in any church, chapel, or churchyard; that then every such offender and offenders in any the premises, his or their aider, procurer, or abettor, aiders, procurers, or abettors, immediately and forthwith after any of the said act or acts, or other the said misdemeanors so committed, done, or made, or any time or times after, shall be apprehended, arrested, and taken by any constable or constables, churchwarden or churchwardens, of the said parish, town, or place where the said offence or offences shall be so committed, made, or done, or by any other officer or officers, or *by any other person* (1) or persons then being present at the time of the said offence or offences so unlawfully committed, made, or done.

"V. Which person or persons so apprehended, taken, or arrested, with convenient speed shall be brought and carried to any justice of peace within the said shire, or within any city, borough, liberty, or town corporate wherein justices of peace be, where the said offence or offences shall be so committed, done, and made: and that the said justice of peace, upon due accusation thereupon had and made by the apprehender or apprehenders, or other person or persons, of any of the said person or persons so offending, forthwith shall commit the said person or persons so apprehended, arrested, and taken, to safe keeping and custody, as by the discretion of the said justice shall be thought most meet and convenient, and that within six days next and immediately after the said accusation so had and made to the said justice, the said justice with one other justice of peace in the said shire, city, borough, liberty, or town corporate, shall diligently examine the act or acts, offence or offences aforesaid.

The punish-
ment of the
offender for any
of the crimes
aforesaid.

"VI. And if they the said two justices of peace shall upon their said examination find or perceive the said person or persons so accused guilty of any of the said offence or offences whereof he or they shall be so accused, and that by two sufficient witnesses, or by his or their own confession or confessions, that then and immediately with convenient speed the said two justices shall commit and award the said person or persons so accused as is aforesaid, to the gaol of or for the said shire, city, borough, liberty, or town corporate where the said offence or offences was so committed, made, or done, there to remain without bail or mainprize, by the space of three months then next ensuing, and further to the next quarter sessions to be holden within the said shire, city, borough, liberty, or town corporate, next after the end of the said three months; at which said quarter sessions, the said person or persons so committed to the gaol as is aforesaid, upon his or their reconciliation and repentance in that behalf before the said justices of peace at the said sessions, shall be delivered and discharged out of prison and gaol, upon sufficient surety of his good abearing and behaviour, to be then and there taken by the said justices for one whole year then next ensuing, as by the discretion or

to the manner or quality of the service, but to the authority establishing it."

(1) *By any other person*:—In the case of *Gleaver & Hynde*, (1 Mod. 168,) where an action of trespass, of assault, and battery, was brought, for laying hands on the disturber; it was declared by the court, that at common law, a person disturbing divine ser-

vice, might be removed by any other person there present, as being all concerned in the service of God that was then performing; so that the disturber was a nuisance to them all, and might be removed by the same rule of law, that allows a man to abate a nuisance. *Vide etiam*, 1 Russell on Crimes by Greaves, 301.

discretions of the said justices then and there being, or of the more part of them, shall be thought meet and convenient; and if the said person or persons so in gaol as is aforesaid, will not be reconciled and repent at the said quarter sessions, that then the said person or persons immediately in time convenient, shall be further awarded and committed to the said gaol by the said justices, or by the more part of them, there to remain without bail or mainprise, until he or they so committed and awarded to gaol as is aforesaid, shall be reconciled, and be penitent, for his or their said offence or offences.

STAT. 1 MAR.
SESS. 2, c. 3.

Godb. 246,
pl. 343.

“VII. And be it further enacted by the authority aforesaid, that if any person or persons, at any time or times after the said xx. day of December, of their own authority and power, willingly and unlawfully do rescue any offender or offenders, so apprehended, taken, or arrested as is aforesaid, or will disturb, hinder, or let the said offender or offenders, so offending as is aforesaid, to be apprehended, taken, or arrested, that then every one of the said rescuers or disturbers shall suffer like imprisonment as is aforesaid, and further shall pay, forfeit, and lose for a fine, for every of his or their said offences, five pounds to the queen’s majesty, her heirs and successors.

The penalty for
rescuing an
offender, or
disturbing the
arrest.

“VIII. And be it further enacted by the authority aforesaid, that if any of the offenders aforesaid be not taken, apprehended, or arrested immediately in time convenient, as is aforesaid, but do escape or go away, that then the said escape shall be lawfully presented before the justices of peace in the said shire, city, borough, liberty, or town corporate, at the next quarter sessions to be holden where the said escape was made and suffered, and that then the inhabitants of the parish where the said escape was so suffered, shall forfeit and lose to the queen’s majesty, her heirs and successors, for every such escape five pounds, to be levied and taken as other like amerciaments and fines before this time hath been levied and taken upon any village, hundred, or town, for the escape of any murderer or other felon, for not making pursuit upon hue and cry, according to the Statute of Winchester, and the statute made and provided in the third year of the worthy King Henry the Seventh.

The penalty if
an offender be
not taken, but
doth escape.

13 Edw. 1,
St. II. c. 1.
3 Hen. 7, c. 1.

“IX. And be it further enacted by the authority aforesaid, that all and singular justices of peace, justices of assize, justices of Oyer and Determiner, and all and singular mayors, bailiffs, and justices of peace within any city, borough, or town corporate, in any parts within this realm, within the limits of their commission or commissions, shall have full power and authority by virtue of this act, after the said xx. day of December, to inquire of all and singular the offences and misdemeanors aforesaid, and to hear and determine the same, and to set the fines and amerciaments of the said offender or offenders as is aforesaid.

What magis-
trates shall
have authority
to inquire of
and punish the
offenders.

“X. Provided always, and be it further enacted by the authority aforesaid, that this act, or any thing therein contained, shall not in any wise extend to abrogate and take away the authority, jurisdiction, power, and punishments of the *ecclesiastical laws* (1) now standing and remaining in their force, of or for the punishment of any the offences and misdemeanors aforesaid, but that the authority, power, jurisdictions, and punishments of the said ecclesiastical laws of and for any of the offences and misdemeanors aforesaid, shall stand in full power and strength, and to be used and exercised in all and in every thing, as though this act had never been had and made; this present act, or any thing therein contained to the contrary thereof in any wise notwithstanding.

The jurisdic-
tion of the law
ecclesiastical
saved.

(1) *Ecclesiastical laws*.—Upon indictment before justices of peace for saying, “preaching was but prating, and hearing of service more edifying than two hours’ preaching;” the party was convicted, and fined 100 marks. And the error assigned to reverse the judgment was, that this was not any offence inquirable by indictment, and before justices of peace, but only before the high commissioners; which point was referred to Sir H. Yelverton (Attorney General), to con-

sider thereof; and he certified, that it was not inquirable before them, and of that opinion was the court, but they would advise. Gibson’s Codex, 305. In another report of the same case it is said, that though the words are spiritual, yet one may be indicted for them, as seditious words against the state of the church, and as drawing after them a temporal evil, namely, the disturbance of the peace. 2 Rol. Abr. *Indictment* (I), 78.

STAT. 1 MAR.
SESS. 2, c. 3.

There shall be
but one punish-
ment for one
offence.

Farther pro-
visions relating
hereto, see 1 Eliz. cc. 1 & 2; 13 Eliz. c. 12; 23 Eliz. c. 1; 13 & 14 Car. 2, c. 4; 15 Car. 2, c. 6; 1 Gul. & Mar. St. I. c. 18; 5 Ann. c. 5; and 23 Geo. 2, c. 28.

“XI. Provided always, and be it enacted, that whatsoever person offending in the premises, shall for any of the offences afore recited receive punishment of the ordinary, having a testimonial thereof under the said ordinary’s seal, shall not for the same offence afterwards be convicted before the justice: and in likewise receiving for the said offences punishment by the justice, he shall not for the same offence afterwards receive punishment of the ordinary; any thing in this act to the contrary notwithstanding.”

STAT. 1 MAR.
SESS. 2, c. 5.

V. STAT. 1 MARLÆ, SESS. 2, c. 5 (1). A.D. 1553.

“An Act for the Limitation of Prescription in certain Cases.”

STAT. 1 MAR.
SESS. 3, c. 9.

VI. STAT. 1 MARLÆ, SESS. 3, c. 9 (2). A.D. 1553.

“The Queen during her Life (3) shall have Authority, by Writing to be sealed with the Great Seal of England, to make and prescribe to all those Churches, Cathedral and Collegiate, that were erected and established by King Henry the Eighth, and to the Deans, Prebendaries, and Ministers of the same, and to their Successors, such Statutes and Orders for the good Governance (4) of every of them, and of the Lands and Possessions of every of the same Churches, as shall seem good to her; and to alter, change, augment, or diminish the same, as occasion shall serve; and to ordain and establish Statutes, Ordinances, and Foundations, for the Government of such Grammar Schools as were erected by King Henry the Eighth, or by King Edward the Sixth, and of the Ministers and Scholars of the same; and to alter and transpose other Statutes and Ordinances there heretofore made.”

STAT. 1 MAR.
SESS. 3, c. 10.

VII. STAT. 1 MARLÆ, SESS. 3, c. 10. A.D. 1553.

“The Repeal of a Statute (not printed) made anno 2 Edw. 6, touching the Consolidation and Union of the Parish Churches of Onger and Grensted, in the County of Essex: and they shall be several Parishes as they were before: and James Morris and his Heirs shall have the Presentation of the said Parsonage of Onger.”

(1) For the Statutes of Limitation, and the decisions thereon, *vide* Stephens on Nisi Prius, 2893-2935.

(2) Expired.

In this statute it is recited, that King Henry the Eighth’s statutes were not *indented*, but in the commission which was issued under this statute, it is also specified, that they were not under the *great seal*. 2 Burn’s E. L. by Phillimore, 100.

(3) *During her Life*:—In the last year, of which this direction was given by Cardinal Pole (Archbishop), at the opening of the convocation: “Deinde voluit Reverendissimus, statuta ecclesiarum noviter erectarum aut mutatarum à regularibus ad seculares,

expendi per Episcopos Lincoln’ Cicestr’ et Petriburg’. Item et Nicolao Wotton, *Cant.* Edmundo Stuard, *Winton*, et Seth Holland *Wigorn*. Ecclesiarum Decanis; et quæ consideranda sunt, referri Reverendissimo quàm primum commodè poterunt.” Reg. Conv. 1557, Sess. 2.

(4) *Governance*:—The clause in the foundation charter, is thus: “Per presentes volumus etiam et ordinamus,—quòd prædictus decanus et præbendarii dicti,—se gerent, exhibebunt, et occupabunt, secundum ordinationem, regulas, et statuta, eis per nos in quadam indenturâ in posterum fiend’ specificand’ et declarand’.” 1 Burn. App. 248.

STATUTA PHILIPPI & MARIE.

A.D. 1554—1558.

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I. STAT. 1 & 2 PHILIPPI & MARIE, c. 6 (1). A.D. 1554.

STAT. 1 & 2
P. & M. c. 6.

"A Reviver of the Statute of 5 Rich. 2, St. II. c. 5, concerning arresting of Heretical Preachers; and of the Statute of 2 Hen. 4, c. 15, touching repressing of Heresies and Punishment of Hereticks; and of the Statute of 2 Hen. 5, c. 7, concerning the Enormity of Heresy and Lollardy, and the Suppression thereof."

II. STAT. 1 & 2 PHILIPPI & MARIE, c. 8 (2). A.D. 1554.

STAT. 1 & 2
P. & M. c. 8.

"An Act repealing all Articles and Provisions made against the See Apostolick of Rome, since the twentieth Year of King Henry the Eighth, and for the establishment of all Spiritual and Ecclesiastical Possessions and Hereditaments conveyed to the Laity."

III. STAT. 1 & 2 PHILIPPI & MARIE, c. 17 (3). A.D. 1554.

STAT. 1 & 2
P. & M. c. 17.

"An Act touching Leases hereafter to be made by certain Spiritual Persons."

"Where in the parliament begun and holden at Westminster the eighth day of June in the xxviii. year of the reign of our late king of famous memory, Henry the Eighth, and there continued and kept until the dissolution of the same parliament the eighteenth day of July next following, one act entitled, 'An Act for the restitution of the First-fruits in the time of Vacation to the next Incumbent,' was had and made, wherein are certain clauses for leases then made and to be made by spiritual and ecclesiastical persons, to endure and be in force for term of six years, if the incumbents did resign their said spiritual promotions, or if the same should otherwise become void by the only act of the same incumbents, as by the same act more at large may appear: to the intent the parsons and vicars, and others having cure of souls, may the better attend, and be the more vigilant in their ministry and function.

So much of the statute of 28 Hen. 8, c. 11, as concerneth the ratifying of a lease made by a spiritual person of his benefice to a layman, for some years after the lessor's resignation or death, altered.

"II. Be it enacted by the king our sovereign lord, and by the queen our sovereign lady, with the assents of the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, that as much of the same act as doth concern the making good of the said leases, ne any clause, sentence, provision, or article therein contained, shall extend or be construed or adjudged to extend to any lease that shall be made by any parson, vicar, or any other having any spiritual promotion after the feast of the Purification of our Lady next coming (4)."

Dyer, 255, pl. 7.
The statute of 28 Hen. 8, c. 11, shall not extend to leases hereafter to be made by spiritual persons.

(1) Repealed by Stat. 1 Eliz. c. 1, s. 15.

(4) Vide Stat. 13 Eliz. c. 20. Stat. 14

(2) Repealed by Stat. 1 Eliz. c. 1, s. 2. Stat. 8 Eliz. c. 1.

Eliz. c. 11. Stat. 18 Eliz. c. 11. Stat. 43 Eliz. c. 9. Stat. 5 & 6 Vict. c. 27. Stat.

(3) Vide Stat. 5 & 6 Vict. c. 27. Stat. 5 & 6 Vict. c. 108.

5 & 6 Vict. c. 108.

STAT. 2 & 3
P. & M. c. 4.

IV. STAT. 2 & 3 PHILIPPI & MARIE, c. 4 (1). A.D. 1555.

"The Payment of the First-fruits of Spiritual Livings to the Queen shall cease. The yearly Tenths heretofore paid to the Queen by the Statute of 26 Hen. 8, c. 3, shall be employed to other Godly Uses. Parsonages impropriate, Tithes, Glebe Lands, and other Ecclesiastical Livings, renounced by the Queen. But this Act shall not extend to Tenths reserved upon Letters Patents."

STAT. 2 & 3
P. & M. c. 14.

V. STAT. 2 & 3 PHILIPPI & MARIE, c. 14. A.D. 1555.

[Authority given to the Dean and Chapter of Hereford, to re-edify four sufficient Mills.]

STAT. 3 & 4
P. & M. c. 8.
[Ir.]

VI. STAT. 3 & 4 PHILIPPI & MARIE, c. 8(2). [IRELAND.] A.D. 1556.

"An Act repealing Statutes and Provisions made against the See Apostolick of Rome, sithence the twentieth Year of King Henry the Eighth, and also for the establishment of Spiritual and Ecclesiastical Possessions and Hereditaments conveyed to the Laity."

STAT. 3 & 4
P. & M. c. 9.
[Ir.]

VII. STAT. 3 & 4 PHILIPPI & MARIE, c. 9(3). [IRELAND.] A.D. 1556.

"An Act for reviving of three Statutes made for the Punishment of Heresies."

STAT. 3 & 4
P. & M. c. 10.
[Ir.]

VIII. STAT. 3 & 4 PHILIPPI & MARIE, c. 10(4). [IRELAND.] A.D. 1556.

"An Act for the Discharge of the First-fruits."

STAT. 3 & 4
P. & M. c. 11.
[Ir.]

IX. STAT. 3 & 4 PHILIPPI & MARIE, c. 11(5). [IRELAND.] A.D. 1556.

"An Act whereby certain Offences be made Treasons; and also for the Government of the King and Queen's Majesties' Issue."

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| (1) Repealed by Stat. 1 Eliz. c. 4. | (3) Repealed by Stat. 2 Eliz. c. 1. (1.) |
| (2) Partly repealed by Stat. 2 Eliz. c. 1. | (4) Repealed by Stat. 2 Eliz. c. 3. (1.) |
| (I.) | (5) Expired. |

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A.D. 1558—1603.

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I. STAT. 1 ELIZABETHÆ, C. 1 (2). A.D. 1558.

STAT. 1 ELIZ.
c. 1.

"An Act(3) to restore(4) to the Crown the ancient Jurisdiction over the Estate Ecclesiastical and Spiritual, and abolishing all Foreign Powers repugnant to the same."

"Most humbly beseech your most excellent majesty, your faithful and obedient subjects the lords spiritual and temporal, and the commons, in this your present parliament assembled, that where in time of the reign of your most dear father, of worthy memory, King Henry the Eighth, divers good laws and statutes were made and established, as well for the utter extinguishment and putting away of all usurped and foreign powers and authorities out of this your realm, and other your highness' dominions and countries, as also for the restoring and uniting to the imperial crown of this realm, the ancient jurisdictions, authorities, superiorities, and pre-eminences to the same of right belonging or appertaining, by reason whereof we your most humble and obedient subjects, from the xxv. year of the reign of your said dear father, were continually kept in good order, and were disburdened of divers great and intolerable charges and exactions before that time

All ancient jurisdiction restored to the crown.

A repeal of divers statutes, and revivor of

(1) The same discrepancy of dates between the English and Irish statutes, to which allusion has been made, (*antè* 117.) exists in this and subsequent reigns.

(2) *Vide* Stat. 8 Eliz. c. 1. Stat. 16 Car. 1, c. 11. Stat. 13 Car. 2, c. 12. Stat. 31 Geo. 3, c. 32.

(3) *An Act*:—This act was passed in the House of Lords, "Dissentient' Archiep. Ebor. Comite Salop. Vicecom. Mountague. Ep. Lond. Winton. Wigorn' Landaven' Coven' Exon' Cestren' Carliolen' et Abbate Westm'." and the speeches made against the bill (by

Heath, archbishop of York, and Scot, bishop of Chester,) are printed in the Annals of the Reformation, for the first twelve years of Queen Elizabeth. Gibson's Codex, 42.

(4) *To restore*:—In *Caudrey's case*, (5 Co. 8,) it was stated, that this was not a statute introductory of a new law, but declaratory of the old; which is true, with regard to a general right of jurisdiction in the crown, over the state ecclesiastical; but it does not apply to the entire statute. *Vide post*. 357, n. (1) (2).

STAT. 1 ELIZ.
c. 1.

others, and all
foreign power
abolished.

1 & 2 P. & M.
c. 8.

1 Roll. 162.
Act. 121.

A repeal of the
statute of
1 & 2 P. & M.
c. 8.

A revivor of
the statutes
hereafter
specified, viz.
23 Hen. 8,
c. 9.

24 Hen. 8,
c. 12.

25 Hen. 8,
not printed.

25 Hen. 8,
c. 19.

25 Hen. 8,
c. 20.

25 Hen. 8,
c. 21.

26 Hen. 8,
c. 14.

unlawfully taken and exacted by such foreign power and authority as before that was usurped, until such time as all the said good laws and statutes by one act of parliament made in the first and second years of the reigns of the late King Philip and Queen Mary, your highness' sister, entitled, 'An Act repealing all Statutes, Articles, and Provisions made against the See Apostolick of Rome since the twentieth year of King Henry the Eighth, and also for the establishment of all Spiritual and Ecclesiastical Possessions and Hereditaments conveyed to the Laity,' were all clearly repealed and made void, as by the same act of repeal more at large doth and may appear; by reason of which act of repeal, your said humble subjects were eftsoons brought under an usurped foreign power and authority, and do yet remain in that bondage, to the intolerable charges of your loving subjects, if some redress (by the authority of this your high court of parliament, with the assent of your highness) be not had and provided:

"II. May it therefore please your highness, for the repressing of the said usurped foreign power, and the restoring of the rights, jurisdictions, and pre-eminences appertaining to the imperial crown of this your realm, that it may be enacted by authority of this present parliament, that the said act made in the said first and second years of the reigns of the said late King Philip and Queen Mary, and all and every branches, clauses, and articles therein contained, (other than such branches, clauses, and sentences as hereafter shall be excepted,) may from the last day of this session of parliament, by authority of this present parliament, be repealed, and shall from thenceforth be utterly void and of none effect:

"III. And that also for the reviving of divers of the said good laws and statutes made in the time of your said dear father, it may also please your highness, that one act and statute made in the xxiii. year of the reign of the said late King Henry the Eighth, entitled, 'An Act, that no Person shall be cited out of the Diocese wherein he or she dwelleth, except in certain cases;'

"IV. And one other act made in the xxiv. year of the reign of the said late king, entitled, 'An Act, that Appeals in such cases, as hath been used to be pursued to the See of Rome, shall not be from henceforth had ne used, but within this Realm;'

"V. And one other act made the xxv. year of the said late king, concerning restraint of Payment of Annates and First-fruits of Archbishopricks and Bishopricks to the See of Rome;

"VI. And one other act in the said xxv. year, entitled, 'An Act concerning the Submission of the Clergy to the King's Majesty;'

"VII. And also one act made in the said xxv. year, entitled, 'An Act restraining the Payment of Annates or First-fruits to the Bishop of Rome, and of the electing and consecrating of Archbishops and Bishops within this Realm;'

"VIII. And one other act made in the said xxv. year, entitled, 'An Act concerning the Exoneracion of the King's Subjects from Exactions and Impositions heretofore paid to the See of Rome, and for having Licences and Dispensations within this Realm, without suing further for the same;'

"IX. And one other act made in the xxvii. year of the said late king, entitled, 'An Act for *Nomination and Consecration of Suffragans within this Realm* (1);'

(1) *Nomination and Consecration of Suffragans within this Realm*:—It was an ancient custom in the church, when a bishop grew very aged, or otherwise unfit to discharge the episcopal office, for him to take a *coadjutor*, or for a *coadjutor* to be given to him; originally, the *coadjutor* succeeded to the bishoprick upon its vacancy; but, in later times, he became only an *assistant*, during the life of the bishop.

For the appointment of *coadjutors*, there are many rules in the canon law; (Extra. l. i., t. 31, c. 15; Sext. Decret. l. 3, t. 5, c. 1; Caus. 7, q. 1, cc. 1, 4, 5, 6, 13, 17, 18;) but the authority that seems to be the most

conclusive upon the subject, and upon which the subsequent practice of the Church of England was apparently founded, is the Decretal Epistle of Innocent the Third to the Archbishop of Arles. Decret. l. 3, t. 6, c. 5. "Ex parte tua fuit propositum, quod cum Aurasienis episcopus gravi et incurabili morbo ferè per quadriennium laboraverit, ita quod pastorale officium non potest ullatenus exercere; princeps terræ illius, ac cives civitatis ejusdem, à te postulant incessanter, ut ipsis, cum sis metropolitanus eorum, studeas providere. Verum cum ipsum ad cessionem compellere non possis, nec debeas ullo modo, nec afflicto afflictio sit addenda, imo potius

"X. And also one other act made in the xxviii. year of the reign of the said late king, entitled, 'An Act for the Release of such as have obtained pretended Licences and Dispensations from the See of Rome;' and all and every branches, words, and sentences in the said several acts and statutes contained, by the authority of this present parliament, from and at all times after the last day of this session of parliament, shall be revived, and shall stand and be in full force and strength, to all intents, constructions, and purposes: and that the branches, sentences, and words of the said several acts, and every of them, from thenceforth shall and may be judged, deemed, and taken to extend to your highness, your heirs and successors, as fully and largely as ever the same acts, or any of them, did extend to the said late King Henry the Eighth, your highness' father.

"XI. And that it may please your highness, that it may be enacted by the authority of this present parliament, that so much of one act or statute made in the xxxii. year of the reign of your said dear father King Henry the Eighth, entitled, 'An Act concerning Precontracts of Marriages, and touching Degrees of Consanguinity,' as in the time of the late King Edward the Sixth, your highness' most dear brother, by one other act or statute, was not repealed;

"XII. And also one act made in the xxxvii. year of the reign of the said late King Henry the Eighth, entitled, 'An Act that Doctors of the Civil Law, being married, may exercise Ecclesiastical Jurisdiction;' and all and every branches

STAT. 1 ELIZ.
c. 1.

28 Hen. 8,
c. 16.

The sentences
and branches in
the aforesaid
statutes shall
extend to the
queen.

32 Hen. 8,
c. 38.

2 & 3 Edw. 6,
c. 23.

37 Hen. 8,
c. 17.

ipsius miseriæ miserendum, eò quòd idem vir bonus extiterit, et ecclesiam salubriter sibi commissam gubernaverit: nos volentes tam episcopo quàm ecclesiæ, providere, mandamus, quatenus illi *coadjutorem* associes, virum providum et honestum; per quem tam episcopo, quàm populo, utiliter consulatur."

Three coadjutors were included in one commission given by Archbishop Peckham, (Reg. f. 23 (a), to the Bishop of London; and the powers given were, to collate to benefices of the patronage of the see, to institute clerks presented by others, and to grant "commendas canonicas, in suis casibus," i. e. dispensations to hold a second benefice, for a time, without institution; (Ibid.) the granting of which was in the power of the bishops, and they, in fact, frequently granted it. And, by another instrument, the same archbishop committed, *custodiam sigilli*, to one of those three; with this limitation, that he should not set it to any institutions or collations, but with consent of the other two.

It should, however, be remarked, that in the appointment, none of the three were *bishops*, but *presbyters* only, viz. the Dean and Treasurer of St. Paul's, and the Archdeacon of Colchester; the discharge of the mere episcopal duties being probably undertaken by a suffragan bishop. In like manner, it existed in the diocese of Lichfield, under the same archbishop; (Ibid. 26(b);) who having required the bishop to provide a suffragan for the mere spiritual purposes of his diocese, in the words previously cited; enjoins him, in the same instrument, not to collate to any benefice, "absque *coadjutoris* vestri consilio pariter et consensu;" which coadjutor had been appointed before, and was the Archdeacon of Chester; to whom also, in the same commission, the archbishop assigns one hundred marks by way of salary, to be paid him out of the bishoprick, at Midsummer and Christmas.

In the time of the same archbishop, (Peck.

103(a),) a coadjutor was given to Robert, bishop of Sarum; and a dispute arising concerning the method of appointing him, (occasioned, as it should seem, (Ibid. 143,) by some pretended immunities or compositions, probably that, for the supplying of jurisdiction, *sede vacante*,) a twofold expedient was thought of; either for the bishop to name two or three of the chapter, who, being capitularly approved, might be presented to the archbishop to choose one; or for the chapter to name, and the archbishop to choose.

By these instances it appears, that, in England, whatever the practice might be in ancient times and in other countries, the two ends of orders and of jurisdiction voluntary, in case of the inability of a bishop, were answered by two several persons; the first under the name of *suffragan*, and the second under the name of *coadjutor*. And though, in subsequent times, little mention has been made of the last, yet *curators* or *coadjutors* to the beneficed clergy, in the like circumstances, have been very common, both before and since the Reformation.

The Reformatio Legum (51(b),) urges, that, by parity of reason, *coadjutors* ought to be assigned to *bishops*: "Quemadmodum *episcopi* ministris inferioribus, cum jam vel propter morbum desperatum, vel propter senectutem, ecclesiam ministrare diutius non possint, *adjutores* apponere debent: sic etiam illis, ob easdem causas, ab archiepiscopo dabuntur, modò noster consensus interveniat." Peck. 76(a), 96(a), 178(a). Islip, 155(a).

In the canon law, (Extra. l. 3, t. 6, c. 6,) direction is given for a *coadjutor* to an archdeacon, as follows: "Archidiacono, quem morbo paralytico laborantem, officium lingue asseris amisisse, *coadjutor* est meritò adhibendus." And, in our records, there are many instances, modern as well as ancient, of coadjutors given also to other dignitaries, and to incumbents of benefices. Gibson's Codex, 137, and authorities therein cited.

STAT. 1 ELIZ.
c. 1.

and articles in the said two acts last mentioned, and not repealed in the time of the said late King Edward the Sixth, may from henceforth likewise stand and be revived, and remain in their full force and strength, to all intents and purposes; any thing contained in the said act of repeal before mentioned, or any other matter or cause to the contrary notwithstanding.

What statutes
repealed by
the statute of
1 & 2 P. & M.
c. 8, shall con-
tinue repealed.

“XIII. And that it may also please your highness, that it may further be enacted by the authority aforesaid, that all other laws and statutes, and the branches and clauses of any act or statute, repealed and made void by the said act of repeal, made in the time of the said late King Philip and Queen Mary, and not in this present act specially mentioned and revived, shall stand, remain, and be repealed and void, in such like manner and form as they were before the making of this act; any thing herein contained to the contrary notwithstanding.

A revivor of
the statute
1 Edw. 6, c. 1.

“XIV. And that it may also please your highness, that it may be enacted by the authority aforesaid, that one act and statute made in the first year of the reign of the late King Edward the Sixth, your majesty's most dear brother, entitled, ‘An Act against such Persons as shall unreverently speak against the Sacrament of the Body and Blood of Christ, commonly called the Sacrament of the Altar, and for the receiving thereof under both Kinds,’ and all and every branches, clauses, and sentences therein contained, shall and may likewise from the last day of this session of parliament be revived, and from thenceforth shall and may stand, remain, and be in full force, strength, and effect, to all intents, constructions, and purposes, in such like manner and form as the same was at any time in the first year of the reign of the said late King Edward the Sixth; any law, statute, or other matter to the contrary in any wise notwithstanding.

A repeal of
the statute of
1 & 2 P. & M.
c. 6.
5 Rich. 2,
St. II. c. 5.
2 Hen. 4,
c. 15.
2 Hen. 5,
c. 7.

“XV. And that also it may please your highness, that it may be further established and enacted by the authority aforesaid, that one act and statute made in the first and second years of the said late King Philip and Queen Mary, entitled, ‘An Act for the reviving of three Statutes made for the Punishment of Heresies;’ and also the said three statutes mentioned in the said act, and by the same act revived, and all and every branches, articles, clauses, and sentences contained in the said several acts and statutes, and every of them, shall be from the last day of this session of parliament deemed and remain utterly repealed, void, and of none effect, to all intents and purposes; any thing in the said several acts, or any of them contained, or any other matter or cause, to the contrary notwithstanding.

The abolishing
of foreign
authority.

“XVI. And to the intent that all usurped and foreign power and authority spiritual and temporal, may for ever be clearly extinguished, and never to be used or obeyed within this realm, or any other your majesty's dominions or countries; may it please your highness that it may be further enacted by the authority aforesaid, that no foreign prince, person, prelate, state, or potentate spiritual or temporal, shall at any time after the last day of this session of parliament use, enjoy, or exercise any manner of power, jurisdiction, superiority, authority, pre-eminence, or privilege spiritual or ecclesiastical, within this realm, or within any other your majesty's dominions or countries that now be, or hereafter shall be, but from thenceforth the same shall be clearly abolished out of this realm, and all other your highness' dominions for ever; any statute, ordinance, custom, constitutions, or any other matter or cause whatsoever to the contrary in any wise notwithstanding.

Co. pl. fol. 465,
487.
Ecclesiastical
jurisdiction
annexed to the
crown.
1 Leon. 176.

“XVII. And that also it may likewise please your highness, that it may be established and enacted by the authority aforesaid, that such jurisdictions, privileges, superiorities, and pre-eminences spiritual and ecclesiastical, as by any spiritual or ecclesiastical power or authority hath heretofore been, or may lawfully be exercised or used for the visitation of the ecclesiastical state and persons, and for reformation, order, and correction of the same, and of all manner of errors, heresies, schisms, abuses, offences, contempts, and enormities, shall for ever by authority of this present parliament be united and annexed to the imperial crown of this realm.

“XVIII. And that your highness, your heirs and successors, kings or queens

of this realm, shall have full power and authority by virtue of this act, by letters patents under the great seal of England, *to assign, name, and authorize* (1) when and as often as your highness, your heirs or successors, shall think meet and convenient, and for such and so long time as shall please your highness, your heirs or successors, such person or persons being natural-born subjects to your highness, your heirs or successors, as your majesty, your heirs or successors, shall think meet, to exercise, use, occupy, and execute under your highness, your heirs and successors, all manner of jurisdictions, privileges, and pre-eminences, in any wise touching or concerning any spiritual or ecclesiastical jurisdiction, within these your realms of England and Ireland, or any other your highness' dominions and countries: and *to visit* (2), reform, redress, order, correct, and amend all such errors, heresies, schisms, abuses, *offences, contempts, and enormities* (3) whatsoever,

STAT. 1 ELIZ.
c. 1.

The queen may assign commissioners to exercise ecclesiastical jurisdiction. Repealed by 16 Car. 1, c. 11, s. 3.

(1) *To assign, name, and authorize*:—My Lord Coke states, that it was resolved in *Caudrey's case*, (5 Co. 1 (a).) that if this act had never been made, the king or queen of England, for the time being, might have made such an ecclesiastical commission, by the ancient prerogative and law of England. But it is said by Bishop Stillington, (Eccles. Ca. pt. 2, 67,) that the series of instances which Lord Coke produces out of our ancient histories and laws, have been found, upon examination, not to come up to the case in hand; which is not, whether the King, by the law of England, had not a jurisdiction over the state ecclesiastical, exclusive of the Pope, and antecedent to any statute made for that purpose; but, (as the same right reverend prelate states it,) "Whether our ancient law doth give the King a power, by virtue of his ecclesiastical jurisdiction, to appoint commissioners, by an extraordinary way of jurisdiction, to proceed in *primâ instantiâ*, against persons by ecclesiastical censures;" (Ibid. 85;) for the proof of which, (as he particularly shows,) there is not one instance among the many alleged by my Lord Coke, that is sufficient, or that comes up to the point.

(2) *To visit*:—Lord Coke considers, (*Caudrey's case*, (5 Co. 1 (a).) that this branch was enacted out of necessity; for that the bishops, and most of the clergy, being then popish, it was necessary to raise a commission to deprive them who would not deprive themselves, and to have a more summary proceeding than by the ordinary and prolix course of law is required. But Bishop Stillington (Eccles. Ca. pt. 2, 67 *et seq.*) believes, that they were rather deprived by a particular commission for that purpose; which the queen might grant, in virtue of this act, by the same reason, that she issued particular commissions into every county, to execute the powers contained and specified in such statute. Life of Archbishop Parker, 147.

In Ireland, so early as the thirteenth century, a visitation was made of the archdiocese of Dublin, the record of which visitation is generally styled the *Crede Mihi*; copies of this document still exist, and by one of them, in the British Museum, it appears, that the original was written about the end of the reign of Henry 3. Soon after, a general survey or valuation of the churches of Ireland was instituted, as is found by some fragments of the valuation still remaining in the Ex-

chequer in England: the valuation so made is generally called "Pope Nicholas' Taxation," and was executed in the reign of Edward 1; there is a writ from King Edward 3, ordering a new visitation of the diocese of Ireland to be made, though no such visitation has as yet been discovered. The most important document of that description, which next occurs, is the *Repertorium Viride*, or account of the former and present state of his own archdiocese, made by John Alan, archbishop of Dublin, in the reign of Henry 8. The original record, thus compiled, has continued in the possession of the archbishop's successors; and when we find copies of it were made for preservation in the libraries of Christ Church and St. Patrick's Cathedrals, Trinity College, &c. where they now remain, it may be fairly presumed, that it was formerly a document in considerable estimation. During the reign of Queen Elizabeth, many visitations of the dioceses of Ireland were made; some of them pursuant to order of state, and records of most of them are still to be seen in the MSS. Library of Trinity College, Dublin.

(3) *Offences, contempts, and enormities*:—The High Commission Court, which was erected in virtue of this clause, being abolished by Stat. 16 Car. 1, c. 11, the extent and exercise of that authority are now matters of mere speculation and curiosity; but, during the period that such court existed, there were many and great contests between it and the courts of Westminster Hall, concerning the extent of the jurisdiction assigned and limited by this statute; the commissioners, on the one hand, not confining themselves to such crimes as might properly be called enormous, (heresy, schism, polygamy, incest, and recusancy,) but taking cognizance of adultery, alimony, defamation, laying violent hands on a clerk, misbehaviour of clergymen in their functions, and the like; the cognizance of which, the judges affirmed to belong of right to the standing ecclesiastical courts, and not to the enormities, within the meaning of this statute; alleging further, that the exercise of jurisdiction, in these and the like cases, by the high commissioners, would not only prejudice all the bishops of England in their ecclesiastical jurisdiction, but would be also grievous to the subject, who must be drawn up from all the remote parts of the realm, when, before their own diocesan, they might receive justice at their own doors. Much of

STAT. 1 ELIZ.
c. 1.

Moor, 755,
pl. 1043.
Cro. Car. 113.

Who are com-
pellable to take
the oath:
ecclesiastical
persons and
officers, judge,
justice, mayor,
temporal
officer, he that
hath the
queen's fee.

The oath of
the queen's
supremacy.
Repealed by
1 Gul. & Mar.
sess. 1, c. 8,
s. 2.
1 Bulst. 199.

The penalty
for refusing
the oath.

which by any manner of spiritual or ecclesiastical power, authority, or jurisdiction, can or may lawfully be reformed, ordered, redressed, corrected, restrained, or amended, to the pleasure of Almighty God, the increase of virtue, and the conservation of the peace and unity of this realm; and that such person or persons so to be named, assigned, authorized, and appointed by your highness, your heirs or successors, after the said letters patents to him or them made and delivered, as is aforesaid, shall have full power and authority by virtue of this act, and of the said letters patents (1) under your highness, your heirs and successors, to exercise, use, and execute all the premises, according to the tenour and effect of the said letters patents; any matter or cause to the contrary in any wise notwithstanding.

“XIX. And for the better observation and maintenance of this act, may it please your highness that it may be further enacted by the authority aforesaid, that all and every archbishop, bishop, and all and every other ecclesiastical person, and other ecclesiastical officer and minister, of what estate, dignity, pre-eminence, or degree soever he or they be or shall be, and all and every temporal judge, justice, mayor, and other lay or temporal officer and minister, and every other person having your highness' fee or wages, within this realm, or any your highness' dominions, shall make, take, and receive a corporal oath (2) upon the Evangelist, before such person or persons as shall please your highness, your heirs or successors, under the great seal of England to assign and name, to accept and to take the same according to the tenour and effect hereafter following; that is to say,

“I A. B. do utterly testify and declare in my conscience, that the queen's highness is the only *supreme governor* (3) of this realm, and of all other her highness' dominions and countries, as well in all spiritual or ecclesiastical things or causes, as temporal; and that no foreign prince, person, prelate, state, or potentate, hath or ought to have any jurisdiction, power, superiority, pre-eminence, or authority ecclesiastical or spiritual, within this realm; and therefore I do utterly renounce and forsake all foreign jurisdictions, powers, superiorities, and authorities, and do promise, that from henceforth I shall bear faith and true allegiance to the queen's highness, her heirs and lawful successors, and to my power shall assist and defend all jurisdictions, pre-eminences, privileges, and authorities, granted or belonging to the queen's highness, her heirs and successors, or united and annexed to the imperial crown of this realm. So help me God, and by the contents of this book.”

“XX. And that it may also be enacted, that if any such archbishop, bishop, or any other ecclesiastical officer or minister, or any of the said temporal judges, justiciaries, or other lay officer or minister, shall preemptorily or obstinately refuse

this kind is to be met with in the reports of that time, particularly in my Lord Coke, who strenuously resisted the encroachments of the High Commission; and he and the other judges restrained them, in many instances, by prohibitions. *Roper's (Sir Anthony) case*, 12 Co. 47. 4 Inst. 332. Gibson's Codex, 45, and authorities therein cited.

(1) *Of the said letters patents*:—The letters patents or commission, (one copy of which is printed at large in the Life of Archbishop Grindal, App. 64.) empowered the commissioners, to fine and imprison; which they accordingly practised, in many cases; and the practice was allowed by the greater part of the justices assembled at Serjeants' Inn to consider of it; (Gibson's Codex, 45;) with this limitation, that the fine ought to be reasonable, and the imprisonment only for a moderate time. But the commission being in its nature ecclesiastical, and limited, by the express words of the statute, to offences punishable by spiritual or ecclesiastical power;

and it being also found, that divers, who were imprisoned in the reign of Queen Elizabeth, had been delivered by *habeas corpus*; and that, though fines had been imposed in that reign, none of them had been levied: upon these considerations, and upon a full and mature examination of the several parts of the act, it was resolved by all the justices of the Common Pleas, (9 Jac. 1.) that this statute did not warrant a commission to fine or imprison; which resolution, and the reasons for it, are contained in the 4th Institute, 324.

(2) *Oath*:—The form of this oath was altered by Stat. 1 G. & M. c. 8.

(3) *Supreme governor*:—The queen would not take the title of “Supreme Head;” a scruple having been raised in her mind about it, by one *Lever*, a minister of Frankfurt, (as appears by a letter from Dr. Sands to Dr. Parker; 2 Burn. App. 333;) and besides, it is probable this title might be less offensive to the popish party (then very prevalent) than that other of “Supreme Head.”

to take or receive the said oath; that then he so refusing shall forfeit and lose only during his life all and every ecclesiastical and spiritual *promotion* (1), benefice, and office, and every temporal and lay promotion and office, which he hath solely at the time of such refusal made; and that the whole title, interest, and incumbency, in every such promotion, benefice, and other office, as against such person only so refusing, during his life shall clearly cease and be void, as though the party so refusing were dead. STAT. 1 ELIZ. c. 1.

“XXI. And that also all and every such person and persons so refusing to take the said oath, shall immediately after such refusal be from thenceforth, during his life, disabled to retain or exercise any office or other promotion which he at the time of such refusal hath jointly, or in common, with any other person or persons.

“XXII. And that all and every person and persons, that at any time hereafter shall be preferred, promoted, or collated to any archbishoprick or bishoprick, or to any other spiritual or ecclesiastical benefice, promotion, dignity, office, or ministry: or that shall be by your highness, your heirs or successors, preferred or promoted to any temporal or lay office, ministry, or service within this realm, or in any your highness’ dominions, before he or they shall take upon him or them to receive, use, exercise, supply, or occupy any such archbishoprick, bishoprick, promotion, dignity, office, ministry, or service, shall likewise make, take, and receive *the said corporal oath* (2) before mentioned, upon the Evangelist, before such persons as have or shall have authority to admit any such person to any such office, ministry, or service, or else before such person or persons as by your highness, your heirs or successors, by commission under the great seal of England shall be named, assigned, or appointed to minister the said oath.

“XXIII. And that it may likewise be further enacted by the authority aforesaid, that if any such person or persons, as at any time hereafter shall be promoted, preferred, or collated, to any such promotion spiritual or ecclesiastical, benefice, office, or ministry, or that by your highness, your heirs or successors, shall be promoted or preferred to any temporal or lay office, ministry, or service, shall and do peremptorily and obstinately refuse to take the same oath so to him to be offered: that then he or they so refusing shall presently be judged disabled in the law to receive, take, or have the same promotion spiritual or ecclesiastical, or the same temporal office, ministry, or service within this realm, or any other your highness’ dominions, to all intents, constructions, and purposes.

“XXIV. And that it may be further enacted by the authority aforesaid, that all and every person and persons temporal, suing livery or *oustre le maine* out of the hands of your highness, your heirs or successors, before his or their livery or *oustre le maine* sued forth and allowed, and every temporal person or persons doing any homage to your highness, your heirs or successors, or that shall be received into service with your highness, your heirs or successors, shall make, take, and receive the said corporal oath before mentioned, before the lord chancellor of England, or the lord keeper of the great seal for the time being, or before such person or persons as by your highness, your heirs or successors, shall be named and appointed to accept or receive the same. He that sueth livery or oustre le maine.
He that doth homage to the queen.
He that shall be received into the queen’s service.

“XXV. And that also all and every person and persons taking orders, and all and every other person and persons which shall be promoted or preferred to any degree of learning in any university within this your realm or dominions, before he shall receive or take any such orders, or be preferred to any such degree of learning, shall make, take, and receive the said oath by this act set forth and declared as is aforesaid, before his or their ordinary, commissary, chancellor, or vice-chancellor, or their sufficient deputies in the said university. He that taketh orders.
He that taketh degrees in any university.

“XXVI. Provided always, and that it may be further enacted by the autho-

(1) *Promotion, &c.*—The penalty of refusing is here much moderated; being high treason, in Stat. 28 Hen. 8, c. 10, (*antè* 205,) and Stat. 35 Hen. 8, c. 1, (*antè* 287.)

(2) *The said corporal oath*:—i. e. the oath of supremacy; but which was altered by Stat. 1 G. & M. c. 8.

STAT. 1 ELIZ.
c. 1.

He that hath
estate of
inheritance in
a temporal
office, first
refuseth, and
then taketh
the oath.

rity aforesaid, that if any person, having any estate of inheritance in any temporal office or offices, shall hereafter obstinately and peremptorily refuse to accept and take the said oath as is aforesaid, and after at any time during his life shall willingly require to take and receive the said oath, and so do take and accept the same oath before any person or persons that shall have lawful authority to minister the same; that then every such person, immediately after he hath so received the said oath, shall be vested, judged, and deemed in like estate and possession of the said office, as he was before the said refusal, and shall and may use and exercise the said office in such manner and form as he should or might have done before such refusal; any thing in this act contained to the contrary in any wise notwithstanding.

"XXVII. And for the more sure observation of this act, and the utter extinguishment of all foreign and usurped power and authority, may it please your highness, that it may be further enacted by the authority aforesaid, that if any person or persons dwelling or inhabiting within this your realm, or in any other your highness' realms or dominions, of what estate, dignity, or degree soever he or they be, after the end of thirty days next after the determination of this session of this present parliament, shall by writing, printing, teaching, preaching, express words, deed, or act, advisedly, maliciously, and directly affirm, hold, stand with, set forth, maintain, or defend, the authority, pre-eminence, power or jurisdiction, spiritual or ecclesiastical, of any foreign prince, prelate, person, state or potentate whatsoever, heretofore claimed, used, or usurped within this realm, or any dominion or country being within or under the power, dominion, or obeysance of your highness; or shall advisedly, maliciously, and directly put in ure or execute any thing for the extolling, advancement, setting forth, maintenance, or defence of any such pretended or usurped jurisdiction, power, pre-eminence, and authority, or any part thereof; that then every such person and persons so doing and offending, their abettors, aiders, procurers, and counsellors, being thereof lawfully convicted and attainted, according to the due order and course of the common laws of this realm, for his or their first offence *shall forfeit and lose* (1) unto your highness, your heirs and successors, all his and their goods and chattels, as well real as personal.

The penalty of
the maintenance
of
foreign
authority.
Dyer, 363.

The forfeiture
for the first
offence.

"XXVIII. And if any such person so convicted or attainted shall not have or be worth of his proper goods and chattels to the value of twenty pounds, at the time of his conviction or attainder, that then every such person so convicted or attainted, over and besides the forfeiture of all his said goods and chattels, shall have and suffer imprisonment by the space of one whole year, without bail or mainprise.

Forfeiture of
the second
offence.

"XXIX. And that also all and every the benefices, prebends, and other ecclesiastical promotions and dignities whatsoever, of every spiritual person so offending, and being attainted, shall immediately after such attainder be utterly void to all intents and purposes, as though the incumbent thereof were dead; and that the patron and donor of every such benefice, prebend, spiritual promotion, and dignity, shall and may lawfully present unto the same, or give the same, in such manner and form as if the said incumbent were dead; and if any such offender or offenders, after such conviction or attainder, do afterwards commit or do the said offences, or any of them, in manner and form aforesaid, and be thereof duly convicted and attainted, as is aforesaid; that then every such offender and offenders shall for the same second offence incur into the dangers, penalties, and forfeitures ordained and provided by the Statute of Provision and *Præmunire*, made in the sixteenth year of the reign of King Richard the Second.

16 Rich. 2,
c. 5.

The penalty of
the third
offence.

"XXX. And if any such offender or offenders, at any time after the said second conviction and attainder, do the third time commit and do the said offences, or any of them, in manner and form aforesaid, and be thereof duly convicted and

(1) *Shall forfeit and lose*:—These penalties are according to Stat. 1 Edw. 6, c. 12; whereas in Henry the Eighth's time, Stat. 25 Hen. 8, c. 19, (*anté* 152,) made the penalty

a *præmunire*, and Stat. 28 Hen. 8, c. 10, (*anté* 205,) constituted the offence to be treason; and both, in the first instance.

attainted, as is aforesaid; that then every such offence or offences shall be deemed and adjudged high treason, and that the offender or offenders therein, being thereof lawfully convicted and attainted, according to the laws of this realm, shall suffer pains of death, and other penalties, forfeitures, and losses, as in cases of high treason by the laws of this realm.

STAT. 1 ELIZ.
c. 1.

“XXXI. And also that it may likewise please your highness, that it may be enacted by the authority aforesaid, that no manner of person or persons shall be molested or impeached for any of the offences so committed or perpetrated only by preaching, teaching, or words, unless he or they be thereof lawfully indicted within the space of one half year next after his or their offences so committed: and in case any person or persons shall fortune to be imprisoned for any of the said offences committed by preaching, teaching, or words only, and be not thereof indicted within the space of one half year next after his or their such offence so committed and done; that then the said person so imprisoned shall be set at liberty, and be no longer detained in prison for any such cause or offence.

Within what time an offender shall be impeached.

“XXXII. Provided always, and be it enacted by the authority aforesaid, that this act, or any thing therein contained, shall not in anywise extend to repeal any clause, matter, or sentence contained or specified in the said act of repeal made in the said first and second years of the reigns of the said late King Philip and Queen Mary, as doth in any wise touch or concern any matter or cause of *præmunire*, or that doth make or ordain any matter or cause to be within the case of *præmunire*; but that the same, for so much only as toucheth or concerneth any case or matter of *præmunire*, shall stand and remain in such force and effect, as the same was before the making of this act; any thing in this act contained to the contrary in any wise notwithstanding.

All things touching the *præmunire* in 1 & 2 P. & M. c. 8, s. 40, do continue in force.

“XXXIII. Provided also, and be it enacted by the authority aforesaid, that this act, or any thing therein contained, shall not in any wise extend or be prejudicial to any person or persons for any offence or offences committed or done, or hereafter to be committed or done, contrary to the tenor and effect of any act or statute now revived by this act, before the end of thirty days next after the end of the session of this present parliament; any thing in this act contained, or any other matter or cause to the contrary notwithstanding.

Offences committed against statutes revived.

“XXXIV. And if it happen that any peer of this realm shall fortune to be indicted of and for any offence that is revived or made *præmunire* or treason by this act; that then he so being indicted shall have his trial by his peers, in such like manner and form as in other cases of treason hath been used.

Trial of peers.

“XXXV. Provided always, and be it enacted as is aforesaid, that no manner of order, act, or determination for any matter of religion, or cause ecclesiastical, had or made by the authority of this present parliament, shall be accepted, deemed, interpreted, or adjudged at any time hereafter, to be any error, heresy, schism, or schismatical opinion; any order, decree, sentence, constitution, or law, whatsoever the same be, to the contrary notwithstanding.

No matter of religion, &c. made by this parliament shall be adjudged heresy or schism.

“XXXVI. Provided always, and be it enacted by the authority aforesaid, that such person or persons to whom your highness, your heirs or successors, shall hereafter by letters patents, under the great seal of England, give authority to have or execute any jurisdiction, power, or authority spiritual, or to visit, reform, order, or correct any errors, *heresies*, *schisms* (1), abuses, or enormities, *by virtue of this act* (2), shall not in any wise have authority or power to order, determine, or

Commissioners may adjudge such things to be heresy as are warranted by the Scripture, or the

(1) *Heresies, schisms*.—“Inter hæresim, et schisma hoc interesse arbitrantur, quod hæresis perversum dogma habeat, schisma propter episcopalem dissensionem ab ecclesia pariter separat. Quod quidem in principio aliqua ex parte intelligi potest: cæterum nullum schisma non aliquam sibi confingit hæresim, ut rectè ab ecclesiâ recessisse videatur.” Caus. 24, q. 3, c. 26.

(2) *By virtue of this act*.—“Which act, so far as concerneth the High Commission

court, being repealed by Stat. 16 Car. 1, c. 11, it follows, that this branch, which extended only to that court, is also repealed; but, saith my Lord Coke, while that commission stood, ‘albeit this proviso extendeth only to the High Commissioners, yet seeing in the High Commission there be so many bishops, and other divines, and learned men, it may serve for a good direction to others, especially to the diocesan, being a sole judge in so weighty a cause.’” Gibson’s Codex, 351.

STAT. 1 ELIZ.
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first four general councils. For farther provisions relating hereto, see c. 2. And farther, 13 Eliz. c. 12; 23 Eliz. c. 1; 13 & 14 Car. 2, c. 4; 15 Car. 2, c. 6; 1 Gul. & Mar. St. I. c. 18; 5 Ann. c. 5; and 23 Geo. 2, c. 28.

None shall be indicted or arraigned, but by two witnesses.

A proviso for them that give relief to offenders.

Chetwood's appeal to the court of Rome.

adjudge any matter or cause to be heresy, *but only such*(1) as heretofore have been determined, ordered, or adjudged to be heresy, by the authority of the canonical Scriptures, or by the first four general councils, or any of them, or by any other general council wherein the same was declared heresy by the express and plain words of the said canonical Scriptures, or such as hereafter shall be ordered, judged, or determined to be heresy by the high court of parliament of this realm, with the assent of the clergy in their convocation; any thing in this act contained to the contrary notwithstanding.

“XXXVII. And be it further enacted by the authority aforesaid, that no person or persons shall be hereafter indicted or arraigned for any of the offences made, ordained, revived, or adjudged by this act, unless there be two sufficient witnesses or more, to testify and declare the said offences whereof he shall be indicted or arraigned; and that the said witnesses, or so many of them as shall be living and within this realm at the time of the arraignment of such person so indicted, shall be brought forth in person face to face before the party so arraigned, and there shall testify and declare what they can say against the party so arraigned, if he require the same.

“XXXVIII. Provided also, and be it further enacted by the authority aforesaid, that if any person or persons shall hereafter happen to give any relief, aid, or comfort, or in any wise be aiding, helping, or comforting, to the person or persons of any that shall hereafter happen to be an offender in any matter or case of *præmunire* or treason revived or made by this act; that then such relief, aid, or comfort given shall not be judged or taken to be any offence, unless there be two sufficient witnesses at the least, that can and will openly testify and declare that the person or persons that so gave such relief, aid, or comfort, had notice and knowledge of such offence committed and done by the said offender, at the time of such relief, aid, or comfort, so to him given or ministered; any thing in this act contained, or any other matter or cause to the contrary in any wise notwithstanding.

“XXXIX. And where one pretended sentence hath heretofore been given in the Consistory in Paul's before certain judges delegate, by the authority legantine of the late Cardinal Poole, by reason of a foreign usurped power and authority, against Richard Chetwood, Esq., and Agnes his wife, by the name of Agnes Woodhall, at the suit of Charles Tyrrel, gentleman, in a cause of matrimony solemnized between the said Richard and Agnes, as by the same pretended sentence more plainly doth appear, from which sentence the said Richard and Agnes have appealed to the court of Rome; which appeal doth there remain, and yet is not determined:

“XL. May it therefore please your highness, that it may be enacted by the authority aforesaid, that if sentence in the said appeal shall happen to be given at

In the 5th year of James the First, Nicholas Fuller, (12 Co. 41,) was convened before the high commissioners, for heresy, schism, and other erroneous opinions, and for slandering the authority of the High Commission. Whereupon he moved for a prohibition, and obtained it; and it stood *quoad* the slander, (which, they said was punishable by the courts of common law,) but *quoad* the heresy, schism, &c. consultation was granted. After which, such commissioners proceeded and convicted him of schism and erroneous opinions, and imprisoned him, and fined him 200*l.*, but, the same term, he moved for a *habeas corpus*, and it was granted.

(1) *But only such*:—The ground of making this limitation, was a retrospect of the times of popery, in which everything was adjudged

heresy, that the church of Rome thought fit to call by that name, (*vide* Stat. 25 Hen. 8, c. 21.) how far soever, in its own nature, from being fundamental, and how contrary soever to the Gospel and the ancient doctrine of the catholic church; such as speaking against pilgrimages, against the worship of images, against the necessity of auricular confession, and the like. Agreeably to this latitude, is the description, which the canon law gives of heresy: “Qui in ecclesia Christi morbidum aliquid, pravumque sapiunt: si correpti, ut sanum, rectumque sapient, resistent contumaciter, suaque pestifera, et mortifera dogmata emendare nolunt, sed defensere persistent, heretici fiunt,” Caus. 24, q. 3, c. 31. *Vide* 1 De Lolme on the English Constitution, by Stephens, 178—207.

the said court of Rome for and in the behalf of the said Richard and Agnes, for the reversing of the said pretended sentence, before the end of three score days next after the end of this session of this present parliament, that then the same shall be adjudged and taken to be good and effectual in the law, and shall and may be used, pleaded, and allowed in any court or place within this realm; any thing in this act, or in any other act or statute contained to the contrary notwithstanding.

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“XLI. And if no sentence shall be given at the court of Rome in the said appeal for the reversing of the said pretended sentence before the end of the said three score days, that then it shall and may be lawful for the said Richard and Agnes, and either of them, at any time hereafter, to commence, take, sue, and prosecute their said appeal from the said pretended sentence, and for the reversing of the said pretended sentence, within this realm, in such like manner and form as was used to be pursued, or might have been pursued within this realm, at any time since the twenty-fourth year of the reign of the said late King Henry the Eighth, upon any sentences given in the court or courts of any archbishop within this realm.

“XLII. And that such appeal as so hereafter shall be taken or pursued by the said Richard Chetwood and Agnes, or either of them, and the sentence that herein or thereupon shall hereafter be given, shall be judged to be good and effectual in the law to all intents and purposes; any law, custom, usage, canon, constitution, or any other matter or cause to the contrary notwithstanding.

“XLIII. Provided also, and be it enacted by the authority aforesaid, that where there is the like appeal now depending in the said court of Rome between Robert Harcourt, merchant of the staple, and Elizabeth Harcourt, otherwise called Elizabeth Robins, of the one party, and Anthony Fidell, merchant-stranger, on the other party; that the said Robert, Elizabeth, and Anthony, and every of them, shall and may, for the prosecuting and trying of their said appeal, have and enjoy the like remedy, benefit, and advantage, in like manner and form as the said Richard and Agnes, or any of them, hath, may, or ought to have and enjoy; this act or any thing therein contained to the contrary in any wise notwithstanding.”

An appeal between Robert Harcourt and Anthony Fydell.

1 Hale's P. C.
404.

II. STAT. 1 ELIZABETHÆ, c. 2 (1). A.D. 1558.

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c. 2.

“An Act for the Uniformity of Common Prayer and Service in the Church, and Administration of the Sacraments.”

“Where at the death of our late sovereign lord King Edward the Sixth there remained one uniform order of common service and prayer, and of the administration of sacraments, rites, and ceremonies of the church of England, which was set forth in one book, intituled, ‘The Book of Common Prayer, and Administration of Sacraments, and other Rites and Ceremonies in the Church of England;’ authorized by act of parliament holden in the fifth and sixth years of our said late sovereign lord King Edward the Sixth, intituled, ‘An Act for the Uniformity of Common Prayer, and Administration of the Sacraments;’ the which was repealed and taken away by act of parliament in the first year of the reign of our late sovereign lady Queen Mary, to the great decay of the due honour of God, and discomfort to the professors of the truth of Christ's religion.

13 & 14 Car.
2, c. 4.

5 & 6 Edw. 6,
c. 1.

A repeal of the statute of 1 Mar. sess. 2, c. 2.

“II. Be it therefore enacted by the authority of this present parliament, that the said statute of repeal, and every thing therein contained, *only concerning the said book* (2), and the service, administration of the sacraments, rites, and ceremo-

And the Book of Common Prayer shall be of effect.

(1) *Vide* Stat. 8 Eliz. c. 1. Stat. 13 & 14 Car. 2, c. 4. Stat. 31 Geo. 3, c. 32. *Powell (Clerk) v. Milburn (Clerk)*, 3 Wils. 355. 2 Black. (Sir W.), 851.

(2) *Only concerning the said book*:—“The book of consecrating and ordaining, being not expressly named in this repeal and reviver, Bishop Bonner raised a scruple, whether that book, 5 Edw. 6, did not still stand condemned by law; and, by consequence, whether the ordinations performed according to it, did not

remain illegal? But the answer is clear, that neither was it expressly named, in that part of the repeal of Queen Mary, which relates to Stat. 5 Edw. 6, and that for a plain reason; because, having by that statute been made part of the Common Prayer, it was judged to be effectually repealed by the parliament of Queen Mary, and revived by that of Queen Elizabeth, under the general title of the book, of which it was a part.” Gibson's Codex, 100. Dyer, 234(a).

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c. 2.

1 Leon. 295.

The Book of
Common
Prayer shall be
used.

8 Eliz. c. 1.

The alterations
of the book
set forth.
5 & 6 Edw. 6,
c. 1.

The forfeiture
of those which

nies, contained or appointed in or by the said book, shall be void and of none effect, from and after the feast of the *Nativity of St. John Baptist* (1) next coming; and that the said book, with the order of service, and of the administration of sacraments, rites, and ceremonies, with the alterations and additions therein added and appointed by this statute, shall stand and be, from and after the said feast of the Nativity of St. John Baptist, in full force and effect, according to the tenor and effect of this statute; any thing in the aforesaid statute of repeal to the contrary notwithstanding.

“III. And further be it enacted by the queen’s highness, with the assent of *the lords and commons* (2) in *this present parliament* (3) assembled, and by the authority of the same, that *all and singular ministers* (4) in any cathedral or parish church, or other place within this realm of England, Wales, and the marches of the same, or other the queen’s dominions, shall from and after the feast of the Nativity of St. John Baptist next coming, be bounden to say and use the mattens, even-song, celebration of the Lord’s supper, and administration of each of the sacraments, and all the common and open prayer, in such order and form as is mentioned in the said book, so authorized by parliament in the said fifth and sixth years of the reign of King Edward the Sixth, with one alteration or addition of *certain lessons* (5) to be used on every Sunday in the year, and the form of the Litany *altered and corrected* (6), and *two sentences only added* (7) in the delivery of the sacrament to the communicants, and none other or otherwise.

“IV. And that if any manner of parson, vicar, or other whatsoever minister, that ought or should sing or say common prayer mentioned in the said book,

(1) *Nativity of St. John Baptist*.—For a month and more, after Queen Mary’s death, the service continued as before, nothing being forbidden, except the elevation; but, December 27, the queen set forth a proclamation, (Stry. Ref. App. 3,) to charge and command all manner of her subjects, as well those that be called to ministry in the church, as all others, that they do forbear to preach or teach, or to give audience to any manner of doctrine or preaching, other than to the Gospels and Epistles, commonly called the Gospel and Epistle of the day, and to the Ten Commandments, in the vulgar tongue, without exposition, or addition of any manner, sense, or meaning to be applied or added; or to use any other manner of public prayer, rite, or ceremony in the church, but that which is already used, and by law received, or the common Litany used at this present, in her majesty’s own chapel, and the Lord’s Prayer, and the Creed, in English; until consultation may be had by parliament, by her majesty, and her three estates of this realm, for the better conciliation and accord of such causes, as at this present are moved in matters and ceremonies of religion.

(2) *Of the lords and commons*.—The assent of the “lords spiritual,” is not stated; because all the bishops present dissented: “Read tertiâ vice, et conclusa; dissentientibus Archiepiscopo Eborac’, Marchione Wint. Comite Salop. Vice-Comite Mountague, Episcopis London’, Elien’, Wigorn’, Landaven’, Coven’, Exon’, Cestren’, Carliol’, ac Dominis Morley, Stafford, Dudley, Wharton, Rich, et North.” D’Ewes, 28.

(3) *This present parliament*.—Which was not opened and begun on the 23rd of January, as the common statutes have it; but the members having been summoned to meet on that day, were by writ discharged from attendance, by reason of the Queen’s indispo-

sition, till the 25th, on which day the parliament was opened; (Ibid. 3;) and, two years after, an indictment upon this statute was held by all the justices of both benches to be insufficient, (Dyer, 203(a),) because it was said, “Contra formam cujusdam, statuti inchoat’ et tet’ apud Westmonast’ 23 die Januarii;” but it seems to have been implied, that this is a general act, and need not be particularly recited.

(4) *All and singular ministers*.—In an action upon this statute, brought against a popish priest, for saying of mass, it was held by the whole court, that he was within the purview of this statute; it appearing clearly by the next clause, (s. 4,) that the design of the parliament was, to abolish the superstitious service, and to establish the new service in its place. Dyer, 203 (a, b).

(5) *Certain lessons*.—Two years after this, the queen issued her commission to the archbishop and three others, to peruse the order of the lessons throughout the whole year, and to cause some new calendars to be imprinted; which were finished, and sent to the several bishops to see them observed in their dioceses, in the month of February, 1560. Stry. Ref. 218. Park. App. 28.

(6) *Altered and corrected*.—By the omission of the clause “From the tyranny of the Bishop of Rome, and all his detestable enormities,” which had been adopted in the reign of Edward the Sixth.

(7) *Two sentences only added*.—Of the two forms now used at the delivering of the bread and wine; the first part of each (to the word *Life*, inclusive,) was in the book of the second year of King Edward 6, but not the second part; but in the book of the fifth year, was the second part, without the first; and the alteration made by virtue of this act, was the inserting of both as they now stand.

or minister the sacraments, from and after the feast of the Nativity of St. John Baptist next coming, refuse to use the said common prayers, or to minister the sacraments in such cathedral or parish church, or other places as he should use to minister the same, in such order and form as they be mentioned and set forth in the said book; or shall, wilfully or obstinately standing in the same, use any other rite (1), ceremony, order, form, or manner of celebrating of the Lord's supper, openly or privily, or mattens, even-song, administration of the sacraments, or other open prayers, than is mentioned and set forth in the said book; (open prayer in and throughout this act, is meant that prayer which is for others to come unto, or hear, either in common churches, or private chapels or oratories, commonly called the service of the church;) or shall *preach, declare, or speak* (2) any thing in the derogation or depraving of the said book, or any thing therein contained, or of any part thereof, and shall be thereof lawfully convicted, according to the laws of this realm, by verdict of twelve men, or by his own confession, or by the notorious evidence of the fact, shall lose and forfeit to the queen's highness, her heirs and successors, for his first offence, *the profit of* (3) all his spiritual benefices or promotions coming or arising in one whole year next after his conviction; and also that the person so convicted shall for the same offence suffer imprisonment for the space of six months, without bail or mainprise.

“V. And if any such person once convict of any offence concerning the premises, shall after his first conviction afterwards offend, and be thereof in form aforesaid lawfully convicted (4), that then the same person shall for his second offence suffer imprisonment by the space of one whole year, and also shall therefore be deprived, *ipso facto*, of all his spiritual promotions; and that *it shall be lawful* (5) to all patrons or donors of all and singular the same spiritual promotions, or of any of them, to present or collate to the same, as though the person or persons so offending were dead.

“VI. And that if any such person or persons, after he shall be twice convicted in form aforesaid, shall offend against any of the premises the third time, and

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use any other service than the Book of Common Prayer. Godb. 118, pl. 137. 3 Mod. 78.

The penalty for depraving the Book of Common Prayer.

The penalty for the second offence.

The penalty for the third offence.

(1) *Any other rite*.—A person of the name of Flemming was indicted, (1 Leon. 295; vide Godb. 119,) upon this statute, and punished according to it, because he had given the sacrament of baptism in a different form to that, which is hereby prescribed. In *Rex v. Sparks*, (3 Mod. 79,) an indictment for using *alias preces* in the church, and *alio modo*, seems to have been judged insufficient, because such prayers may be used, upon some extraordinary occasion, and so no crime: and it was said, that the indictment ought to have alleged, that the defendant used other forms and prayers, instead of those enjoined, which were neglected by him; for otherwise every parson may be indicted, that useth prayers before his sermon, other than such, which are required by the Book of Common Prayer.

(2) *Preach, declare, or speak*.—In the 31st of Elizabeth, Robert Caudrey (Clerk), (5 Co. 1(a),) was deprived of his benefice before the high commissioners; as well for that he had preached against the Book of Common Prayer, as also for that he refused to celebrate divine service according to the said book; which deprivation, though not prescribed by this statute for the first offence, was declared to be good, because the ecclesiastical judge might lawfully inflict such sentence before the making of this statute, and is not inhibited, (on the contrary, his ancient power is reserved,) by this statute. Vide *Candict & Plomer's case*. Godb. 163.

(3) *The profit of*.—A clerk was indicted upon this statute at the quarter-sessions, for using *alias preces*, &c. and was fined 100 marks, and it was held by the whole court to be ill; because, though the justices of peace were supposed to have power in their sessions to inquire into this matter, yet they could inflict no other punishment than that which is directed by the statute. *Rex v. Sparks*, 3 Mod. 79.

(4) *Lawfully convicted*.—So that although an offender, after the first offence, commit another; and after the second, many more; yet shall he not be deprived for any of the latter offences, unless judicially convicted, (*Caudrey's case*, 5 Co. 1(a); 2 Inst. 479,) so as the second offence, for which he must be deprived, must be committed after such judicial and solemn conviction and punishment; (and also the second indictment ought to make mention of the first indictment; especially, if the second be before other justices.) Upon this foundation, when one was indicted “pro auditu trium privatar missar’ tribus separabilibus diebus,” and that upon several indictments, and found guilty upon all three; he was only fined 100 marks for the first. Dyer, 323(b).

(5) *It shall be lawful*.—This power given to the patron implies an immediate voidance, without declaration; especially if interpreted according to the judgments given upon Stat. 13 Eliz. c. 12, in case of deprivation for not subscribing the articles. Vide post. Stat. 13 Eliz. c. 12. *Baker v. Brent*, Cro. Eliz. 679.

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The penalty of
an offender
having no
spiritual pro-
motion.

The forfeiture
of them which
do any thing,
or speak in the
derogation of
the Book of
Common
Prayer.
Causing other
prayer to be
said or sung.
Co. pl. fol. 362.
1 Roll. 95.
1 Mod. 168.

The forfeiture
of an hundred
marks for the
first offence.
The forfeiture
of four hundred
marks for the
second offence.

The forfeiture
for the third
offence.

The penalty if
the party con-
victed do not
pay his forfei-
ture within the
time
limited.

shall be thereof in form aforesaid lawfully convicted, that then the person so offending and convicted the third time, shall be deprived, *ipso facto*, of all his spiritual promotions, and also shall suffer imprisonment during his life.

“VII. And if the person that shall offend, and be convicted in form aforesaid, concerning any of the premises, shall not be benefited, nor have any spiritual promotion, that then the same person so offending and convict, shall for the first offence suffer imprisonment during one whole year next after his said conviction, without bail or mainprise.

“VIII. And if any such person, not having any spiritual promotion, after his first conviction shall afterwards offend in any thing concerning the premises, and shall in form aforesaid be thereof lawfully convicted, that then the same person shall for his second offence suffer imprisonment during his life.

“IX. And it is ordained and enacted by the authority aforesaid, that if *any person* (1) or persons whatsoever, after the said feast of the Nativity of St. John Baptist next coming, shall in any interludes, plays, songs, rhymes, or by other open words, declare or speak any thing in the derogation, depraving, or despising of the same book, or of any thing therein contained, or any part thereof: or shall by open fact, deed, or by open threatenings, compel, or cause, or otherwise procure or *maintain* (2), any parson, vicar, or other minister in any cathedral or parish church, or in chapel, or in any other place, to sing or say any common or open prayer, or to minister any sacrament otherwise, or in any other manner and form, than is mentioned in the said book; or that by any of the said means shall unlawfully interrupt or let any parson, vicar, or other minister in any cathedral or parish church, chapel, or any other place, to sing or say common and open prayer, or to minister the sacraments or any of them, in such manner and form, as is mentioned in the said book; that then every such person, being thereof lawfully convicted in form abovesaid, shall forfeit to the queen our sovereign lady, her heirs and successors, for the first offence an hundred marks.

“X. And if any person or persons being once convict of any such offence, afterwards offend against any of the last recited offences, and shall in form aforesaid be thereof lawfully convict; that then the same person so offending and convict shall for the second offence forfeit to the queen our sovereign lady, her heirs and successors, four hundred marks.

“XI. And if any person, after he in form aforesaid shall have been twice convict of any offence concerning any of the last recited offences, shall offend the third time, and be thereof in form abovesaid lawfully convict, that then every person so offending and convict shall for his third offence forfeit to our sovereign lady the queen, all his goods and chattels, and shall suffer imprisonment during his life.

“XII. And if any person or persons, that for his first offence concerning the premises shall be convict in form aforesaid, do not pay the sum to be paid by virtue of his conviction, in such manner and form as the same ought to be paid, within six weeks next after his conviction; that then every person so convict, and so not paying the same, shall for the same first offence, instead of the said sum, *suffer imprisonment* (3) by the space of six months, without bail or mainprise.

(1) *Any person*:—*Feme-covert* is within this statute: thus, where the wife, &c. was indicted with the husband, and priest; “et habuerunt separalia iudicia sua, scilicet, quilibet foris—faceret 100 marcas dominæ reginæ.” The like is also mentioned in *Moore v. Hussey*, (Hob. 97.), as an uncontested point. *Dyer* 323 (b). Vide etiam *Rex v. Foster* (Dr.), 1 Roll. 93.

(2) *Maintain*:—Where the indictment was for the saying and hearing of mass; the tenour thereof, with reference to the hearers, was, “Fuerunt præsentēs, audientes missam prædictam, ac manutenant’ et confortant’ prædicti J. R. [the priest] ad missam præ-

dictam dicend’ et celebrand’;” it was held, that the indictment was good, not only against him who said mass, but also against those “queux oyent et maintene le dit masse;” implying, that to hear, is to maintain. *Dyer* 203 (a), (b).

(3) *Suffer imprisonment*:—Where Sir Edward Walgrave, (*Dyer*, 231 (b).) refused to pay the 100 marks, and was imprisoned, but died within the six months; *Saunders* (Chief Baron), desired to be informed by the justices of the Queen’s Bench, whether his executors were obliged to pay the 100 marks; it does not appear, what the answer was, but the circumstance with

"XIII. And if any person or persons, that for his second offence concerning the premises, shall be convict in form aforesaid, do not pay the said sum to be paid by virtue of his conviction and this statute, in such manner and form as the same ought to be paid, within six weeks next after his said second conviction; that then every person so convicted, and not so paying the same, shall for the same second offence, in the stead of the said sum, suffer imprisonment during twelve months, without bail or mainprise.

"XIV. And that from and after the said feast of the Nativity of St. John Baptist next coming, *all and every person* (1) and persons inhabiting within this realm, or any other the queen's majesty's dominions, shall diligently and faithfully, having no lawful or *reasonable excuse* (2) to be absent, endeavour themselves to resort to their parish church or chapel accustomed, or *upon reasonable let* (3)

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Every person shall resort to the church upon the holydays.
Godb. 148, pl. 191.

which he puts it, seems to determine it in favour of the executors, *viz.* that it was by the act of God, that his body could not sustain the imprisonment of the six months, which he chose in lieu of the forfeiture.

(1) *All and every person*:—"Except dissenters qualified by the Act of Toleration, who resort to some congregation of religious worship allowed by that act. 1 Gul. 3, c. 18, ss. 2, 16. And persons who shall take the oaths, and come to some congregation or place of religious worship permitted to Roman Catholics by Stat. 31 Geo. 3, c. 32, s. 9.

"But they who repair to no place of public worship, are still punishable as before that act, or Stat. 31 Geo. 3, c. 32. And if the churchwardens shall happen to present a person who possibly may go to some other place, the proof thereof rests upon the person presented, and the absence from church justifies the presentment." 3 Burn's E. L. by Phillimore, 405, 406.

But by Stat. 7 & 8 Geo. 4, c. 38, no petty constable is, in future, to make or to deliver any presentment respecting popish recusants, persons absenting themselves from their parish church or any other place of religious worship, profane swearers and cursers, or whether the poor are well provided for.

(2) *Reasonable excuse*:—"In the case of *Elizabeth Dormer*, an exception was taken to the indictment, because these words were omitted, "*Non habens aliquam rationabilem causam*;" but it was agreed, that these words ought to have come from the other side, and were not to be put into the indictment.

(3) *Upon reasonable let*:—"Lyndwood, (*De Clandest.* Desp. c. 1,) upon the words "*Ecclesiis parochialibus*," says, "*Quarum jus parochiale consistit in multis, puta quod in diebus festis parochiani in ipsis missas audire debent, et non alibi*;" and by the common law or practice of the church of England, no person can be duly discharged from attending his own parish church, or warranted in resorting to another, unless he be first duly licensed by his ordinary, who is the proper judge of the reasonableness of his request, and grants him letters of licence under seal, to be exhibited, (as there shall be occasion,) in proof of his discharge. These are very common in our ecclesiastical records; (*Reg. Grindal*, 313(a); *Whitg.* 2nd, 154(b); *Ibid.* 3rd, 102(a); *Bancr.* 132(a); *Abb.* 2nd, 232(a); *Ibid.* 3rd, 110(b), 142

(a); *Laud.* 232(a), 275(b); *De Winston (Parson) v. Brown*, 2 Roll. 455;) and as the practice is an excellent means to preserve parochial communion and order in the church; so, having been the law of the church both before and since the making of these statutes, it seems reasonable, that no person should be admitted to plead such let in any court, without exhibiting his letters of license from the ordinary. In order to which, the temporal courts have gone so far, as to declare, that when one was libelled against in the spiritual court for not coming to his parish church, and there alleged his repairing to another by reason of the great distance of his own, the court would not allow the plea, and refused to grant a prohibition, even though custom was pleaded in his behalf. *Dr. Gibson*, (*Codex*, 291,) conceived, "that if he had first represented to the ordinary, the inconvenience of repairing to his parish church, and the convenience of one more near, and had thereupon obtained letters of licence, and exhibited them; these had been a full and legal warrant to him, upon that article of absenting from his parish church."

In *Britton v. Standish*, (6 Mod. 188,) prohibition was prayed in the court of King's Bench, to stay proceedings in the spiritual court, upon a libel against one for not coming to his parish church on Sunday, and though *Holt* (Chief Justice), seemed at first to be of opinion, that the convenience of hearing divine service in the parish church was rather a *right*, than an *obligation*, upon the parishioners, and if that was the sense of Stat. 1 Eliz. c. 2, prohibition ought to go; yet *Powel* was clearly of another mind, and averred, not only that the spiritual court had jurisdiction in this matter, but that the reason why parishioners are obliged to come to their own church, is, because the parson has the care of their souls, and he cannot discharge that care, if they come not to hear him. And at another day, when a prohibition was moved for in the like case, (*Ibid.* 190,) *Holt* himself, having viewed the authorities, and Stat. 1 Eliz. c. 2, was clear, that if the libel be grounded upon that statute, the spiritual court may compel people to come to their parish church, because this statute does directly subject them to the ecclesiastical law.

In *Anon.* (1 Skin. 101,) it appeared, that a citizen of Bristol had a country house, and frequently received the sacrament in the parish church there, and also frequently at

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c. 2.

One justice
may convict
the offender,
&c. by 3 Jac.
1, c. 4, s. 27.
2 Roll. 438,
455.
March, 93.
The forfeiture
for not coming
to church.
23 Eliz. c. 1.
11 Co. 56.
1 Roll. 89.

The ordinary
may punish
offenders by
the censures of
the church.

Which justices
may punish
these offences.

A bishop may
join with the
justices to
inquire of
offenders.

thereof, to some usual place where common prayer and such service of God shall be used in such time of let, upon every Sunday, and other days ordained and used to be kept as holy-days, and then and there *to abide orderly* (1) and soberly during the time of the common prayer, preaching, or other service of God there to be used and ministered; upon pain of punishment by the censures of the church, and also upon pain that every person so offending shall forfeit for every such offence twelve pence, to be levied by the churchwardens of the parish where such offence shall be done, to the use of the poor of the same parish, of the goods, lands, and tenements of such offender, by way of distress.

“XV. And for due execution hereof, the queen’s most excellent majesty, the lords temporal, and all the commons, in this present parliament assembled, do in God’s name earnestly require and charge all the archbishops, bishops, and other ordinaries, that they shall endeavour themselves to the uttermost of their knowledges, that the due and true execution hereof may be had throughout their diocese and charges, as they will answer before God, for such evils and plagues wherewith Almighty God may justly punish his people for neglecting this good and wholesome law.

“XVI. And for their authority in this behalf, be it further enacted by the authority aforesaid, that all and singular the said archbishops, bishops, and all other their officers exercising ecclesiastical jurisdiction, as well in place exempt as not exempt, within their diocese, *shall have full power* (2) and authority by this act to reform, correct, and punish, by censures of the church, all and singular persons which shall offend within any their jurisdictions or diocese, after the said feast of the Nativity of St. John Baptist next coming, against this act and statute; any other law, statute, privilege, liberty, or provision heretofore made, had, or suffered, to the contrary notwithstanding.

“XVII. And it is ordained and enacted by the authority aforesaid, that all and every justices of Oyer and Determiner, or *justice of assize* (3), shall have full power and authority in every of their open and general sessions, to inquire, hear, and determine all and all manner of offences that shall be committed or done contrary to any article contained in this present act, within the limits of the commission to them directed, and to make process for the execution of the same, as they may do against any person being indicted before them of trespass, or lawfully convicted thereof.

“XVIII. Provided always, and be it enacted by the authority aforesaid, that all and every archbishop and bishop shall or may at all time and times, at his liberty and pleasure, join and associate himself, by virtue of this act, to the said

the cathedral, but not at his own parish church in Bristol; for which he was cited into the ecclesiastical court and excommunicated. He pleaded such facts, and moreover, that one of the surrogates of the court, but the Sunday before, had with his own hand given him the sacrament. Upon which the court of King’s Bench awarded a prohibition.

Where a person went to a customary chapel within the parish, it was held to be a good excuse; but that it must be pleaded. *Britton v. Standish*, 6 Mod. 190.

But where the plea in the spiritual court was, that the church in question was not his parish church, and the plea was refused; a prohibition was granted, because that court could not intermeddle with the precincts of parishes. *Anon.* 1 Bulst. 159.

(1) *To abide orderly*.—It is not enough to come, unless he also abide; nor enough to abide when he is come, unless he come so as to be present at the several parts of divine service, and also remain there throughout, orderly and soberly; the clause being penned conjunctively, and so the guilt and

forfeiture incurred by the violation of any one branch. *Vide* Can. 1640, c. 5. *Ann Mannock’s case*, Godb. 148.

The constitutions of Egbert, archbishop of York, enjoin, “*Sacerdote verbum in ecclesiâ faciente, qui egressus de auditorio fuerit, excommunicetur;*” and which is derived from the fourth council of Carthage. 1 Spel. 266. Agath. c. 47. 1 Aurelian, c. 26.

(2) *Shall have full power*.—Which, as to this article at least, they certainly had before, by the laws of the church, without the aid of any statute, in all points, except the extending of their power to places exempt. But it was the making of a statute, which, in this and many other cases, first introduced a power of cognizance in the temporal courts, of matters which till then had been wholly cognizable in the spiritual court, as being merely of a spiritual nature. *Gibson’s Codex*, 292.

(3) *Justices of assize*.—But not justices of the peace in their sessions; as was practised by mistake, in the first year of King James the Second. *Rex v. Sparks*, 3 Mod. 79.

justices of Oyer and Determiner, or to the said justices of assize, at every of the said open and general sessions to be holden in any place within his diocese, for and to the inquiry, hearing, and determining of the offences aforesaid. STAT. 1 ELIZ. c. 2.

“XIX. Provided also, and be it enacted by the authority aforesaid, that the books concerning the said services shall, at the costs and charges of the *parishioners* (1) of every parish and cathedral church, be attained and gotten before the said feast of the Nativity of St. John Baptist next following; and that all such parishes and cathedral churches, or other places, where the said books shall be attained and gotten before the said feast of the Nativity of St. John Baptist, shall within three weeks next after the said books so attained and gotten use the said service, and put the same in ure according to this act. At whose charges the Book of Common Prayer shall be gotten.

“XX. And be it further enacted by the authority aforesaid, that no person or persons shall be at any time [hereafter impeached or otherwise molested of or for any of the offences above-mentioned, hereafter to be committed or done contrary to this act, unless he or they so offending be thereof indicted at the next general sessions to be holden before any such justices of Oyer and Determiner or justices of assize, next after any offence committed or done contrary to the tenor of this act. Within what time offenders shall be impeached. Godb. 148, pl. 191.

“XXI. Provided always, and be it ordained and enacted by the authority aforesaid, that all and singular lords of the parliament, for the third offence above-mentioned, shall be tried by their peers. Trial of peers.

“XXII. Provided also, and be it ordained and enacted by the authority aforesaid, that the mayor of London, and all other mayors, bailiffs, and other head officers of all and singular cities, boroughs, and towns corporate within this realm, Wales, and the marches of the same, to the which justices of assize do not commonly repair, shall have full power and authority by virtue of this act, to inquire, hear, and determine the offences abovesaid, and every of them, yearly within fifteen days after the feast of Easter, and St. Michael the Archangel, in like manner and form as justices of assize and Oyer and Determiner may do. Chief officers of cities and boroughs shall inquire of offenders.

“XXIII. Provided always, and be it ordained and enacted by the authority aforesaid, that *all and singular* (2) archbishops and bishops, and every of their chancellors, commissaries, archdeacons, and other ordinaries, having any peculiar ecclesiastical jurisdiction, shall have full power and authority by virtue of this act, as well to inquire in their visitation, synods, and elsewhere within their jurisdiction at any other time and place, to take accusations and informations of all and every the things above-mentioned, done, committed, or perpetrated within the limits of their jurisdictions and authority, and to punish the same by admonition, excommunication, sequestration, or deprivation, and other censures and process, in like form as heretofore hath been used in like cases by the queen’s ecclesiastical laws. The ordinary’s jurisdiction in these cases.

“XXIV. Provided always, and be it enacted, that whatsoever persons offending in the premises shall for their offences first receive punishment of the ordinary, having a testimonial thereof under the said ordinary’s seal, shall not for the same offence afterwards be convicted before the justices: and likewise receiving for the said offence punishment first by the justices, shall not for the same offence afterwards be punished above once for one offence. None shall be punished above once for one offence.

(1) *Of the parishioners*.—It will be perceived, that the charges were to be liquidated by the parishioners; and were not to be divided as in some other cases, between the *parson* and the parishioners.

(2) *All and singular*.—Where a person (*Caudrey’s case*, 5 Co. 1 (a),) was deprived by the high commissioners for the first offence; it was alleged against the validity of such deprivation, that though the High Commission might be within this proviso, yet the commissioners ought not to have deprived him for the first offence, but to have proceeded according to the form and order of this act, against which it was, that the offence

was committed. But this objection was overruled by the court, not only because the statute is affirmative, and hath not the clauses, “not otherwise,” or “in no other manner or form,” or the like, by which negative words, ecclesiastical jurisdiction and process might be thought to be abrogated; but chiefly, because the ecclesiastical judge, before this act, had power to punish such crime with deprivation, and the act doth not only not take away, but confirm to him, all the power which he had before; and, to pursue the form prescribed in the act, would be, to punish according to the temporal, and not according to the ecclesiastical, law.

STAT. 1 ELIZ.
c. 2.

Ornaments of
the church and
ministers.

soons receive punishment of the ordinary; any thing contained in this act to the contrary notwithstanding.

“XXV. Provided always, and be it enacted, that such *ornaments of the church* (1) and of the ministers thereof, shall be retained and be in use, as was in this church of England by authority of parliament, in the second year of the reign of King Edward the Sixth, *until other order* (2) shall be therein taken by the authority of the queen’s majesty, with the advice of her commissioners appointed and authorized under the great seal of England for causes ecclesiastical, or of the metropolitan of this realm.

“XXVI. And also, that if there shall happen any contempt or irreverence to be used in the *ceremonies or rites* (3) of the church, by the mis-using of the orders appointed in this book, the queen’s majesty may, by the like advice of the said commissioners or metropolitan, ordain and publish such further ceremonies or rites, as may be most for the advancement of God’s glory, the edifying of his church, and the due reverence of Christ’s holy mysteries and sacraments.

All laws and
ordinances
made for other
service shall be
void.

Further provi-
sions, see 13
Eliz. c. 12; 23

“XXVII. And be it further enacted by the authority aforesaid, that all laws, statutes, and ordinances, wherein or whereby any other service, administration of sacraments or common prayer, is limited, established, or set forth to be used within this realm, or any other the queen’s dominions or countries, shall from henceforth be utterly void and of none effect. Made perpetual by 5 Annæ, c. 5, as to the establishment of the church.”

Eliz. c. 1; 15 Car. 2, c. 6; 1 G. & M. St. I. c. 18; 23 Geo. 2, c. 28.

STAT. 1 ELIZ.
c. 3.

III. STAT. 1 ELIZABETHÆ, c. 3 (4). A.D. 1558.

“An Act for Recognition of the Queen’s Highness to the Imperial Crown of this Realm.”

“II. For which causes we your said most loving, faithful, and obedient subjects, representing the *three estates* (5) of your realm of England, . . .”

(1) *Ornaments of the church*:—Pursuant to this clause, the queen (anno Regni 3) granted a commission to the Archbishop, Bishop of London, Dr. Bill, and Dr. Haddon, to reform the disorders of chancels, and to add to the ornament of them, by ordering the commandments to be placed at the east end. Stry. Park. App. 28.

(2) *Until other order*:—Which *other order*, (at least in the method prescribed by this act,) was never made; and therefore, legally, the ornaments of ministers in performing divine service, are the same now as they were in the 2nd of Edward 6.

(3) *Ceremonies or rites*:—Pursuant to this clause, the queen granted a commission to the Archbishop, the Bishop of London, Dr. Bill, and Dr. Haddon, her ecclesiastical commissioners, to peruse the order of the lessons throughout the whole year, and to cause some new kalendars to be imprinted; whereby such chapters or parcels of less edification may be removed, and others more profitable may supply their rooms. Which commission is stated at length, in the Register of Archbishop Parker, and published by Mr. Strype, as is also the Archbishop’s mandate to the Bishop of London, for publishing the alterations by them made. Stry. Park. 29, App. Park. Regist. 215 (a), 228 (a).

(4) Expired.

(5) *Three estates*:—That the bishops, as distinct from the lords temporal, are one of these three estates, is proved by Bishop Stillingfleet, (2 Eccles. Ca. 385,) from the language of parliament in many places; where the king is mentioned, as distinct from the three estates; and if the king be not one, the bishops of course must be one. In the Parliament Roll of 21 Rich. 2, it is said, that many ordinances have been disannulled, because the state of the clergy were not present in parliament, at the making of them. So that the distinction, between estates in the kingdom, and estates in parliament, as if the bishops were one of the first, and not of the second, is merely notional, and leaves one estate unrepresented in parliament; whereas, in this statute, the lords spiritual and temporal, and the commons, are spoken of as representing the three estates, in parliament; and there is this passage in the Parliament Roll of 23 Hen. 8: “It is considered and declared by the whole body of this realm, now represented by all the estates of the same, assembled in this present parliament.” Gibson’s Codex, 125. Vide 1 De Lolme on the English Constitution by Stephens, 134, 135.

IV. STAT. 1 ELIZABETHÆ, C. 4(1). A.D. 1558.

STAT. 1 ELIZ.
C. 4.*"An Act for the Restitution of the First-fruits to the Crown."*

"In their most humble wise beseech your most excellent majesty, your faithful and humble subjects the lords spiritual and temporal, and the commons of this your realm, in this present parliament assembled, that where in the parliament of your most noble father, of famous memory, King Henry the Eighth, holden at Westminster upon prorogation the third day of November in the six and twentieth year of his prosperous reign, it was enacted, ordained, and established by the authority of the same parliament, amongst other things, that his highness, his heirs and successors, kings of this realm, should have and enjoy from time to time, to endure for ever, of every such person and persons, which at any time after the first day of January then next ensuing should be nominated, elected, prefected, presented, collated, or by any other means appointed to have any archbishoprick, bishoprick, abbacy, monastery, priory, college, hospital, archdeaconry, deanery, provostship, prebend, parsonage, vicarage, chantry, free chapel, or other dignity, benefice, office, or promotion spiritual within this realm, or elsewhere within any of the king's dominions, of what name, nature, or quality soever they were, or to whose foundation, patronage, or gift soever they did belong, the first-fruits, revenues, and profits for one year of every such archbishoprick, bishoprick, abbacy, monastery, priory, college, hospital, archdeaconry, deanery, provostship, prebend, parsonage, vicarage, chantry, free chapel, or other dignity, benefice, office, or promotion spiritual aforementioned, whereunto any such person or persons should after the said first day of January be nominated, elected, prefected, presented, collated, or by any other means appointed: and that every such person or persons, before any actual or real possession, or meddling with the profits of any such archbishoprick, bishoprick, abbacy, monastery, college, hospital, deanery, provostship, prebend, parsonage, vicarage, chantry, free chapel, priory, or other dignity, benefice, office, or promotion spiritual, should satisfy, content, and pay, or compound, or agree to pay to the king's use at reasonable days, upon good sureties, the said first-fruits and profits for one year:

A rehearsal of the statute of 26 Hen. 8, c. 3, touching first-fruits and tenths given to the king.

The first-fruits.

"II. And it was further enacted by the authority aforesaid, that the first-fruits of benefices, before that time accustomed to be paid to the Bishop of Norwich within his diocese, and to the Archdeacon of Richmond within his archdeaconry, or any other person or persons within this realm, or any other the king's dominions, should from the said first day of January cease and be extinct; and no longer be paid but only to the king's highness, his heirs and successors, in such form as is before-mentioned:

"III. And further it was enacted by the authority aforesaid, that the king's majesty, his heirs and successors, for more augmentation and maintenance of the royal estate of his imperial crown, should yearly have, take, enjoy, and receive, united and knit to his imperial crown for ever, one yearly rent or pension, amounting to the value of the tenth part of all the revenues, rents, fermes, tithes, offerings, emoluments, and of all other profits, as well called spiritual as temporal, appertaining or belonging, or that from thenceforth should belong to any archbishoprick, bishoprick, abbacy, monastery, priory, archdeaconry, deanery, hospital, college, house collegiate, prebend, cathedral church, collegiate church, conventual church, parsonage, vicarage, chantry, free chapel, or other benefice or promotion spiritual, of what name, nature, or quality soever they were, within any diocese of this realm, or in Wales; the said pension or annual rent to be yearly paid for ever, to the said late king, his heirs and successors, at the feast of the Nativity of our Lord God, and the first payment thereof to begin at the feast of the Nativity of our Lord God, which should be in the year of our Lord God 1535, and to be paid yearly by such as should be appointed to have the collection thereof, before the first day of April next following after the said feast of the Nativity of our Lord God, as in the said act more plainly it doth appear:

The tenths.

"IV. And where also one other act was made and established in the said par-

26 Hen. 8,
c. 17.

- STAT. 1 ELIZ.** liament the said twenty-sixth year, that no farmer of spiritual persons should be compelled or charged to pay for their lessors first-fruits or yearly pension for the tenth granted unto the king's highness, notwithstanding any covenant, contract, bond, or other thing made to the contrary, as by the same act more plainly appeareth.
- 27 Hen. 8, c. 8.** "V. And where also at one other session of the same parliament, holden by prorogation at Westminster in the twenty-seventh year of the reign of your said father, one other act was made and established, that the king's spiritual subjects should be deducted and allowed of the tenth of their spiritual promotions for that year for which they should pay the first-fruits, as in the said act also more at large appeareth.
- 28 Hen. 8, c. 11.** "VI. And where also in one other parliament of the said late king, holden at Westminster in the twenty-eighth year of his reign, amongst other things, it was enacted and ordained, that the year in which the first-fruits of every benefice and spiritual promotion should be paid, should begin, and be accounted immediately after the avoidance thereof: and that the tithes, commodities, revenues, casualties, and profits thereof (chantries only excepted) in the time of vacation, should belong and affere to the next incumbent, towards the payment of the first-fruits; as by the same act more at large appeareth.
- 32 Hen. 8, c. 22.** "VII. And where also in one or other parliament, holden upon prorogation at Westminster in the thirty-second year of the reign of the said late king, one act was made and established, that bishops upon their accounts of and for the said yearly tenth should be discharged by their oaths, of payment of such sum or sums of money of the said annual rent or tenth, as they could not lawfully levy: and also an order appointed how the king should be answered of the tenth of any benefice and spiritual promotion, omitted in the original or former certificate of benefices and spiritual promotions made in the exchequer; as by the same act last mentioned more at large appeareth.
- 32 Hen. 8, c. 45.** "VIII. And where also in the same session and parliament holden in the said thirty-second year of the reign of your highness' said noble father, and by authority of the same parliament, one court was erected, established, and made, for the better answering of the said first-fruits and tenths unto the king, called the Court of First-fruits and Tenths; as in the same Act of Erection thereof more fully appeareth.
- 32 Hen. 8, c. 47.** "IX. And where also in the same session and parliament one other act was made, whereby the Bishop of Norwich for the time being (being before that discharged from the collection of the tenth within his diocese) should be charged and chargeable for ever, for and with the collection of the same tenth within his diocese, and make payment thereof, as other bishops should or ought to do within their dioceses; as by the same act more plainly appeareth.
- 34 & 35 Hen. 8, c. 1.** "X. And where also in one other parliament of the said late king, holden at Westminster upon prorogation in the thirty-fourth year of his reign, one act was established and made concerning collectors and receivers, to make payment of their receipts within three months next after the same should be due and paid to the king's use, under certain penalties therein expressed; as by the same act more at large appeareth.
- 34 & 35 Hen. 8, c. 17.** "XI. And where also in the same session and parliament it was enacted and established, that the new erected Bishops of Chester, Gloucester, Peterborough, Bristol, Oxford, and their successors for ever, should pay their tenths reserved upon their letters patents on their several erections, only in the said court of the first-fruits and tenths for ever; as by the same act more at large appeareth.
- 37 Hen. 8, c. 21.** "XII. And where also in the parliament of the said late king, holden at Westminster in the thirty-seventh year of his reign, one act intituled, 'An Act for the Union of Churches not exceeding the value of Six Pounds,' was established and made, wherein is contained a saving to the king of the first-fruits and tenths of all churches and chapels not exceeding the value of six pounds, that then were or from thenceforth should be united and consolidated in one; as in the same act and saving more largely appeareth.

“XIII. And where also in the parliament of your highness’ dearest brother of worthy memory, King Edward the Sixth, holden at Westminster upon prorogation in the second year of his reign, one act was made, that by the certificate of the bishop of any diocese within this realm, or any of the dominions of the same, of recusance or non-payment of any tenth of any benefice or spiritual promotion, the incumbent should lose but that benefice or promotion only; as by the same act more plainly appeareth. STAT. 1 ELIZ. c. 4.
2 & 3 Edw. 6, c. 20.

“XIV. And where also in one other parliament of the said late King Edward, holden at Westminster in the seventh year of his reign, one act was made and established, declaring how and in what sort the under-collectors of the tenth in every diocese, appointed by the bishop, should be bound to discharge the bishops of that collection, and a longer day given for the payment of the tenth: and how the king should be answered of the tenth for the time of vacation of every benefice and spiritual promotion, and that the patents of the collection of tenths should be good only during the incumbency of the grantors; as in the same act more at large is contained. 7 Edw. 6, c. 4.

“XV. And where also in the second session of parliament of our late sovereign lady Queen Mary, your majesty’s dearest sister, holden at Westminster in the first year of her reign, one act was made and established, whereby full power and authority was given and appointed unto her highness, at her will and pleasure to alter, change, unite, transpose, dissolve, or determine, as well the said court of first-fruits and tenths, as the court of augmentations of the revenues of the king’s crown, and other courts therein expressed, and to reduce the same courts, or any of them, into one, two, or more court or courts, or to unite and annex the said courts or any two or more of them together, or to any other of her majesty’s courts of record, as to her it should be thought most convenient and best; for the better, sure, and more speedy answering of her yearly revenues, casualties, and profits, then answerable in the said courts, or any of them, as in the same act more at large is expressed: by vigour and authority of which act, the said late queen by her grace’s four several letters patents, whereof two bear date the three and twentieth day of January in the first year of her reign, and the other two, the four and twentieth of January in the same year, did not only dissolve, determine, and extinguish the said courts, commonly called and intituled, ‘The Court of the Augmentations and Revenues of the King’s Crown,’ and ‘The Court of the First-fruits and Tenths,’ and the jurisdiction and authority thereof; but also did unite, transpose, and annex the said courts of augmentations of the revenues of the king’s crown, and of the first-fruits and tenths so dissolved, to the court of the exchequer, there to be and continue as a member and parcel of the same court of the exchequer; and did appoint all and singular the revenues, casualties, profits, and hereditaments then answerable in the said courts, to the order, rule, survey, and governance of the said court of the exchequer, there to be answered and accounted for ever, in such order, manner, and form, as in the said letters patents, and in two schedules unto the said letters patents annexed, is mentioned and declared, as by the tenor and purport of the said letters patents and schedules signed with her highness’ hand, more plainly may appear. 1 Mar. sess. 2, c. 10.

Queen Mary dissolved the court of first-fruits and augmentations;

and annexed them to the exchequer.

“XVI. By reason of all which said premises, not only the said perpetual revenues of the first-fruits and tenths granted by the said act in the twenty-sixth year of the reign of your highness’ most noble father, in augmentation and maintenance of the crown of this realm, but also the tenths and yearly rents reserved *nomine decimæ*, by any letters patents of your said noble father, sithence the said six and twentieth year of his reign, and of your said dearest brother and sister, or of any of them, made to any bishop and his successors, or to any cathedral church, dean and chapter, college, or any other ecclesiastical and spiritual person or persons, or corporations, and their successors for ever; and also all and every the rents, revenues, issues, and profits of all and singular rectories, parsonages, and benefices impropriate, glebe lands, tithes, oblations, pensions, portions, and other profits and emoluments ecclesiastical and spiritual to the same belonging, being in the hands and possession of your said dearest sister, at the said four and twentieth 26 Hen. 8, c. 3.

STAT. 1 ELIZ. day of January, were ordered, answerable, and accounted for in the said court of
c. 4. the exchequer, and were therein well and justly answered and paid unto her highness' use and behoof, like as the same had been unto the said two noble kings her said father and brother by the space of twenty years, without grief or contradiction of the prelates and clergy of the realm, to the great aid, relief, and supportation of the inestimable charges of the crown of this realm, which daily since the time of the making of the said first act have increased and grown more and more.

Queen Mary's "XVII. Which thing, although the said late queen might and did manifestly
zealous, but not politick respect. feel and perceive to be most true, yet she upon certain zealous and inconvenient respects, not sufficiently nor politickly enough weighing that matter, nor having due consideration and regard to the maintenance and upholding, and good continuance of the estate of the imperial crown of this realm in succession, which rather needed an augmentation, than any diminution, procured and willed an act of parliament to be made and provided in the second and third years of the reign of King Philip her late husband and her, that all payments of the said first-fruits should from thenceforth cease and be clearly extinct and determined for ever: and that as well all the said benefices and spiritual promotions, as the possessors, owners, and incumbents thereof, and their successors, should from and after the eighth day of August in the said second and third years, and so from thenceforth at all times for ever, be clearly exonerated, acquitted, and discharged against the said late King Philip and Queen Mary, her heirs and successors, of and from the payment and payments of all and every the said first-fruits, in as ample and large manner and form, as they were before the making of the said act of the first and original grant thereof, in the said six and twentieth year of the reign of the said late king your noble father, and as though the same had never been had ne made.

By the statute made 2 & 3 P. & M. c. 4, the payment of first-fruits and tenths ceased.

26 Hen. 8, c. 3.

"XVIII. And further, that neither the said perpetual pension, annual rent, or tenth, granted by the said first act of the six and twentieth year of the said noble King Henry, nor also the said several annual rents or tenths reserved *nomine decimæ* by and upon the said several letters patents of the said late king and queen, made to spiritual persons and corporations, as is aforesaid, or any of them, from and after the feast of St. Michael the Archangel then last past, should any more be paid or payable unto the said late King Philip and Queen Mary, her heirs or successors; but that as well all the said archbishopricks, bishopricks, and other benefices, dignities, deans and chapters, colleges, corporations, and spiritual promotions aforesaid, as also the possessors, owners, proprietaries, and incumbents of the same, and their successors, from and after the said feast of St. Michael the Archangel, should be clearly exonerated, acquitted, and discharged of and from the payment thereof, against them and the heirs and successors of the same late queen for ever.

"XIX. And furthermore, that the said late King Philip and Queen Mary, her heirs and successors, from and after the said feast of St. Michael the Archangel, should not receive, perceive, take, and enjoy any the issues, revenues, profits, or commodities of the said rectories, parsonages, benefices, glebe lands, tithes, oblations, pensions, portions, and other profits and emoluments ecclesiastical and spiritual aforesaid, or of any of them, or of the reversion or reversions of them or any of them; but in and by the said act the same late king and queen clearly gave over, renounced, and relinquished, as well the said rectories, parsonages, benefices, glebe lands, tithes, oblations, pensions, portions, and other profits and emoluments ecclesiastical and spiritual aforesaid and every of them, and the reversion and reversions of them and every of them, and all their right, title, use, interest, and demand of, in, or to the same, from them and the heirs and successors of the said late queen for ever, as also the said perpetual pension, annual rent, and tenth, and also the said yearly rents reserved *nomine decimæ* upon the said several letters patents, and all their right, title, and interest which they or either of them, or the heirs or successors of the said late queen, had or might have had in or to the same.

"XX. The same yearly pension, tenths, yearly rents, parsonages, emoluments, and profits to be perceived, taken, received, counted, employed, used, and disposed by the late reverend father in God Reginald Pool, late cardinal and legate, and

such other persons as he should name and appoint, and such other as were specially limited in the said act, to and for certain uses, purposes, and intents mentioned in the same act, with divers provisions and a saving in the same expressed and contained, as by the same more at large appeareth. STAT. 1 ELIZ. C. 4.

“XXI. We your said humble and obedient subjects, the lords spiritual and temporal and commons in this your present parliament assembled, calling to our remembrance the huge innumerable and inestimable charges of the royal estate and imperial crown of this realm, and how the same is left unto your majesty at this your first entry thereunto, greatly diminished, as well by reason of the said act made in the said second and third years of the said King Philip and Queen Mary, as otherwise, do conceive at the bottom of our hearts great sorrow and heaviness, as subjects careful for their natural and liege sovereign lady, upon whom dependeth the surety, worldly joy, and wealth of us all; and being no less affected towards your majesty’s most royal person, and the preservation and maintenance of the same, and of the estate and succession of your majesty’s said crown, than were the first grantors of the said first-fruits and tenths towards your highness’ most noble father, and his said royal estate, at the time of their said grant thereof to him made, do account of very right and good congruence no less than our most bounden duty, to move your highness, and therewith do most humbly beseech the same, that the great disherison and decay committed and done to the crown, and estate royal of this your realm, and the succession thereof, by reason of the said act made in the said second and third years of the reign of the said King Philip and Queen Mary, may at this present parliament be reformed and avoided, and that with your highness’ favour and royal assent, it may be enacted, ordained, established, and provided by authority of this parliament, in manner and form hereafter ensuing:

“XXII. That is to say, that the said act made in the second and third years of the reign of the said late King Philip and Queen Mary, and all articles, clauses, and sentences therein contained, shall be from and after the first day of this present parliament utterly and clearly repealed, made void, and of no force ne effect; and all authorities and liberties granted, limited, and appointed in and by the said act to the said late Cardinal Pool, or made or derived, by force, strength, or colour of the same act, by or from the said late cardinal, to any other person or persons, bodies politick or corporate, to cease and be utterly void and determined: and that the said first-fruits, and all payments thereof, from and after the said first day of this parliament shall be revived, and have their being and continuance again, and be deemed and adjudged to all intents, constructions, and purposes, in the queen’s highness’ most royal person, her heirs and successors, and united and annexed to the imperial crown of this realm, of and in such like and the same estate, interest, title, quality, sort, degree, and condition, and in as ample and beneficial manner and form, as the same was or were in the person and possession of the said late Queen Mary, at and before the said eighth day of August, in the said Act of Extinguishment, mentioned and expressed; the same Act of Extinguishment, or any letters patents, or any other matter or thing had, done, or suffered by the said late queen to the contrary thereof in any wise notwithstanding. A repeal of the statute 2 & 3 P. & M. c. 4.

“XXIII. And also that as well so much of the said perpetual and annual tenth and pension granted by the said act made in the said twenty-sixth year of the reign of the said late King Henry the Eighth, as also so much of the said yearly rents reserved upon the said several letters patents *nomine decimæ*; and also so many of the said rectories, parsonages, and benefices impropriate, glebe lands, tithes, oblations, pensions, portions, and other profits and emoluments, ecclesiastical and spiritual, aforesaid, and the reversion and reversions thereof, and all rents, emoluments, and profits incident to the same, as were in the hands and possession of the said late Queen Mary, at and before the said eighth day of August, shall from the feast of St. Michael the Archangel last past be vested, adjudged, and deemed, actually and really in the seisin and possession of our said sovereign lady Queen Elizabeth, her heirs and successors, to all intents, constructions, and purposes, of and in such like and the same estate, interest, order, degree, quality, sort, The first-fruits revived.

The tenths revived, and rents reserved upon patents and promotions ecclesiastical. 26 Hen. 8, c. 3.

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and condition, and as fully, wholly, largely, and beneficially, as the same were in the seisin and possession of the said late Queen Mary, at and before the same eighth day of August: and that as well the said first-fruits and tenths, and the order thereof, as also the said annual rents reserved *nomine decimæ*, and the said rectories, parsonages, benefices, glebe lands, tithes, oblations, pensions, portions, and other profits and emoluments, ecclesiastical and spiritual, aforesaid, and every of them, and the reversion and reversions of them, and of all rents and profits unto the same or any of them incident or belonging, shall be within the said order, survey, rule, and governance of the said court of the exchequer, in every degree, sort, and condition, as they were at and before the said eighth day of August, the said act made in the said second and third years, or any other matter or thing to the contrary thereof, notwithstanding.

The before-
rehearsed
statute revived.

“XXIV. And that so much of all and every the said acts and statutes first recited, or of any other act or statute touching or concerning the order, levying, true answering, and payment, or qualification of the said first-fruits and tenths, and of the said rectories, parsonages, and benefices impropriate, and of the rents, revenues, emoluments, and profits thereof, and of all other the premises, and also the charge, discharge, or alteration of them or any of them, or any matter or thing in any wise sounding or tending thereunto, which were standing and being in force, effect, and unrepealed, at and before the said eighth day of August, (except only the said acts of the erections of the courts of augmentations, and first-fruits and tenths,) shall be, remain, and continue in their full and perfect strengths and forces, and be observed and put in due execution, according to the tenors and purports of the same and every of them.

The queen
shall have the
advowson of
vicarages
belonging to
rectories, &c.

“XXV. And that the queen’s majesty, her heirs and successors, by authority of this present parliament, shall from the said first day of this present parliament have, hold, possess, and enjoy for ever, the advowsons, gifts, and patronages of all vicarages, belonging or incident to any of the said rectories and parsonages impropriate, in the same sort, quality, condition, and degree, to all intents and purposes, as the same were in the person and possession of the said late Queen Mary, at and before the said eighth day of August; any thing or act done by the same late cardinal, or any grant or grants by letters patents made by the said late Queen Mary, of the said advowsons and patronages or any of them, to any ecclesiastical or spiritual person or persons, or any spiritual corporation, to the contrary in any wise notwithstanding :

A saving of
the right of
others.

“XXVI. Saving to all and every person and persons, bodies politick and corporate, and their heirs, executors, successors, and assigns and every of them, (other than such persons as be mentioned and named in any letters patents made by the said Queen Mary the said eighth day of August, or at any time sithence, or claiming only by or under the authority and strength of the same act or letters patents or any of them,) all such right, title, interest, estate, offices, leases, grants, annuities, pensions, fees, corodies, rents, and other yearly profits and commodities, as they or any of them ought or should have had, perceived, or enjoyed, of, in, or by reason of any of the parsonages, rectories, or of any other the premises, in case the said former act now repealed, and this present act of repeal, had never been had ne made; any thing in the same acts or either of them contained or sounding to the contrary thereof in any wise notwithstanding.

How pensions
shall be paid.

“XXVII. And be it further enacted by the authority aforesaid, that from and after the said feast of St. Michael the Archangel last past, and so from thenceforth from time to time, the said pensions, annuities, rents, corodies, fees, and other yearly payments, shall be paid and payable only by our said sovereign lady, her heirs and successors, at the receipt of the exchequer, or in such other places, as the queen’s majesty, her heirs and successors, shall appoint, to all and every person and persons that ought to have and enjoy the same, in such sort, order, and form, as the same should or ought to have been paid and payable, in case the said act now repealed had never been had ne made; any thing therein or else in this act contained to the contrary thereof, in any wise notwithstanding.

They that were

“XXVIII. And be it further enacted by authority aforesaid, that all and

singular incumbents, proprietaries, tenants, farmers, lessees, and occupiers of the premises or any part thereof, their heirs, executors, and assigns, which the said first day of this present parliament were behind, or in any arrearages of and with the rents, farms, tenths, or other revenues, profits, or duties, by them or any of them due and payable, for or by reason of the premises or any of them, shall and may be by the authority of this act severally chargeable, accountable, and answerable to the queen's majesty, her heirs and successors, in and at the said court of the exchequer, of and for the same arrearages and duties as other accomptants be and shall be in the same court; any thing in the said act now repealed, in this act, or any other matter or cause to the contrary thereof, in any wise notwithstanding.

“XXIX. And yet nevertheless the queen's most excellent majesty, at the humble request of her said subjects, of her abundant grace and bountifulness, is pleased and contented that it be enacted by the authority aforesaid, that all and singular vicarages not exceeding the yearly value of ten pounds, after the rate and value upon the records and books of the rates and values for the first-fruits and tenths now remaining in the exchequer, or that shall hereafter come and remain in the same court; and also all and singular parsonages not exceeding the yearly value of ten marks, after the like rate and valuation, and the incumbents thereof and of every of them, their executors, administrators, successors, and sureties and every of them, from the said feast of St. Michael the Archangel last past, shall be free and clearly discharged and acquitted for ever against the queen's majesty, her heirs and successors, of and from the said first-fruits; any thing in the said act of first-fruits and tenths, made in the said six and twentieth year of the reign of the said late King Henry the Eighth, or in this act of repeal, or any other act or acts before recited, to the contrary thereof in any wise notwithstanding.

“XXX. Provided always, and be it enacted by the authority aforesaid, that if any incumbent of any such promotion spiritual as is aforesaid, charged or chargeable to the payment of the said first-fruits, happen to live to the end of one half year next after the last avoidance of the same promotion spiritual, so as he hath received, or without fraud or covin might lawfully have received or enjoyed, the rents or profits of that half year, and before the end of the other half year then next following shall happen to die, or to be lawfully evicted, removed, or put from the said promotion spiritual, by judgment in any action at the common law, without fraud or covin, that then every such incumbent, his heirs, executors, administrators, and sureties, shall be charged and chargeable but only with the fourth part of the first-fruits due to be paid for such his promotion, and with no more of the said first-fruits: any thing in this act contained, or any bond or writing to be made for the payment of the said first-fruits, or any other matter or cause to the contrary notwithstanding.

“XXXI. And if it shall happen any such incumbent to live by the space of one whole year next after the last avoidance of the same spiritual promotion, and after before the end of one half year then next following shall fortune to die, or to be lawfully evicted, removed, or put from the said promotion spiritual, by judgment in any action at the common law, without fraud or covin; that then every such incumbent, his heirs, executors, administrators, and sureties shall be charged and chargeable but only with the moiety and one half of the first-fruits due to be paid for such his promotion spiritual, and with no more of the same first-fruits; any thing in this act contained, or any bond or writing obligatory to be made for the payment of the same first-fruits, or any other matter or cause to the contrary notwithstanding.

“XXXII. And if it shall happen any such incumbent to live to the end of one whole year and a half next after the last avoidance of such promotion spiritual, and after and before the end of six months then next following shall fortune to die, or to be lawfully evicted, removed, or put from the said promotion spiritual, by judgment in any action at the common law, without fraud or covin; that then every such incumbent, his heirs, executors, administrators, and sureties, shall be

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in arrearages for rents, &c. shall pay the same to the queen.

2 & 3 P. & M.
c. 4.

Vicarages not exceeding x. li. shall pay no first-fruits.

Parsonages not exceeding ten marks shall pay no first-fruits.

26 Hen. 8,
c. 3.

The charge of the incumbent which liveth half a year after the avoidance.

His charge which liveth a whole year, &c.

The charge of him which liveth a year and a half, &c

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charged and chargeable but only with three parts of the first-fruits of the same promotion spiritual, in four parts to be divided, and with no more; any thing in this act contained, or any bond or writing obligatory had or made for the payment of the said first-fruits, or any other matter or cause to the contrary notwithstanding.

The charge of
him which
liveth two
whole years
after, &c.

“XXXIII. And if it shall happen any such incumbent to live till the end of two whole years next after the last avoidance of the same his promotion spiritual, and not to be lawfully evicted, removed, or put from the same promotion spiritual as is aforesaid, that then such incumbent, his heirs, executors, administrators, and sureties, shall content and pay to our said sovereign lady the queen, her heirs and successors, the whole first-fruits due to be paid for the same promotion spiritual, according to the statute aforesaid.

Grants made
to the univer-
sities or the
colleges in
them, and to
Eaton and
Winchester
colleges.

“XXXIV. Provided also, and be it enacted, that all grants, immunities, and liberties given to the universities of Cambridge and Oxford, or to any college or hall in either of the said universities, and to the colleges of Eaton and Winchester, and unto every or any of them, by our late sovereign lord King Henry the Eighth, or any other of the queen’s highness’ progenitors or predecessors, or by act of parliament, for or touching the release or discharge of the said first-fruits and tenths, or any part thereof, shall be always and remain in their full strength and virtue: and that all such lawful conveyances and assurances in the law as were had or made before the making of this act, to either of the said universities of Oxford or Cambridge, or to any college or hall within any of them, by what name or names soever they or any of them be incorporated or named, of any of the said parsonages or benefices impropriate, or of any part of the same, or of any patronages, for the maintenance of students or learning, shall be as good and effectual in the law to all intents, constructions, and purposes, as though this act had never been made.

The chapel of
St. George in
Windsor.

“XXXV. And be it further enacted by the authority aforesaid, that the dean and canons of the free chapel of St. George the Martyr, within the castle of Windsor, and all the possessions and hereditaments of the same free chapel, deanery, and canons, by whatsoever name or names they be incorporated or known, shall be exonerated, and shall stand for ever discharged of the tenths and first-fruits before mentioned; any thing in this act, or any other act or statute before mentioned, to the contrary thereof in any wise notwithstanding.

Leases for
years or three
lives.
Cro. Eliz. 207,
430, 690.

“XXXVI. Provided also, and be it enacted, that all leases made before the xx. day of December last past, for xxi. years, or three lives at the most, by any person or persons, bodies politick or corporate, being lawfully seised of or in any of the said parsonages impropriate, or of or in any other the premises, wont commonly to be let or set to ferm, then being out of lease, or whereof there was not, at the time of the making of the said lease or leases, any former lease to endure above one year then to come at the most, and upon which new lease or leases the old yearly rent accustomedly wont to be paid for the same, by the space of twenty years last past before the making of such lease or leases, or more yearly rent is reserved and payable during the said term; and all other lawful grants by them or any of them heretofore made of any office or offices in old time wont commonly to be granted, and all gifts and grants of any parsonage or parsonages impropriate, heretofore belonging to the archdeacons of Wells in the county of Somerset, or to the incumbent of the same office or dignity, or to the incumbent of the same lately given and restored, shall be as good and effectual in the law, as though this act, or any thing contained therein, had not been had or made.

Grants of
offices wont to
be granted.

The Arch-
deacon of
Wells charged
with payment
of first-fruits.

“XXXVII. And be it further enacted by the authority aforesaid, that the said archdeacons, and all rectories and spiritual promotions given, assigned, limited, or appointed to the same, and all and every incumbent and incumbents which hereafter shall be presented, collated, preferred, and admitted unto the said archdeacons, and the rectories and spiritual promotions thereunto limited and appointed, or appertaining and belonging, shall stand, remain, and be charged and chargeable with the payment of the first-fruits and tenths for the same to the queen’s highness, her heirs and successors, in such like manner and for as other

spiritual promotions, and the incumbents of the same, be and shall be charged and chargeable by this act, or by any other act or statute before specified.

“XXXVIII. Provided always, and be it further enacted by the authority aforesaid, that so many of the said rectories, parsonages, and benefices impropriate, glebe lands, tithes, oblations, pensions, portions, and other profits and emoluments ecclesiastical and spiritual, and every of them, and the reversion and reversions of them, and all rents and profits unto the same or any of them incident or belonging, as were at and before the said eighth day of August in the hands and possessions of the said late Queen Mary, and within the survey, rule, and order of the court of the duchy of Lancaster, shall be again within the order, survey, rule, and government of the said court, in such and the same manner and form to all intents and purposes, as they were at and before the said eighth day of August in the said second and third years of the reign of the said late king and queen; any thing in this act, or in the said act of the same late king and queen, to the contrary thereof in any thing notwithstanding.

“XXXIX. Provided always, and be it further enacted by the authority of this parliament, that no person or persons presented, instituted, or inducted, at any time sithence the first day of this present parliament, or that shall be presented, instituted, or inducted, on this side of the feast of the Nativity of Saint John Baptist next coming, to any the said spiritual or ecclesiastical promotions chargeable to or with the payment of the first-fruits, for one year’s profits of such promotion, shall incur any penalty or forfeiture by entering into any of the said spiritual or ecclesiastical promotions, or by taking the profits thereof, for the non-payment or not compounding of or for the first-fruits thereof, so that he or any other for him shall or do compound for the same first-fruits, according to the true meaning of the statute, before the said feast of the Nativity of Saint John Baptist; any thing in this act contained to the contrary notwithstanding.

“XL. Provided also, that this act, nor any thing therein contained, shall not in any wise extend to charge any hospital founded and used, and the possessions thereof employed, to and for the relief of poor people, or any school or schools, or the possessions or revenues of them or any of them, with the payment of any tenths or first-fruits; any thing in this act before mentioned to the contrary in any wise notwithstanding.”

V. STAT. 1 ELIZABETHÆ, c. 19. A.D. 1558.

‘An Act (1) *giving Authority to the Queen’s Majesty, upon the Avoidance of any Archbishoprick or Bishoprick, to take into her hands certain of the Temporal Possessions thereof, recompensing the same with Parsonages Impropriate (2) and Tenths.*”

“The lords spiritual and temporal and the commons in this present parliament assembled, perceiving how necessary it is for the imperial crown of this realm to

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The benefices, &c. which were within the order of the duchy court shall so continue.

They which be presented to a benefice shall compound for their first-fruits before the feast of St. John Baptist.

The revenues of hospitals and schools.
2 Ann. c. 11.
5 Ann. c. 24.
6 Ann. c. 27.
1 Geo. 1, c. 10.
3 Geo. 1, c. 10.

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c. 19.

Leases and other assurance of bishops’ lands.

(1) *An Act*:—In *Elmer’s case*, (5 Co. 2(a),) this act was declared to be a private act, of which the court could not take notice, unless it were pleaded; and not being pleaded, judgment, for that reason, was given against the bishop; and in *Talentine v. Denton*, (Cro. Jac. 112,) it was again resolved, that the court could not take notice of this act, because it was not specially pleaded.

(2) *Impropriate*:—There is some confusion in the books, in not always distinguishing between two sorts of appropriation, which were fundamentally different. Appropriations are an abuse which took their rise in the darker ages. They are termed usually in the canon law, “*annexiones*,” “*donationes*,” “*uniones*,” &c. and the term “*appropriation*,” which was borrowed from the form of

such grant, “*in proprios usus*,” appears to have been peculiar, or principally confined to England. *Ducange* (Gloss. 592,) cites a letter from England, in which it is used. It is seldom indeed to be found in any foreign canon, without reference to this country, and there is scarcely a foreign writer who, in noticing it, does not say, “*quas in Anglia vocant appropriationes*.”

There were two sorts of appropriation, or rather appropriation was authorized to be made, with different privileges, in two forms; (X. 5. 33. 3;) the one “*pleno jure, sive utroque jure, tam in spiritualibus quam in temporalibus*,” where the interests in the benefice, both temporal and spiritual, were annexed to some religious house, and the other, “*non utroque jure*,” though “*pleno jure*,” as it is

STAT. 1 ELIZ. be repaired with the restitution of revenues meet for the same, and having assented
c. 19. and fully accorded to restore to the same imperial crown the first-fruits and tenths

described, "in temporalibus," where temporal interests only were conveyed, such as the tithes or patronage of the benefice; but the cure of souls resided in an endowed perpetual vicar.

In the first species, the religious house had the cure of souls, and all rights, and performed the duties of the church by its own members, or by stipendiary curates; and the distinction on this point is summarily described, in a passage from the proceedings of the court of Audience: "Cum ecclesia conceditur alicui monasterio, pleno jure, in temporalibus, tunc episcopi debent instituere vicarium perpetuum; ubi vero unitur mensæ episcopali, vel abbatali, et spectat ad illam, pleno jure, tam in spiritualibus, quam in temporalibus,—tunc ponitur in ea presbyter temporalis, ad nutum removibilis ad exercitium curæ, quæ principaliter residet in eo cuius mensæ est unita." Selden on Tithes, c. 12. Ayliffe's Parer. 86. This description of these two species of appropriation is frequently mentioned by *Hostiensis* in his *Aurea Summa*. ("Ubi ecclesia ad monasterium pertinet pleno jure, habet monasterium in eâ institutionem, destitutionem, investituram, fidelitatem, obedientiam, correctionem, et quædam alia: episcopus nihilominus desuper est; nisi privilegium, vel præscriptio, vel contraria consuetudo obest; sed ubi pleno jure non pertinet, tunc habet ibi monasterium temporalia, et representationem presbyteri vicarii tantum, qui non debet ab episcopo recipi, nisi per monachos sufficiens portio assignetur.") On a further discussion, how the bishop could grant such powers *in pleno jure*, being greater than what he himself possessed, the answer is, "Non potest transferre, nisi ex causâ, puta, propter paupertatem mensæ religiosorum, quæ non sufficit ad sustentationem ipsorum," &c. *De Officio Ordinarii*, l. i., 296, *et seq.*)

Against holding benefices, *pleno et utroque jure*, great complaints were made in the Gallican church, in which, on no subject, was dissatisfaction more loudly or more frequently expressed. And it is mentioned, as a fundamental maxim in that church, that, since the council of Constance, (A.D. 1414, Conc. Gener. t. 12, 254;) it has become a legitimate cause of revocation in that kingdom.

In England, it was ordained by the Constitution of Othobon, that all religious houses, which possessed churches *in proprios usus*, should present vicars, with competent endowment, to the diocesan, for institution, within the space of six months; and that if they failed so to do, the bishop was empowered to fill up the vacancy: this, however, proved insufficient against the power of the monks. The civil legislature next interfered, and passed the statutes 15 Rich. 2, c. 6, (*antè* 88,) and 4 Hen. 4, c. 12, (*antè* 96,) which require, that vicarages should be regularly endowed. Such was the general and legal character of appropriations in England, by the canon law, and by the statutes of the

realm. The vicarage became a benefice with cure of souls, and the monks held *in proprietatem*, in some sort, as a lay fee. *Mallet v. Trigg*, 1 Vern. 42.

But after the Statute of Improvements, the monks were too subtle and cunning for the law, and still, nevertheless, obtained appropriations, as annexed to their tables, as before, under the plea of poverty and inability to support themselves. These *uniones ad mensam*, for the sustentation of the monks, were always presumed, in law, to be *in utroque jure*, and it was an universal rule, that they were never vacant, but that there was a perpetual plenary; as it had been held, that the canon "De supplendâ negligentia," (X. l. 10. 2; Clem. l. t. 5;) which gave the right of presentation on lapse, did not apply to such appropriations. The monks, who thus may be said to have been the immortal incumbents, had the cure of souls remaining in them, and the minister, whom they employed, was a mere stipendiary.

From this root sprung the peculiar kind of appropriation, without a vicarage endowed; and this is the origin of stipendiary curacies, in which the impropiator is bound to provide divine service—but may do it by a curate, not instituted, but only licensed by the bishop; and might reckon himself under no obligation to present a vicar to the bishop for institution, but might provide for the service of the church, as the monks did, by a licensed curate. Since that time, the Statutes of Dissolution enact, that benefices of every description should be held as they had been held by the dissolved religious houses; a grantee, who has obtained what was before held, as above described, *ad mensam, pleno et utroque jure*, would have the complete incumbency, as *intitulus*, and *beneficiary*. If such an impropiator should take orders, he might perform the offices of the church without institution, only taking the oaths imposed by later statutes. And it would be only the circumstance of not being in orders, that would prevent him from exercising his ecclesiastical rights, in full form, as those spiritual persons, the monks, did before. But it was not so in ordinary impropiations, in which there had been a vicarage endowed; because the vicar holds by something extrinsic of the impropiator.

In the presumption of the canon law, the monks were held to be impropiators in the ordinary and common way; so says *Hostiensis*: "Semper præsumo contra monachos, nisi auctoritatem episcopi probent intervenire." Aur. Summ. 297. And this presumption is still more strongly fortified, in the law of England, by the Statute of Improvements, and the further presumption, that the provisions of that statute have been observed. The presumptions of law then are, that the benefice, though impropiated, is not impropiated *pleno et utroque jure*, and if so, that there is an endowed minister to whom the *cura animarum* belongs.

of parsonages improper, for the increase of the revenue thereof, he also desirous to devise some good means, whereby the said revenue of tenths and improper benefices might be in the governance and disposition of the clergy of this realm, being most apt for the same, in such sort as yet thereby the said imperial crown should not be in any wise diminished in the said restored revenue.

“II. And therefore beseech your majesty, that it may be enacted by the authority of this present parliament, in manner and form hereafter following; that is to say, upon the *vacation* (1) and avoidance of every archbishoprick or bishoprick within this your realm of England and Wales, and other your highness’ dominions, *it shall and may be* (2) lawful for your highness to elect and choose, and to take into your hands and real possession, as much and so many of any the honours, castles, manors, lands, tenements, or other hereditaments, being parcel of the possessions of any such archbishoprick or bishoprick so being void, as the clear yearly value of all your majesty’s *parsonages* appropriate and yearly *tenths* (3) within every such archbishoprick or bishoprick shall yearly amount and extend unto; and for the trial of every value of such honours, castles, manors, lands, tenements, and hereditaments, it shall and may be lawful for your highness from time to time, to direct your *letters of commission* (4) under your highness’ great seal of England into every such archbishoprick or bishoprick, so being void, to such persons as your majesty shall think meet and convenient, giving them authority thereby to survey such honours, castles, manors, lands, tenements, and hereditaments, parcel of the possessions of the same archbishoprick or bishoprick so being void, as to your majesty shall be thought meet and convenient to be taken into your highness’ hands and possession, and thereupon to certify the very clear yearly value thereof, over all charges and reprises, into your highness’ court of exchequer, at such day and time as by the said commission shall be limited and appointed; and after such certificate into the said court of exchequer of the clear yearly value of such honours, castles, manors, lands, tenements, and hereditaments, so had and made, it shall and may be lawful for your highness, by your letters patents, to give and assure unto such archbishop and bishop, and his successors, as shall be preferred and consecrated archbishop or bishop of such archbishoprick or bishoprick so being void, so much and so many of your yearly tenths, tithes, and parsonages appropriated, being within the same archbishoprick or bishoprick, as shall be of as much, or of more yearly value, as the said honours, castles, manors, lands, tenements, or hereditaments, so certified into your said court of exchequer, be certified unto; and that immediately upon such gift and grant made by your highness, and the same by your majesty under

STAT. 1 ELIZ.
c. 19.

5 Co. 2.
Cro. Jac. 112.
1 Jac. 1, c. 3.

The queen empowered to take into her hands, on the avoidance of any bishoprick, so much of the possessions as shall be of the value of all the queen’s parsonages appropriate, &c. within the bishoprick, assuring the parsonages, &c. to the promoted bishop.

(1) *Vacation*.—Soon after this, there being an avoidance of all, or almost all, the bishopricks, the courtiers had a present opportunity, (which, no doubt, was in their view, at the time of making the act,) of selecting for themselves (by grants) the best possessions of the archbishops and bishops.

(2) *It shall and may be*.—This bill was opposed by the bishops, as highly prejudicial to the church; and their dissent, at the third reading, is particularly expressed in the Journals. Journ. Sup. Dom. Apr. 6. After which, it was again opposed upon the third reading, in the House of Commons; but such was the influence of the court, and the expectations of “bishop’s manors” among the courtiers, that it was carried and passed there by 134 against 90. Journ. Com. Apr. 17.

(3) *Parsonages . . . tenths*.—To many of the parsonages, appertained decayed chantries, and ruinous houses, besides the slender provision for vicars and curates, which was of necessity to be augmented, with a certain prospect of the ill payment of the tenths, as

such payment was to be made by the poorer clergy. Gibson’s Codex, 651.

(4) *Letters of commission*.—Archbishop Parker, and four bishops elect, petitioned the queen, (Stry. Ref. 98–101,) that she would not make use of the power which the parliament had given her; and offered 700 marks yearly during their lives, and continuance in their bishopricks, to be exempt from such exchanges; which example was designed to be followed by other bishops, upon their consecrations to other sees. But the prey which the courtiers had in view, was too tempting to be easily relinquished; and therefore, soon after the parliament had been prorogued, the queen appointed commissioners to survey the several vacant bishopricks, (which were now, about fourteen, vacant either by death or deprivation,) and also other commissioners, to consider which of the lands she should take into her hands, and what impropriations and tenths it would be convenient to grant instead of them.

STAT. 1 ELIZ.
c. 19.

your signet or sign manual signified unto your treasurer and barons of your said court of exchequer, together with your pleasure for the retaining and keeping of the said honours, castles, manors, lands, tenements, or other hereditaments so certified unto your said court of exchequer, in lieu and place of the said tenths, tithes, and parsonages appropriate, the same and such honours, castles, manors, lands, tenements, and other hereditaments, as so shall then be certified into your said court of exchequer, shall be adjudged, vested, and deemed, by authority of this present parliament, actually and really in your highness, your heirs and successors, and be from thenceforth united and annexed to the imperial crown of this your realm for ever, and from thenceforth shall be in the order, survey, rule, and governance of your said court of exchequer, in such like manner and form, as other your highness' possessions and hereditaments be at this present.

"III. Provided always, and be it enacted by the authority aforesaid, that this act, or any thing herein contained, shall not extend to give any liberty or authority to your highness, to take from any such archbishoprick or bishoprick any of the mansion-houses, commonly used for the habitation or dwelling of any such archbishop or bishop, or any the demean lands commonly used or occupied with any such mansion or dwelling-house or houses or any of them, or to take any other lands or tenements commonly used and kept in the manurance, tillage, or manual occupation of any archbishop or bishop, for the maintenance of hospitality and good housekeeping; any thing in this act contained to the contrary notwithstanding.

"IV. Saving to all and every person and persons, bodies politick and corporate, their heirs and successors, and to the heirs and successors of every of them, other than the said archbishops and bishops and their successors, all such estate, right, title, term, interest, rent, profit, offices, or commodities, as they or any of them have, should, might, or ought to have had, in or to any honours, castles, manors, lands, tenements, or other hereditaments whatsoever, in such like manner, form, and condition, to all intents and purposes, as if this act had never been had nor made; any thing herein contained to the contrary notwithstanding.

Conveyances
by bishops, &c.
other than, &c.
made void.

1 Inst. 44 (a).

"V. *And be it further* (1) *enacted* (2) by the authority aforesaid, that *all gifts, grants* (3), feoffments, fines, or other conveyance or estates, from the first day of this present parliament, to be had, made, done, or suffered by any archbishop or bishop, of any honours, castles, manors, lands, tenements, or *other hereditaments* (4), being parcel of the possessions of his archbishoprick or bishoprick, or united,

(1) *And be it further*:—The long leases which a bishop, (with consent of dean and chapter,) might have made before this statute, were in some measure alienations, with regard to the succeeding bishops, during the continuance of such leases. *Sarum's (Levesque de) case*, 10 Co. 60 (a).

(2) *Enacted*:—This statute is merely disabling, and the disability which is hereby laid on the bishops, is this, that notwithstanding Stat. 32 Hen. 8, c. 28, (*antè* 262,) bishops might continue to make such long leases, as they had usually done, in case those leases were confirmed; by this statute, they are absolutely prohibited from granting any leases, but for twenty-one years, or three lives, though with confirmation; and the power which a bishop acquired to let a lease for twenty-one years, or three lives, so as to bind the successor, was owing not to this statute, (which is wholly disabling,) but to Stat. 32 Hen. 8, c. 28; and for that reason, the conditions and limitations prescribed by such statute, were obliged to be observed in the leases of bishops for twenty-one years, or three lives, otherwise they would not have bound the successors, without confirmation.

For example, if a bishop let a new lease, when the old lease would have ended within one year, this was good, without confirmation, because Stat. 32 Hen. 8, c. 28, enabled him to do it; but if he let a new lease, when more than one year remained of the old, in that case confirmation was necessary, in order to bind the successor, as it was at common law, this not being within Stat. 32 Hen. 8, c. 28.

(3) *All gifts, grants*:—The rule of the canon law is this: "Sine exceptione discernimus, ne quis episcopus de rebus ecclesiæ suæ quidquam donare, vel commutare, vel vendere audeat, nisi fortè aliquid horum faciat, ut meliora prospiciat; et cum totius cleri tractatu atque consensu id eligat, quod non sit dubium profuturum ecclesiæ." "Episcopus rebus ecclesiæ, tanquam commendatis, non tanquam propriis, utatur. Irrita enim episcoporum venditio et commutatio rei ecclesiasticæ erit, absque conventiâ et subscriptione clericorum." Caus. 12, q. 2, c. 52.

(4) *Other hereditaments*:—The general design of this statute, being in favour of the successor, to preserve bishopricks from im-

appertaining, or belonging to any the same archbishopricks or bishopricks, to any person or persons, bodies politick or corporate, other than to the queen's highness, STAT. 1 ELIZ. c. 19.

poverishment; it hath been extended, in equity and intention, to a prohibition of the grants of new offices (though not directly included in any of the foregoing terms). For if a bishop might erect new offices at pleasure, and assign salaries to the officers, and then make grants to bind his successors, the end of the statute would be manifestly defeated. The same thing is to be said of the augmentation of the fee or salary belonging to an ancient office; which power of augmentation, (for the same reason,) is also restrained; (*Chester (Bishop of) v. Freeland, Ley, 71; Chichester (Bishop of) v. Freedland, Cro. Car. 47;*) as when the keepership of a park was granted with the ancient fee, "nec non cum pasturâ pro duobus equis in eodem parco," this was void; and it hath been said, that if the ancient fee be less than 5*l.*, and a grant be made with a fee of 5*l.* entire, the whole grant would be void, as well for the ancient fee, as the overplus; but if the office, and the ancient and new fee, were as several grants, in several sentences, the grant would be good for the office, and ancient fee, and void only for the new. *Chichester (Bishop of) v. Freedland, Cro. Car. 47. Chester (Bishop of) v. Freeland, Ley, 71. Ely's (the Bishop of) case, 2 Brownl. 137.*

It hath been adjudged, that the offices of chancellor, commissary, official, register, &c., are hereditaments within the words and intent of this statute, as well as the possession of the bishoprick. The general design of which statute in the case of bishops, and of Stat. 13 Eliz. c. 10, in the case of other ecclesiastics, being to preserve the rights of successors, against any illegal practices of the present possessors; it hath been, ever since, the general rule in the courts of common law, that no offices of any kind are grantable by bishops, or other ecclesiastical persons, as such, in any larger extent, than they shall appear to have been granted before this statute, and Stat. 13 Eliz. c. 10. *Walker v. Lamb (Sir John), Cro. Car. 259. Jon. (Sir W.), 264.*

But, observes my Lord Coke, (*Sarum's (Levesque de) case, 10 Co. 61 (a),*) "if the office hath been ancient and necessary, the grant thereof, with the ancient fee, is not any diminution of the revenue, nor impoverishing of the successor; and therefore, for necessity, such grants are by construction exempted out of the general restraint of this act." And as to the granting it for the life of the grantee, he adds, "if bishops should not have power to grant such offices of service and necessity for the life of the grantees, but that their estates should depend upon uncertainties, as upon the death, translation, &c., of the bishop, then able persons would not serve them in such offices, or at least would not discharge their office with any alacrity, if they have not such certain estates for their lives, as their predecessors had in the same offices."

However, this equity of granting for life

amounts to no more than for one life; and therefore, where a bishop grants an office for two or more lives, it must be under the sanction of custom, *i. e.*, because such patent hath usually been for two or more lives, and had been so granted before the present act was made. Such is the principle; and in it there is no difference between bishopricks of the old and of the new foundation, since the new, as well as old, are capable of coming under this rule. *Walker v. Lamb (Sir John), Cro. Car. 258. Ridley v. Founel, 3 Keb. 474. 2 Lev. 138.*

The same is the law, and the reason of it, concerning grants of offices in reversion; (*i. e.*, to have and enjoy such office, after the death of the present grantee for life;) for there can be no pretence, that such second grant is necessary, or for the advantage of the bishoprick; and therefore, nothing can make it legal but custom, and particular instances, or an instance, of such grant, before the making of the statute. *Ibid. 2 Rol. Abr. Office (H), 154. Young v. Fowler, Cro. Car. 555. Sarum's (Levesque de) case, 10 Co. 62. Et vide Co. Lit. 3 (b), n. 5.*

But though there be but one such instance of a grant for two or more lives, (*Yonge v. Stowell, Jon. (Sir W.), 311,*) or of a grant in reversion, before this statute, the law will presume, that it hath been usually and anciently so granted; nay, it is said, that if there be an instance near the time, (*Jones v. Beau, 4 Mod. 17,*) though after it, and no instances appear to the contrary, the courts will be favourable to such grants, upon a presumption, that they followed the like precedents, though now lost; which seems not, by any means, to agree with what the books say, on other occasions, concerning the equity and intention of this statute, as designed for the benefit of the successors, and by consequence to be interpreted most strongly in their favour.

But to the end that unquestionable grants of ancient established offices, may be good against the successor of a bishop; they must, in the first place, be grants of one office, singly, for two offices, which have been usually granted apart, cannot be granted by one patent, though to the same person; and, in the next place, they must be confirmed by the dean and chapter, (though they be but for one life,) because they are grants at common law, and not warranted by this statute, and must therefore pass, as they usually did at common law, before this statute. *Scambler v. Waters, Cro. Eliz. 636. Chichester (Bishop of) v. Freedland, Cro. Car. 50.*

In like manner, the grants of new offices, (if of necessary use to the bishop,) and of new fees annexed to such offices, shall be good, and bind the successor; as was declared in the *case of the Bishop of Ely*, (*Cro. Car. 48,*) who granted the keeping of his house and garden, with 3*l.* per annum, to one for life; and it was adjudged to be good against the successor, because the office was

STAT. 1 ELIZ. her heirs or successors, whereby any estate or estates should or may pass from the same archbishops or bishops or any of them, other than for the term of xxi. years or three lives, from such time as any such lease, grant, or assurance shall begin, and whereupon the old *accustomed* (1) *yearly rent* (2) or more, shall be reserved and payable yearly during the said term of xxi. years or three lives, shall be *utterly void* (3) and of none effect, to all intents, constructions, and purposes; any law, custom, or usage to the contrary in any wise notwithstanding.”

STAT. 1 ELIZ. c. 19.
Moor, 253,
pl. 400.
Moor, 778,
pl. 1078.
Cro. Eliz. 874.
Cro. Car. 16, 47.
8 Vin. 564.
See 1 Bur. 221.

VI. STAT. 1 ELIZABETHÆ, c. 22 (4). A.D. 1558.

STAT. 1 ELIZ.
c. 22.

“An Act giving Authority (5) to the Queen during her Life to make Ordinances in Collegiate Churches and Schools.”

necessary, and the fee thought reasonable by the court. But, on the other hand, where the foundation of the grant to a civilian for life, was “pro consilio impenso, et impendendo,” and an annual pension was annexed to the office; judgment was given against the grant, as not binding the successor, though it was alleged to be the ancient fee; because this was a voluntary thing, to make an election of one man to be of his counsel, and not an office; and peradventure the next bishop would not make such election. *Chester (Bishop of) v. Freeland*, Ley, 75.

In *Jones v. Pugh*, (2 Salk. 465; Carth. 213,) the Bishop of Landaff had granted the office of vicar-general to two persons, “habend’, conjunctim et divisim, exercend’ per se vel sufficien’ deputatum.” It appeared, and was made part of the cause by the counsel on both sides, that this office had been anciently and usually granted to two, “conjunctim et divisim,” and to the survivor of them. But it was objected, that a judicial office could not be granted to two; for if they differ, nothing can be done. But the answer was, that the same may be said of four judges, as in the court of King’s Bench, and in ministerial offices, as two sheriffs. And the court held the grant good, and said, if an office be granted to two, and one dies, the office does not survive, but determines; as if there be two sheriffs, and one dies, the other cannot act; otherwise if granted to two, and the survivor of them.

(1) *Accustomed*:—The accustomed rent mentioned in this statute, and in Stat. 13 Eliz. c. 10, ought to be understood of the rent reserved upon the last lease, and not upon the first; for that rent having been altered since, cannot be called the accustomed rent. Gibson’s Codex, 736. *Morrice v. Antrobus*, Hardr. 326. *Antè n.* (2), 266.

(2) *Yearly rent*:—For this reason, a grant of the next avoidance of a benefice, is void against the successor; because it is one of those things which are incorporeal, and lie in grant only, and such an interest, out of which a *rent* cannot be reserved.

(3) *Utterly void*:—This statute was intended for the benefit of the successor; agreeably to which, this expression, though absolute and unlimited, hath been interpreted a avoidance against the successor, but not against the grantor; who may, in many

cases, be bound for his own time, though the directions of this, and Stat. 32 Hen. 8, c. 28, (*antè* 262,) be not punctually observed. Nay, even the grant of things not grantable, as, of the next avoidance, or of an annuity, or of tithes for three lives, &c., has been held to bind the bishop who made the grant.

(4) Expired.

(5) *Authority*:—Pursuant to the powers vested in the queen by this act, there seems to have been a confirmation *presently* made, of the statutes of King Henry 8, for a rule to the several churches, until they could be reviewed and reformed. For so it plainly was in the church of Peterborough, as appears by Bishop Scambler’s letter to the queen, concerning those statutes. “After this house was erected, there came to the same certain statutes for the government thereof, under his majesty’s name, and so have continued, not without regard; the rather, through a confirmation made of them by your majesty’s visitors, appointed for that place and countries adjacent, *anno primo* of your most happy reign.” Stry. App. 103.

Afterwards, (special powers for that end having been inserted in the body of the ecclesiastical commission,) new statutes were prepared by the archbishop and others, and finished in the month of July, 1572, and the several bodies were ready for the royal confirmation; but such confirmation (for what reason, or by what accident, appears not,) was never obtained. Stry. Park. 342.

Three years after that, the like powers, almost word for word, were inserted in the ecclesiastical commission granted to Archbishop Grindal, and others; which is as follows:

“And whereas, there were divers cathedral and collegiate churches, grammar schools, and other ecclesiastical corporations, erected, founded, or ordained by the late king of famous memory, our dear father King Henry 8, and by our late dear brother King Edward 6, and by our late sister Queen Mary, and by the late Lord Cardinal Pole, the ordinances, rules, and statutes whereof, be either none at all, or altogether imperfect, or being made at such time as the crown and regiment of this realm was subject to the foreign usurped authority of the see of Rome, they be in some points contrary, diverse, and repugnant to the dignity and prerogative of

VII. STAT. 2 ELIZABETHÆ, C. 1. [IRELAND.] A.D. 1560.

STAT. 2 ELIZ.
C. 1. [Ir.]

"An Act restoring to the Crown the ancient Jurisdiction over the State Ecclesiastical and Spiritual, and abolishing all Foreign Power repugnant to the same."

"Most humbly beseech your most excellent majesty, your faithful and obedient subjects the lords spiritual and temporal, and the commons in this present parliament assembled, that where in the time of the reign of your most dear father of worthy memory, King Henry the Eighth, divers good laws and statutes were made and established, as well for the utter extinguishment and putting away of all usurped and foreign powers and authorities out of this your realm, as also for the restoring and uniting to the imperial crown of this realm, the ancient jurisdictions, authorities, superiorities, and pre-eminences to the same, of right belonging and appertaining, by reason whereof, we your most humble and obedient subjects, from the twenty-eighth year of the reign of your said dear father, were continually kept in good order, and were disburdened of divers great and intolerable charges and exactions before that time unlawfully taken and exacted, by such foreign power and authority as before that was usurped, until such time as all the said good laws and statutes, by one act of parliament made in the third and fourth years of the reigns of the late King Philip and Queen Mary, your highness' sister, intituled, 'An Act repealing all Statutes, Articles, and Provisions made against the See Apostolique of Rome, sithence the twentieth year of King Henry the Eighth, and also for the abolishment of Spiritual and Ecclesiastical Possessions and Hereditaments conveyed to the Laity,' were clearly repealed and made void, as by the same act of repeal more at large doth and may appear, by reason of which act of repeal, your said humble subjects were eftsoons brought under an usurped foreign power and authority, and yet do remain in that bondage, to the intolerable charges of your loving subjects, if some redress, by the authority of this your high court of parliament, with the assent of your highness,

Eng. 1 Eliz.
c. 1.

Divers good statutes made in the time of King Henry 8, against usurpations and exactions of foreign power :

which statutes were repealed by 3 & 4 P. & M. c. 8.

The subjects thereby brought under usurped foreign power.

our crown, the laws of this our realm, and the present state of religion within the same. We therefore do give full power and authority unto you, or six of you, of whom we will you, the forenamed Archbishop of Canterbury, the Bishops of London, Winchester, Ely, Worcester, Norwich, Chichester, Rochester, for the time being, Gabriel Goodman, William Dey, or Thomas Watts, always to be one; to cause and ordain in our name, all and singular the ordinances, rules, and statutes of all and every the said cathedral and collegiate churches, grammar schools, and other ecclesiastical corporations, together with their several letters patents, and other writings touching, and in anything concerning their several erections and foundations, to be brought and exhibited before you, or six of you, as is aforesaid; willing and commanding you, &c., upon the exhibiting, and upon diligent and deliberate view, search, and examination of the said statutes, rules, and ordinances, letters patents and writings; not only to make speedy and undelayed certificates of the enormities, disorders, defects, surplusage or wants, of all and singular the statutes, rules, and ordinances, but also with the same, to advertise us of such good orders and statutes, as you, or six of you, &c., shall think meet and convenient to be by us made, and set forth for the better order and rule of the said several churches, erections, and foundations, and the possessions and revenues of the same; and as may best tend to the honour of Almighty God, the increase of virtue and unity

in the said places, and the public weal and tranquillity of this our realm; to the intent we may thereupon further proceed to the altering, making, and establishing of the same, and other statutes, rules, and ordinances, according to an act of parliament thereof made in the first year of our reign."

But nothing appears to have been done, in pursuance of those powers, although the inconveniences and mischiefs of wanting a certain rule, appear evidently by the tenour of the letter of Bishop Scambler, to which allusion has been made. The bishop, after a complaint of non-residence, the want of discipline, and his own fruitless endeavours to reform what was amiss, adds, "One chief and sole cause, in a manner, of all this matter, besides the perverseness of men's natures, being the uncertainty of the authority of the statutes of the said church, the froward and disobedient always pretending for their defence, that the same were and are of no force, and that they stand at liberty to do or not to do the premises at their pleasure; because they are not extant under the great seal, and indented." Whereupon, his prayer to the queen, is, "Let not then, I most humbly beseech you, the matter of government of these houses, (for they, all that are of your father's foundation, be in like uncertainty of the authority of their statutes, and especially this church, where I am,) stand any longer doubtful; but let it be by your most sacred majesty decided and determined, under what rules and orders they shall live."

STAT. 2 ELIZ.
c. 1. [Ir.]

For remedy
thereof, and
restoring the
rights of the
crown.

Said act, 3 & 4
P. & M. c. 8,
repealed,
except as
hereafter.

The statute
28 Hen. 8,
c. 19, and 28
Hen. 8, c. 6,
revived.

So much only
of the statute
33 Hen. 8,
c. 6, as con-
cerns degrees
of consan-
guinity, re-
vived.

All other sta-
tutes and
clauses re-
pealed by 3 & 4
P. & M. c. 8,
and not in this
act specified
and revived,
continue
repealed.

An act 3 & 4
P. & M. c. 9,
for reviving
three statutes
of heresy, and
also the said
three statutes,
repealed.

No foreign
power to exer-
cise ecclesias-
tical jurisdic-
tion in this
realm.

be not had and provided. May it therefore please your highness, for the repressing of the said usurped foreign power, and the restoring of the rights, jurisdictions, and pre-eminences appertaining to the imperial crown of this your realm, that it may be enacted by authority of this present parliament, that the said act, made in the third and fourth years of the reigns of the said late King Philip and Queen Mary, and all and every branch, clauses, and articles therein contained, other than such branches, clause, and sentences, as hereafter shall be excepted, may, from the last day of this session of parliament, by authority of this present parliament, be repealed, and shall from thenceforth be utterly void and of none effect; and that also for the reviving of divers of the said good laws and statutes made in the time of your said dear father, it may also please your highness, that one act and statute made in a parliament holden at Dublin, the first of May, in the eight and twentieth year of the said late King Henry the Eighth, and after prorogued, adjourned, and continued, as by the roll of the said parliament more at large appeareth, intituled, 'The Act of Appeals;' and also one act made in the said parliament, intituled, 'The Act of Faculties;' and also all and every branches, words, and sentences in the said several acts and statutes contained by authority of this present parliament, from and at all times after the last day of this session of parliament, shall be revived, and shall stand and be in full force and strength, to all intents, constructions, and purposes; and that the branches, sentences, and words of the said several acts, and every of them, from thenceforth shall and may be judged, deemed, and taken, to extend to your highness, your heirs and successors, as fully and largely as ever the same acts, or any of them, did extend to the said late Henry the Eighth, your highness' father.

"II. And that it may also please your highness, that it may be enacted by authority of this present parliament, that so much only of one act or statute made in a parliament begun at Dublin, the thirteenth of June, in the thirty-third year of the reign of your said dear father King Henry the Eighth, and after prorogued, adjourned, and continued, as by the rolls of the said parliament more at large appeareth, intituled, 'An Act for Marriage,' as doth touch and concern degrees of consanguinity, may from henceforth likewise stand and be revived, and remain in full force and strength, to all intents and purposes; any thing in this said act of repeal before mentioned, or other matter or cause to the contrary notwithstanding.

"III. And that it may also please your highness, that it may be further enacted by the authority aforesaid, that all other laws and statutes, and the branches and clauses of any act or statute repealed and made void by the said act of repeal, made in the time of the said late King Philip and Queen Mary, and not in this present act specially mentioned and revived, shall stand, remain, and be repealed and void, in such like manner and form as they were before the making of this act; any thing herein contained to the contrary notwithstanding.

"IV. And that it may also please your highness, that it may be enacted by the authority aforesaid, that one act or statute made in the third and fourth years of the said late King Philip and Queen Mary, intituled, 'An Act for Reviving of Three Estatutes made for the Punishment of Heresies;' and also the said three statutes mentioned in the said act, and by the same act revived, and all and every branches, articles, clauses, and sentences contained in the said several acts or statutes, and every of them, shall be from the last day of this session of parliament deemed and remain utterly repealed, void, and of none effect, to all intents and purposes; any thing in the said several acts or any of them contained, or any other matter or cause to the contrary notwithstanding.

"V. And to the intent that all usurped and foreign power and authority spiri-
tual and temporal may for ever be clearly extinguished, and never to be used or obeyed within this realm; may it please your highness, that it may be further enacted by the authority aforesaid, that no foreign prince, person, prelate, state, or potentate, spiritual or temporal, shall at any time after the last day of this session of parliament, use, enjoy, or exercise any manner of power, jurisdiction, superiority, authority, pre-eminence, or privilege spiritual or ecclesiastical within this realm, but from henceforth the same shall be clearly abolished out of this

realm for ever; any statute, ordinance, custom, constitutions, or other matter or cause whatsoever to the contrary in any wise notwithstanding.

STAT. 2 ELIZ.
c. 1. [1r.]

“VI. And that also it may likewise please your highness, that it may be established and enacted by the authority aforesaid, that such jurisdiction, privileges, superiorities, and pre-eminences spiritual and ecclesiastical, as by any spiritual or ecclesiastical power or authority hath heretofore been or may lawfully be exercised or used for the visitation of the ecclesiastical state and persons, and for reformation, order, and correction of the same, and of all manner errors, heresies, schisms, abuses, offences, contempts, and enormities, shall for ever by authority of this present parliament be united and annexed to the imperial crown of this realm; and that your highness, your heirs and successors, kings or queens of this realm, shall have full power and authority by virtue of this act, by letters patents under the great seal of England or of this realm, and the lord deputy and other governor or governors of this realm for the time being, shall have likewise full power and authority by virtue of this act, by letters patents to be made by his or their warrants under the great seal of this realm, to assign, name, and authorize, when and as often as your highness, your heirs and successors, or the lord deputy, governor or governors of this realm for the time being, shall think meet and convenient, and for such and so long time as shall please your highness, your heirs or successors, or the lord deputy, governor or governors of this realm for the time being, such person or persons being natural born subjects to your highness, your heirs or successors, as your majesty, your heirs or successors, or the lord deputy, governor or governors of this realm for the time being, shall think meet to exercise, use, occupy, and execute, under your highness, your heirs and successors, all manner of jurisdiction, privileges, and pre-eminences, in any wise touching or concerning any spiritual or ecclesiastical jurisdiction within this your realm of Ireland, and visit, reform, redress, order, correct, and amend all such errors, heresies, schisms, abuses, offences, contempts, and enormities whatsoever, which by any manner spiritual or ecclesiastical power, authority, or jurisdiction, can, or may lawfully be reformed, ordered, redressed, corrected, restrained, or amended, to the pleasure of Almighty God, the increase of virtue, and the conservation of the peace and unity of this realm; and that such person or persons so to be named, assigned, authorized, and appointed by your highness, your heirs or successors, or by the lord deputy, governor or governors of this realm for the time being, in manner aforesaid, after the said letters patents to him or them made and delivered as is aforesaid, shall have full power and authority by virtue of this act, and of the said letters patents under your highness, your heirs or successors, to exercise, use, and execute all the premises according to the tenour and effect of the said letters patents; any matter or cause to the contrary in any wise notwithstanding.

Such jurisdiction annexed to the crown.

The queen by letters patents under the great seal of England, or of this realm, or the governors by letters patents under the great seal of this realm, may assign natural-born subjects, to exercise the same.

“VII. And for the better observation and maintenance of this act, may it please your highness, that it may be further enacted by the authority aforesaid, that all and every archbishop, bishop, and all and every other ecclesiastical person and other ecclesiastical officer and minister, of what estate, dignity, pre-eminence, or degree soever he or they be, or shall be, and all and every temporal judge, justicer, mayor, and other lay or temporal officer and minister, and every other person having your highness' fee or wages within this realm, shall make, take, and receive a corporal oath upon the Evangelists before such person or persons as shall please your highness, your heirs or successors, under the great seal in England, or of this realm, or the lord deputy, or other governor or governors of this realm for the time being, by letters patents to be made by his or their warrant under the great seal of this realm, to assign and name, to accept and take the same, according to the tenour and effect hereafter following, that is to say,

Who compellable to take the oath of supremacy. Ecclesiastical persons and officers, judge, justice, mayor, temporal officer, he that hath the queen's fees or wages.

“I, A. B., do utterly testify and declare in my conscience, that the queen's highness is the only supreme governor of this realm, and of all other her highness' dominions and countries, as well in all spiritual or ecclesiastical things or causes, as temporal, and that no foreign prince, person, prelate, state, or potentate, hath or ought to have any jurisdiction, power, superiority, pre-eminence, or authority, ecclesiastical or spiritual, within this realm, and therefore I do utterly renounce

The oath.

STAT. 2 ELIZ.
c. 1. [IR.]

Repealed by
3 G. & M.
c. 2, Eng., and
another oath
appointed.

Penalty for
refusing the
oath.

Forfeiture of
office and pro-
motion, during
life.

Persons to take
the oath.

He that sueth
livery or ouster
le main, that
doth homage
to the queen,
or received
into the queen's
service, that
takes orders or
degrees in the
university.

and forsake all foreign jurisdictions, power, superiorities, and authorities, and do promise, that from henceforth I shall bear faith and true allegiance to the queen's highness, her heirs and successors, and to my power shall assist and defend all jurisdictions, privileges, pre-eminences, and authorities, granted or belonging to the queen's highness, her heirs and successors, or united and annexed to the imperial crown of this realm, so help me God, and by the contents of this book.'

"VIII. And that it may be also enacted, that if any such archbishop, bishop, or any other ecclesiastical officer or minister, or any of the said temporal judges, justicer, or any other lay officer or minister, shall peremptorily, or obstinately, refuse to take or receive the said oath, that then he so refusing shall forfeit and lose, only during his life, all and every ecclesiastical and spiritual promotion, benefice, and office, and every temporal and lay promotion and office which he hath sole at the time of such refusal made; and that the whole title, interest, and incumbency, in every such promotion, benefice, and other office, as against such person only so refusing during his life, shall clearly cease and be void as though the party so refusing were dead, and that also all and every such person and persons, so refusing to take the said oath, shall immediately after such refusal be from thenceforth, during his life, disabled to retain or exercise any office or other promotion, which he at the time of such refusal had jointly or in common with any other person or persons; and that all and every person and persons that at any time hereafter shall be preferred, promoted, or collated to any archbishoprick, or bishoprick, or to any other spiritual or ecclesiastical benefice, promotion, dignity, office, or ministry, or that shall be by your highness, your heirs or successors, preferred or promoted to any temporal or lay office, ministry, or service within this realm, before he or they shall take upon him or them to receive, use, exercise, supply, or occupy any such archbishoprick, bishoprick, promotion, dignity, ministry, office, or service, shall likewise make, take, and receive the said corporal oath before mentioned, upon the Evangelist, before such persons as have or shall have authority to admit any such person to any such office, ministry, or service, or else before such person or persons as by your highness, your heirs or successors, by commission under the great seal of England, or of this realm, or by the lord deputy, or other governor or governors of this realm for the time being, by letters patents to be made by his or their warrant under the great seal of this realm, shall be named, assigned, or appointed to minister the said oath.

"IX. And that it may likewise be further enacted by authority aforesaid, that if any such person or persons as at any time hereafter shall be promoted, preferred, or collated to any such promotion spiritual or ecclesiastical benefice, office, or ministry, or that by your highness, your heirs or successors, shall be promoted or preferred to any temporal or lay office, ministry, or service, shall and do peremptorily and obstinately refuse to take the same oath so to him to be offered, that then he or they so refusing shall presently be judged disabled in the law to receive, take, and have the same promotion spiritual or ecclesiastical, the same temporal office, ministry, or service within this realm, to all intents, constructions, and purposes.

"X. And that it may be further enacted by the authority aforesaid, that all and every person and persons temporal, suing livery or ousterlemain out of the hands of your highness, your heirs or successors, before his or their livery or ousterlemain sued forth and allowed, and every temporal person or persons, doing any homage to your highness, your heirs or successors, or that shall be received into service with your highness, your heirs or successors, shall make, take, and receive the said corporal oath before mentioned, before the lord chancellor of Ireland, or keeper of the great seal for the time being, or before such person or persons as by your highness, your heirs or successors, or by the lord deputy, or other governor or governors of this realm for the time being, by letters patents to be made by his or their warrants under the great seal of this realm, shall be named and appointed to accept and receive the same; and that also all and every person and persons taking orders, and all and every other person and persons which shall be promoted or preferred to any degree of learning, in any university that here-

after shall be within this your realm, before he shall receive or take any such orders, or be preferred to any such degree of learning, shall make, take, and receive the said oath, by this act set forth and declared as is aforesaid, before his or their ordinary, commissary, chancellor or vice-chancellor, or their sufficient deputies in the said university.

“XI. Provided alway, and that it may be further enacted by the authority aforesaid, that if any person having any estate of inheritance in any temporal office or offices, shall hereafter obstinately and peremptorily refuse to accept and take the said oath as is aforesaid, and after at any time during his life shall willingly require to take and receive the said oath, and so to take and accept the same oath, before any person or persons that shall have lawful authority to minister the same, that then every such person immediately after he hath so received the same oath, shall be vested, judged, and deemed in like estate and possession of the said office, as he was before the said refusal, and shall and may use and exercise the said office in such manner and form as he should or might have done before such refusal; any thing in this act contained to the contrary in any wise notwithstanding.

“XII. And for the more sure observation of this act, and the utter extinguishment of all foreign and usurped power and authority, may it please your highness, that it may be further enacted by the authority aforesaid, that if any person or persons dwelling or inhabiting within this your realm, of what estate, dignity, or degree soever he or they be, after the end of thirty days next after the determination of this session of this present parliament, shall by writing, printing, teaching, preaching, express words, deed, or act, advisedly, maliciously, and directly affirm, hold, stand with, set forth, maintain, and defend, the authority, pre-eminence, power, or jurisdiction spiritual or ecclesiastical, of any foreign prince, prelate, person, state, or potentate whatsoever heretofore claimed, used, or usurped within this realm, or shall advisedly, maliciously, and directly put in ure or execute any thing for the extolling, advancement, setting forth, maintenance, or defence of any such pretended or usurped jurisdiction, power, pre-eminence, or authority, or any part thereof, that then every such person and persons so doing and offending, their abettors, aiders, procurers, and counsellors being thereof lawfully convicted and attainted according to the due order and course of the common laws of this realm, for his or their first offence shall forfeit and lose unto your highness, your heirs and successors, all his and their goods and chattels, as well real as personal, and if any such person so convicted or attainted shall not have or be worth of his proper goods and chattels to the value of twenty pounds, at the time of such his conviction or attainder, that then every such person so convicted and attainted over and besides the forfeiture of all his said goods and chattels, shall have and suffer imprisonment by the space of one whole year without bail or mainprise; and that also all and every the benefices, prebends, and other ecclesiastical promotions and dignities whatsoever, of every spiritual person so offending and being attainted, shall immediately after such attainder be utterly void to all intents and purposes, as though the incumbent thereof were dead; and that the patron and donor of every such benefice, prebend, spiritual promotion and dignity, shall and may lawfully present unto the same, or give the same in such manner and form as if the said incumbent were dead; and if any such offender or offenders, after such conviction or attainder, do afterwards commit or do the said offences or any of them in manner and form aforesaid, and be thereof duly convicted and attainted as is aforesaid, that then every such offender or offenders shall for the same second offence incur into the dangers, penalties, and forfeitures, ordained and provided by the Statute of Provision and Premunire, made within the realm of England in the sixteenth year of the reign of King Richard the Second, and if any such offender or offenders, at any time after the said second conviction and attainder, do the third time commit and do the said offences, or any of them, in manner and form aforesaid, and be thereof duly convicted, and attainted as aforesaid, that then every such offence or offences shall be deemed and adjudged high treason, and that the offender and the offenders

STAT. 2 ELIZ.
c. 1. [1R.]

He that has estate of inheritance in temporal office, refusing, and afterwards taking the oath, shall be vested in, and use such office, as before refusal.

Penalty of maintaining or defending foreign authority.

First offence, forfeiture of goods and chattels: a year's imprisonment besides, if he has not 20*l*.; if an ecclesiastical person, his benefice to be void, as if dead, and the patron may present.

Second offence, *premunire*, 16 Rich. 2, c. 5.

Third offence, high treason.

STAT. 2 ELIZ.
c. 1. [Ir.]

Offenders by words only, to be prosecuted within half a year.

This act not to repeal any clause in 3 & 4 P. & M. c. 8, concerning *præmunire*.

Not to prejudice persons for offences committed against statutes revived by this act, before the end of thirty days after this session. Peers indicted, to be tried by peers, as in other cases of treason and *præmunire*.

No order by this parliament for matter of religion, shall be deemed error, heresy, or schism.

Commissioners to execute spiritual jurisdiction, shall not adjudge anything heresy, but what so judged by the canonical Scriptures, or the first four general councils, or any other general council, or by parliament.

therein, being thereof lawfully convicted and attainted according to the laws of this realm, shall suffer pains of death, and other penalties, forfeitures, and losses, as in cases of high treason, by the laws of this realm.

“XIII. And also that it may likewise please your highness, that it may be enacted by the authority aforesaid, that no manner of person or persons shall be molested or impeached for any the offences aforesaid, committed or perpetrated only by preaching, teaching, or words, unless he or they be thereof lawfully indicted within the space of one half year next after his or their offences so committed; and in case any person or persons shall fortune to be imprisoned, for any of the said offences committed by preaching, teaching, or words only, and be not thereof indicted within the space of one half year next after his or their such offence so committed and done, that then the said person so imprisoned shall be set at liberty, and be no longer detained prisoner for any such cause or offence.

“XIV. Provided always, and be it enacted by authority aforesaid, that this act, or any thing therein contained, shall not in any wise extend to repeal any clause, matter, or sentence contained or specified in the said act of repeal made in the said third and fourth years of the reigns of the said late King Philip and Queen Mary, as doth in any wise touch or concern any matter in case of *præmunire*, or do make or ordain any matter or cause to be within the case of *præmunire*, but that the same, for so much only as toucheth and concerneth any case or matter of *præmunire*, shall stand and remain in full force and effect as the same was before the making of this act; any thing in this act contained to the contrary in any wise notwithstanding.

“XV. Provided also, and be it enacted by the authority aforesaid, that this act, or any thing therein contained, shall not in any wise extend or be prejudicial to any person or persons for any offence or offences committed or done, or hereafter to be committed or done, contrary to the tenour and effect of any act or statute now revived by this act, before the end of thirty days next after the end of this session of this present parliament; any thing in this act contained, or any other matter or clause to the contrary notwithstanding. And if it shall happen that any peer of this realm shall fortune to be indicted of and for any offence that is revived or made *præmunire* or treason by this act, that then the said peer or peers so being indicted, shall be put to answer to every such indictment before such peer of this realm, of English blood, as by the lord deputy, or governor or governors of this realm shall be by commission appointed under the broad seal, and to have his and their trial by his and their peers, and to receive and have such like judgment upon the same trial of his or their peers, or making open confession of the same offence or offences, as in other cases of treason or *præmunire* hath been used.

“XVI. Provided always, and be it enacted as is aforesaid, that no manner of order, act, or determination for any matter of religion or cause ecclesiastical, had or made by the authority of this present parliament, shall be accepted, deemed, interpreted, or adjudged at any time hereafter to be any error, heresy, schism, or schismatical opinion; any order, decree, sentence, constitution, or law whatsoever the same be to the contrary notwithstanding.

“XVII. Provided always, and be it enacted by the authority aforesaid, that such person or persons to whom your highness, your heirs or successors, shall hereafter by letters patents under the great seal of England, or of this realm, or the lord deputy, or other governor or governors of this realm, for the time being, by letters patents to be made by his or their warrant under the great seal of this realm, give authority to have or execute any jurisdiction, power, or authority spiritual, or to visit, reform, order or correct any errors, heresies, schisms, abuses or enormities, by virtue of this act, shall not in any wise have authority or power, or order, determine, or adjudge any matter or cause to be heresy, but only such as heretofore hath been determined, ordered, or adjudged to be heresy, by the authority of the canonical Scriptures, or by the first four general councils, or any of them, or by any other general council, wherein the same was declared heresy, by the express and plain words of the said canonical Scriptures, or such as hereafter shall be ordered, judged, or determined to be heresy by the high court of

parliament of this realm; any thing in this act contained to the contrary notwithstanding.

“XVIII. And be it further enacted by authority aforesaid, that no person or persons shall be hereafter indicted or arraigned for any the offences made, ordained, revived, and adjudged by this act, unless there be two sufficient witnesses or more to testify and declare the said offences, whereof he should be indicted or arraigned, and that the said witnesses, or so many of them as shall be living and within this realm at the time of the arraignment of such person so indicted, shall be brought forth in person, face to face before the party so arraigned, and there shall testify and declare what they can say against the party so arraigned, if he require the same.

“XIX. Provided and be it further enacted by the authority aforesaid, that if any person or persons shall hereafter happen to give any relief, aid, or comfort, or in any wise be aiding, helping, or comforting to the person or persons of any that shall hereafter happen to be an offender in any matter or case of premunire or treason revived or made by this act, that then such relief, aid, or comfort given shall not be judged or taken to be any offence, unless there be two sufficient witnesses at the least, that can and will openly testify and declare, that the person or persons that so gave such relief, aid, or comfort, had notice and knowledge of such offence committed and done by the said offender, at the time of such relief, aid, or comfort, so to be given or ministered; any thing in this act contained, or any other matter or cause to the contrary in any wise notwithstanding.”

VIII. STAT. 2 ELIZABETHÆ, C. 2. [IRELAND.] A.D. 1560.

“An Act for the Uniformity of Common Prayer and Service in the Church, and the Administration of the Sacraments.”

“Where at the death of our late sovereign lord King Edward the Sixth, there remained one uniform order of common service, prayer, and of the administration of sacraments, rites, and ceremonies in the church of England, which was set forth in one book, intituled, ‘The Book of Common Prayer, and Administration of Sacraments, and other Rites and Ceremonies in the Church of England,’ authorized by act of parliament, holden in the said realm of England, in the fifth and sixth years of our said late sovereign lord King Edward the Sixth, intituled, ‘An Act for the Uniformitie of Common Prayer, and Administration of the Sacraments;’ the which was repealed and taken away by act of parliament in the said realm of England, in the first year of the reign of our late sovereign lady Queen Mary, to the great decay of the due honour of God, and discomfort to the professors of the truth of Christ’s religion. Be it therefore enacted by the authority of this present parliament, that the said book, with the order of service, and of the administration of sacraments, rites, and ceremonies, with the alteration and additions therein added and appointed by this statute, shall stand and be from and after the feast of Pentecost, next ensuing, in full force and effect, according to the tenour and effect of this statute.

“II. And further be it enacted by the queen’s highness, with the assent of the lords and commons in this present parliament assembled, and by the authority of the same, that all and singular ministers in any cathedral or parish church, or other place within this realm of Ireland, shall from and after the feast of Saint John Baptist, then next ensuing, be bounden to say and use the mattens, even-song, celebration of the Lord’s supper, and administration of each of the sacraments, and all their common and open prayer, in such order and form as is mentioned in the said book so authorized by parliament, in the said fifth and sixth years of the reign of King Edward the Sixth, with one alteration or addition of certain lessons to be used in every Sunday in the year, and the form of the Litany altered and corrected, and two sentences only added in the delivery of the sacrament to the communicants, and none other or otherwise; and that if any manner of parson, vicar, or other whatsoever minister that ought or should sing or say common prayer mentioned in the said book, or minister the sacraments from and after the feast of Saint John the Baptist aforesaid, refuse to use the said common prayers, or to minister

STAT. 2 ELIZ.
C. 1. [IR.]

Two witnesses face to face necessary upon any offence within this act.

And upon giving relief, &c. to any offender, two witnesses necessary that the party had notice of the offence.

STAT. 2 ELIZ.
C. 2. [IR.]

Eng. 1 Eliz.
c. 2.
Eng. 5 & 6
Edw. 6. c. 1,
for uniformity of the common prayer, being repealed by 1 Mar. sess. 2, c. 2, Eng.
The Book of Common Prayer, with the order of service, sacraments, &c. and the alterations and additions by this statute, shall be in force,

And used by all ministers.

Alterations of the book set forth.
Lessons on Sunday.
Form of the Litany.
Addition of two sentences

STAT. 2 ELIZ.
c. 2. [1r.]

in delivery of
the sacrament.
Penalty on
ministers
refusing to use
said form,
or using any
other.

Preaching or
speaking in
derogation of
said book;
And convicted
thereof by ver-
dict, confes-
sion, or noto-
rious evidence
of the fact:
For first of-
fence, forfei-
ture of the
profits of his
benefice for
one year, and
six months im-
prisonment.
Second offence,
imprisonment
one year; and
deprivation,
and patron may
present as if
offender dead.
Third offence,
deprivation and
imprisonment
during life.
If not bene-
ficed, for first
offence, one
year's im-
prisonment; for
the second,
during life.

the sacraments in such cathedral or parish church, or other places as he should use to minister the same, in such order and form as they be mentioned and set forth in the said book, or shall wilfully or obstinately (standing in the same) use any other rite, ceremony, order, form, or manner of celebrating of the Lord's supper openly or privily, or mattens, evensong, administration of the sacraments, or other open prayers, is mentioned and set forth in the said book; (open prayer in and throughout this act, is meant that prayer which is for other to come unto, or hear, either in common churches or privy chapels, or oratories, commonly called the service of the church;) or shall preach, declare, or speak any thing in the derogation or depraving of the said book, or any thing therein contained, or of any part thereof, and shall be thereof lawfully convicted according to the laws of this realm, by verdict of twelve men, or by his own confession, or by the notorious evidence of the fact, shall lose and forfeit to the queen's highness, her heirs and successors, for his first offence, the profit of all his spiritual benefices or promotions coming or arising in one whole year next after his conviction, and also the person so convicted shall for the same offence suffer imprisonment by the space of six months without bail or mainprise; and if any such person once convicted of any offence concerning the premises, shall after his first conviction afterwards offend and be thereof in form aforesaid lawfully convicted, that then the same person shall for his second offence suffer imprisonment by the space of one whole year, and after shall therefore be deprived (*ipso facto*) of all his spiritual promotions; and that it shall be lawful to all patrons or donors of all and singular the same spiritual promotions, or any of them, to present or collate unto the same as though the person or persons so offending were dead; and that if any such person or persons, after he shall be twice convicted in the form aforesaid, shall offend against any of the premises the third time, and shall be thereof in form aforesaid lawfully convicted, that then the person so offending and convicted the third time, shall be deprived (*ipso facto*) of all his spiritual promotions, and also shall suffer imprisonment during his life; and if the person that shall offend and be convicted in form aforesaid, concerning any of the premises, shall not be beneficed, nor have any spiritual promotion, that the same person so offending and convicted shall for the first offence suffer imprisonment during one whole year next after his said conviction, without bail or mainprise; and if any such person not having any spiritual promotion, after his first conviction shall afterwards offend in any thing concerning the premises, and shall in form aforesaid be thereof lawfully convicted, that then the same person shall for his second offence suffer imprisonment during his life.

For depraving
or despising
said book,
or causing
other prayer to
be said or sung,

or interrupting
the minister.

First offence,
after convic-
tion, 100
marks;

Second offence,
400 marks;

"III. And it is ordained and enacted by the authority abovesaid, that if any person or persons whatsoever, after the said feast of Saint John Baptist, shall in any interludes, plays, songs, rhymes, or by other open words, declare or speak any thing in derogation, depraving, or despising of the same book, or of any thing therein contained, or any part thereof, or shall by open fact, deed, or by open threatenings compel or cause, or otherwise procure or maintain any person, vicar, or other minister, in any cathedral or parish church, or in chapel, or in any other place, to sing or say any common and open prayer, or to minister any sacrament otherwise, or in any other manner and form than is mentioned in the said book, or that by any of the said means shall unlawfully interrupt, or let any person, vicar, or other minister in any cathedral or parish church, chapel, or any other place, to sing or say common and open prayer, or to minister the sacraments or any of them, in such manner and form as is mentioned in the said book, that then every such person being thereof lawfully convicted in form abovesaid, shall forfeit to the queen our sovereign lady, her heirs and successors, for the first offence an hundred marks; and if any person or persons, being once convicted of any such offence, afterwards offend against any of the last recited offences, and shall in form aforesaid be thereof lawfully convicted, that then the same person so offending and convicted, shall for the second offence forfeit to the queen our sovereign lady, her heirs and successors, four hundred marks; and if any person, after he in form aforesaid shall have been twice convicted of any offence concerning any of the last recited offences, shall offend the third time, and be thereof in form abovesaid law-

fully convict, that then every person, so offending and convict, shall for his third offence forfeit to our sovereign lady the queen all his goods and chattels, and shall suffer imprisonment during his life. And if any person or persons, that for his first offence concerning the premises shall be convict in form aforesaid, do not pay the sum to be paid by virtue of his conviction, in such manner and form as the same ought to be paid, within six weeks next after his conviction, that then every person, so convict, and so not paying the same, shall for the same first offence, instead of the said sum, suffer imprisonment by the space of six months without bail or mainprise; and if any person or persons, that for his second offence concerning the premises shall be convict in form aforesaid, do not pay the said sum to be paid by virtue of his conviction and this statute, in such manner and form as the same ought to be paid, within six weeks next after his said second conviction, that then every person, so convicted and not so paying the same, shall for the same second offence, in the stead of the said sum, suffer imprisonment during twelve months without bail or mainprise; and that from and after the said feast of Saint John Baptist all and every person and persons inhabiting within this realm shall diligently and faithfully, having no lawful or reasonable excuse to be absent, endeavour themselves to resort to their parish church or chapel accustomed, or upon reasonable let thereof to some usual place, where common prayer and such service of God shall be used in such time of let, upon every Sunday and other days, ordained and used to be kept as holy days, and then and there to abide orderly and soberly during the time of the common prayer, preachings, or other service of God, there to be used and ministered, upon pain of punishment by the censures of the church, and also upon pain that every person so offending shall forfeit for every such offence twelve pence, to be levied by the churchwardens of the parish where such offence shall be done, to the use of the poor of the same parish, of the goods, lands, and tenements of such offender by way of distress; and for the due execution thereof the queen's most excellent majesty, the lords temporal, and all the commons in this present parliament assembled, do in God's name earnestly require and charge all archbishops, bishops, and other ordinaries, that they shall endeavour themselves to the uttermost of their knowledges, that the due and true execution hereof may be had throughout their dioceses and charges, as they will answer before God for such evils and plagues, wherewith Almighty God may justly punish his people for neglecting this good and wholesome law.

“IV. And for their authority in this behalf, be it further enacted by the authority aforesaid, that all and singular the same archbishops, bishops, and all other their officers, exercising ecclesiastical jurisdiction as well in place exempt as not exempt within their dioceses, shall have full power and authority by this act to reform, correct, and punish by censures of the church all and singular persons which shall offend within any their jurisdictions or dioceses after the said feast of Saint John Baptist against this act and statute; any other law, statute, privilege, liberty, or provision heretofore made, had, or suffered, to the contrary notwithstanding.

“V. And it is ordained and enacted by the authority aforesaid, that all and every justices of the peace, gaol delivery, of Oyer and Determiner, or justices of assize, shall have full power and authority in every of their open and general sessions to inquire, hear, and determine all and all manner of offences that shall be committed or done contrary to any article contained in this present act, within the limits of the commission to them directed, and to make process for the execution of the same, as they may do against any person being indicted before them of trespass, or lawfully convicted thereof.

“VI. Provided always, and be it enacted by the authority aforesaid, that all and every archbishop and bishop shall and may at all time and times at his liberty and pleasure join and associate himself by virtue of this act to the said justices of the peace, gaol delivery, of Oyer and Determiner, or to the said justices of assize, at every of the said open and general sessions to be holden in any place within his diocese for and to the inquiry, hearing, and determining of the offences aforesaid.

STAT. 2 ELIZ.
c. 2. [IR.]

Third offence, forfeiture of goods and chattels, and imprisonment for life.

If said sum for first offence not paid in six weeks, instead thereof imprisonment for six months; for second offence, if not paid, twelve months.

All persons not having reasonable excuse, shall resort to their parish church on holy-days, on pain of censures of church and 12*d.* levied by the churchwardens, to use of the poor, by way of distress.

Ordinaries required and charged to put this act in execution. And have power to punish by censures of the church.

Justices of peace, &c. may hear and determine said offences, and make process for execution.

The bishop may join with said justices in the inquiry at the open sessions within his diocese.

STAT. 2 ELIZ.
c. 2. [1R.]

Books provided
at cost of the
parishioners.

Indictment at
the next general
assizes.

Lords for said
third offence,
to be tried by
their peers.

Head officers
of corporations
to which said
justices do not
commonly re-
pair, may in
like manner
inquire of said
offences yearly
in fifteen days
after Easter and
Michaelmas.
Ordinaries, &c.
may inquire
and punish as
heretofore by
the ecclesiastical
laws.

No one to be
punished twice
viz. by the
justices and
ordinary, for
same offence.

Such orna-
ments of the
church and
ministers to be
retained, as in
2 Edw. 6, until
other order by
the queen, &c.
who may pub-
lish further
ceremonies or
rites.

“VII. Provided also, and be it enacted by the authority aforesaid, that the books concerning the said services shall, at the costs and charges of the parishioners of every parish and cathedral church, be attained and gotten before the said feast of Saint John the Baptist; and that all such parishes and cathedral churches, or other places where the said books shall be attained and gotten before the said feast of Saint John Baptist aforesaid, shall within three weeks next after the said books so attained and gotten, use the said service, and put the same in use according to this act.

“VIII. And be it further enacted by the authority aforesaid, that no person or persons shall be at any time hereafter impeached or otherwise molested of or for any of the offences above mentioned, hereafter to be committed or done contrary to this act, unless he or they so offending be thereof indicted at the next general session to be holden before any such justices of the peace, gaol delivery, of Oyer and Determiner, or justices of assize next after any offence committed or done contrary to the tenor of this act.

“IX. Provided always, and be it ordained and enacted by the authority aforesaid, that all and singular lords of the parliament, for the third offence above mentioned, shall be tried by their peers, before such peer of this realm of English blood, as by the lord deputy, or other governor or governors of this realm, for the time being, shall be by commission appointed under the broad seal.

“X. Provided also, and be it ordained and enacted by the authority aforesaid, that the mayor of Dublin, and all other mayors, bailiffs, and other head officers of all and singular cities, boroughs, and towns corporate within this realm, to the which justices of peace, or of gaol delivery, or assize, do not commonly repair, shall have full power and authority, by virtue of this act, to inquire, hear, and determine the offences abovesaid, and every of them, yearly within fifteen days after the feast of Easter and Saint Michael the Archangel, in like manner and form as justices of the peace, gaol delivery, assize, and Oyer and Determiner, may do.

“XI. Provided always, and be it ordained and enacted by the authority aforesaid, that all and singular archbishops, and bishops, and every of their chancellors, commissaries, archdeacons, and other ordinaries, having any peculiar ecclesiastical jurisdiction, shall have full power and authority by virtue of this act, as well to inquire in their visitation, synods, and elsewhere within their jurisdictions, at any other time and place, and to take accusations and informations of all and every the things abovesaid, done, committed, or perpetrated within the limits of their jurisdictions and authority, and to punish the same by admonition, excommunication, sequestration, or deprivation, and other censures and processes, in like form as heretofore hath been used in like cases by the queen's ecclesiastical laws.

“XII. Provided always, and be it enacted, that whatsoever person offending in the premises, shall for the offence first receive punishment of the ordinary, having a testimony thereof under the said ordinaries' seals, shall not for the same offence afterwards be convicted before the justices, and likewise, receiving for the said first offence, punishment by the justicers, he shall not for the same offence afterwards receive punishment of the ordinary: any thing contained in this act to the contrary notwithstanding.

“XIII. Provided always, and be it enacted, that such ornaments of the church, and of the ministers thereof, shall be retained and be in use, as was in the church of England by the authority of parliament, in the second year of the reign of King Edward the Sixth, until other order shall be therein taken by the authority of the queen's majesty, with the advice of her commissioners appointed and authorized under the great seal of England, or of this realm, for causes ecclesiastical, or by the authority of the lord deputy, or other governor or governors of this realm for the time being, with the advice of the council of this realm under the great seal of this realm, and also that if there shall happen any contempt or irreverence to be used in the ceremonies or rites of the church, by the misusing of the orders appointed in this book, the queen's majesty may by the like advice of the said commissioners, or the lord deputy, or other governor or governors of

this realm for the time being, with the advice of the council of this realm, ordain and publish such further ceremonies or rites, as may be most for the advancement of God's glory, the edifying of this church, and the due reverence of Christ's holy mysteries and sacraments. STAT. 2 ELIZ. c. 2. [IR.]

“XIV. And be it further enacted by the authority aforesaid, that all laws, statutes, and ordinances wherein or whereby any other service, administration of sacraments, or common prayer is limited, established, or set forth to be used within this realm, shall from henceforth be utterly void and of none effect. All laws and ordinances for other service, void. Eng. 5 Ann. c. 5.

“XV. And forasmuch as in most places of this realm, there cannot be found English ministers to serve in the churches or places appointed for common prayer, or to minister the sacraments to the people, and that if some good mean were provided, that they might use the prayer, service, and administration of sacraments set out and established by this act, in such language as they might best understand, the due honour of God should be thereby much advanced; and for that also, that the same may not be in their native language, as well for difficulty to get it printed, as that few in the whole realm can read the Irish letters. We do therefore most humbly beseech your majesty that with your highness' favour and royal assent, it may be enacted, ordained, established, and provided by the authority of this present parliament, that in every such church or place, where the common minister or priest hath not the use or knowledge of the English tongue, it shall be lawful for the same common minister or priest to say and use the matins, even song, celebration of the Lord's supper, and administration of each of the sacraments, and all their common and open prayer in the Latin tongue, in such order and form as they be mentioned and set forth in the said book established by this act, and according to the tenor of this act, and none otherwise, nor in other manner: any thing before expressed and contained in this act to the contrary notwithstanding.” Where the minister cannot speak English, he may use the Latin tongue in the service, in such form as in said book, and according to the tenor of this act, and none otherwise.

IX. STAT. 2 ELIZABETHÆ, c. 3(1). [IRELAND.] A.D. 1560.

“An Act for the Restitution of the First-fruits, and Twentieth Part, and Rents reserved nomine Tenth or Twentieth, and of Parsonages Impropriate(2) to the Imperial Crown of this Realm.”

STAT. 2 ELIZ. c. 3. [IR.]

“In their most humble wise beseeching your most excellent majesty, your faithful and humble subjects the lords spiritual and temporal, and the commons of this your realm in this present parliament assembled, that where in the parliament of your most noble father of famous memory, King Henry the Eighth, holden at Dublin, the first day of May, in the xxviii. year of his prosperous reign, and after prorogued, adjourned, and continued as by the roll of the same parliament more at large appeareth, it was enacted, ordained, and established by the authority of the same parliament, amongst other things, that his highness, his heirs and successors, kings of the realm of England, should have and enjoy from time to time to endure for ever, of every such person and persons, which at any time after the first day of that parliament should be nominated, elected, prefected, presented, collated, or by any other means appointed to have any archbishoprick, bishoprick, archdeaconry, deanery, prebend, parsonage, or vicarage, within the land and dominion of Ireland, of what name, nature, or quality soever they be, or to whose foundation, patronage, or gift soever they belong, the annat, commonly called within this land, the ane first-fruits, revenues, and profits for one year, of every such archbishoprick, bishoprick, archdeaconry, deanery, prebend, parsonage, and vicarage aforementioned, whereunto any such person or persons should at any time or times after the said first day of that parliament be nominated, elected, prefected, presented, collated, or by any other means appointed, and that every such person and persons before any actual or real possession, or meddling with the profits of any such archbishoprick, bishoprick, deanery, prebend, parsonage, or vicarage, should satisfy, content, and pay, compound or agree to pay to the king's Eng. 1 Eliz. c. 4.
2 Geo. 1, c. 15.
10 Geo. 1, c. 7.

Recital of 28 Hen. 8, c. 8, for first-fruits.

(1) Partly repealed by Stat. 3 & 4 Gul. 4, (2) *Impropriate*:—Vide ante 379, n. (2). c. 37.

STAT. 2 ELIZ.
c. 3. [Ir.]
28 Hen. 8,
c. 26.

28 Hen. 8,
c. 14, of the
twentieth part.

Which were
justly and
without con-
tradiction of
the clergy paid
to the crown,
to the great
relief and sup-
port thereof,
for twenty
years.

Queen Mary's
zealous, but
not politic
respects.
The crown
requiring
augmentation
rather than
diminution.
By Stat. 3 & 4

use, at reasonable days upon good sureties, the said 'annat or ane,' the first-fruits and profits for one year: and where also in the same parliament it was enacted and established, that the king's majesty, his heirs and successors, kings of England, should have and enjoy from time to time, to endure for ever, of every such person and persons which, at any time after the first day of the same parliament, should be nominated, elected, perfected, presented, collated, or by any other means appointed to any abbey, priory, college, hospital, the priory or hospital of Saint John the Baptist of Jerusalem in Ireland, or any commandry of the same religion within the land and dominion of Ireland, of what nature or quality soever they be, or to whose foundation, patronage, or gift soever they belong, the annat, commonly called within this land the ane, first-fruits, that is to say, the revenues and profits for one whole year of every such abbey, priory, college, hospital, the priory or hospital of Saint John Baptist of Jerusalem in Ireland, and of every the commandries aforementioned, whereunto such person or persons should, at any time or times after the said first day of that parliament, be nominated, elected, perfected, presented, collated, or by any other means appointed, and that every such person and persons, before any actual or real possession, or meddling with the profits of any such abbey, priory, college, hospital, the priory or hospital of Saint John the Baptist of Jerusalem, or any commandry, should satisfy, content, and pay, compound or agree to pay to the king's use, at reasonable days upon good sureties, the said annat or ane, first-fruits and profits for one whole year. And where also in the same parliament it was enacted and established, that the king's majesty, his heirs and successors, kings of the realm of England, for more augmentation and maintenance of the royal estate of his imperial crown, should yearly have, take, enjoy, and receive, united and knit to his imperial crown for ever, one yearly rent or pension, amounting to the value of the twentieth part of all the revenues, rents, fermes, tithes, emoluments, offerings, and of all other profits, as well called spiritual as temporal, then appertaining or belonging, or that thereafter should belong to any archbishoprick, bishoprick, abbey, monastery, priory, archdeaconry, deanery, hospital, commandry, college, house collegiate, prebend, cathedral church, collegiate church, conventual church, parsonage, vicarage, chantry, or free chapel, or other benefice or promotion spiritual, of what name, nature, or quality soever they be, within any diocese of the said land, the said pension or annual rent to be yearly paid for ever to the king's majesty, his heirs and successors, kings of England, at the feast of the Nativity of our Lord God, and the first payment thereof to begin at the feast of the Nativity of our Lord God, a thousand five hundred thirty and seven, and to be paid yearly by such as should be appointed to have the collection thereof by the said act, in such manner and form as should after be limited by that act, by reason of which premises the said perpetual revenues of the first-fruit and twentieth part granted by the said acts, in augmentation and maintenance of the crown of this realm, were well and justly answered and paid unto the late Queen Mary, your highness' sister's use and behoof, in her court of exchequer within this realm, like as the same had been unto the two noble kings, her said father and her brother, by the space of twenty years, without grief or contradiction of the prelates and clergy of this realm, to the great aid, relief, and supportation of the inestimable charges of the crown of this realm, which daily, sithence the time of the making of the said acts, have increased and grown more and more; which thing, although the said late queen might and did manifestly feel and perceive to be most true, yet she by procurement of King Philip, her late husband, upon zealous and inconvenient respects not sufficiently nor politically enough weighing that matter, nor having due consideration and regard to the maintenance, upholding, and good continuance of the state of the imperial crown of this realm in succession, which rather needed an augmentation than any diminution, willed in an act of parliament to be made and provided in the third and fourth years of the reigns of the said King Philip and her, that all payments of the said first-fruits should from thenceforth cease, and be clearly extinct and determined for ever, and that as well all the said benefices and spiritual promotions, as the possessors, owners, and

incumbents thereof, and their successors, should from and after the eighth day of August in the second and third years of the said late king and queen, and so from thenceforth at all times for ever to be clearly exonerated, acquitted, and discharged against the said late King Philip and Queen Mary, her heirs and successors, of and from the payment and payments of all and every the said first-fruits, in as ample and large manner and form as they were before the making of the said acts in the first and original grants thereof in the said eight and twentieth year of the reign of the said late king your noble father, and as though the same had never been had ne made: and further, that neither the said perpetual pension and annual rent or tenth mentioned and contained in the said act, made in the said eight and twentieth year of the reign of the said noble King Henry the Eighth, nor also the several rents and tenths, reserved by and upon any letters patents of your said noble father sithence the said eighth and twentieth year of his reign, and of your said dearest brother, and the said King Philip and Queen Mary, or either of them, for and in the name of a tenth, or any of them, from and after the first day of that parliament should not be paid or payable unto the said late king and queen, her heirs or successors, but that as well all and singular the archbishopricks, bishopricks, and other benefices, dignities, deans, and chapters, colleges, corporations, and spiritual promotions aforesaid, as all and every possessor, owner, proprietary, and incumbent of the same, and their successors, and every of them, from and after the said first day of that parliament, should be clearly exonerated, acquitted, and discharged of and for the payment of the said perpetual pension, annual rents, or tenths aforesaid, and of the said tenths reserved upon the said letters patents, and of every of them against them, and the heirs and successors of the same late queen for ever; and furthermore, that the said late King Philip and Queen Mary, her heirs and successors, from and after the first day of that parliament, should not receive, perceive, take, and enjoy any the issues, revenues, profits, or commodities of any the rectories, parsonages, benefices, glebe lands, tithes, oblations, pensions, portions, and other profits and emoluments ecclesiastical or spiritual, which the said late king and queen then had and enjoyed by title of inheritance, in right of the said late queen, or of any of them, or of the reversion or reversions of them, or of any of them, but in and by the said act the same late king and queen clearly gave over, renounced, and relinquished, as well the said rectories, parsonages, benefices, glebe lands, tithes, oblations, pensions, portions, and other profits and emoluments, ecclesiastical and spiritual aforesaid, and every of them, and the reversion and reversions of them and every of them, and all their right, title, use, interest, and demand of, in, or to the same, from them and the heirs and successors of the same late queen for ever, as also the said perpetual pension, annual rent and tenth, and also yearly rents reserved for and in the name of a tenth, upon the said several letters patents, and all the right, title, and interest, which they or either of them, or the heirs or successors of the said late queen, had or might have had in or to the same; the same yearly pension, tenths, yearly rents, parsonages, emoluments, and profits to be perceived, taken, received, converted, employed, used, and disposed by the late reverend father in God, Reginald Poole, late cardinal and legate, and such other persons as he should name and appoint, and such other as been specially limited in the said act, to and for certain uses, purposes, and intents mentioned in the same act, with divers provisions and savings in the same expressed and contained, as by the same more at large appeareth: we your said humble and obedient subjects, the lords spiritual and temporal, and the commons in this your present parliament assembled, calling to our remembrance the huge, innumerable, and inestimable charges of the royal estate and imperial crown of this realm, and how the same was left unto your majesty at your first entry thereunto, greatly diminished as well by reason of the said act, made in the said third and fourth years of the said King Philip and Queen Mary, as otherwise, do conceive at the bottom of our hearts great sorrow and heaviness, as subjects careful for their natural and liege sovereign lady, upon whom dependeth the surety, worldly joy, and wealth of us all; and being no less affected towards your majesty's most royal person, and the preservation and main-

STAT. 2 ELIZ.
c. 3. [I.R.]

P. & M. c. 10,
these payments
to cease.

Considering
the innumera-
ble charges of
the crown, and
how much the
royal estate
diminished.

STAT. 2 ELIZ.
c. 3. [1R.]

For remedy
thereof.
Enacting part.

Repeal of
3 & 4 P. & M.

Payment of
first-fruits
revived.

The twentieth
part, &c. re-
vived and an-
nexed to the
crown, in as
ample manner
as before.

The said sta-
tutes 28 Hen.
8, revived.

tenance of the same, and of the estate and succession of your majesty's said crown, than were the first granters of the said first-fruits and twentieth part toward your highness' most noble father and his said royal estate at the time of their said grants to him thereof made, do account of very right and good congruence no less than our most bounden duty to move your highness, and therewith most humbly to beseech the same, that the great disherison and decay, committed and done to the crown and estate royal of this your realm and the succession thereof by reason of the said act made in the said third and fourth years of the reigns of the said late King Philip and Queen Mary, at this parliament be reformed and avoided, and that with your highness' favour and royal estate it may be enacted, ordained, established, and provided by authority of this parliament in manner and form hereafter insuing, that is to say, that the said act made in the third and fourth years of the reign of the said late King Philip and Queen Mary, and all articles, clauses, and sentences, therein contained, shall be from and after the first day of this present parliament utterly and clearly repealed, made void, and of no force ne effect; and all liberties and authorities granted, limited, and appointed, in and by the said act to the said late Cardinal Poole, or made or derived by force, strength, or colour of the same act by or from the said late cardinal to any other person or persons, bodies politic or corporate, to cease and be utterly void and determined; and that the said first-fruits and all payments thereof from and after the said first day of this parliament shall be revived, and have their being and continuance again, and be deemed and adjudged to all intents, constructions, and purposes in the queen's highness' most royal person, her heirs and successors, and united and annexed to the imperial crown of this realm of and in such like, and the same estate, interest, title, quality, sort, degree, and condition, and in as ample and beneficial manner and form, as the same was or were in the person or possessions of the said late Queen Mary, and before the said eighth day of August, the said act of extinguishment mentioned and expressed; the same act of extinguishment, or any letters patents, or any other matter or thing, had, done, or suffered by the said late king and queen, or any of them, to the contrary thereof in any wise notwithstanding: and also that as well so much of the said perpetual and annual twentieth part and pension granted by the said act, made in the said eight and twentieth year of the reign of the said late King Henry the Eighth, as also so much of the said yearly rents, reserved upon the said several letters patents *nomine decimæ* or *vicesimæ partis*, and also so many of the said rectories, parsonages, and benefices impropriate, glebe lands, tithes, oblations, pensions, portions, and other profits and emoluments ecclesiastical and spiritual aforesaid, and the reversion and reversions thereof, and all rents, emoluments, conditions, and profits incident to the same, as were in the hands and possession of the said late Queen Mary at and before the said first day of the said parliament holden in the said third and fourth years, shall from the twentieth day of November in the first year of the reign of our said sovereign lady Queen Elizabeth be vested, adjudged, and deemed actually and really in the seisin and possession of her majesty, her heirs and successors, to all intents, constructions, and purposes, of and in such like and the same estate, interest, order, degree, quality, sort, and condition, and as fully, wholly, largely, and beneficially, as the same were in the seisin and possession of the said late Queen Mary at and before the said first day of the said parliament in the said third and fourth years: and that as well the said first-fruits and twentieth part, as also the said annual rents reserved *nomine decimæ* or *vicesimæ*, and the said rectories, parsonages, benefices, glebe lands, tithes, oblations, pensions, portions, and other profits and emoluments ecclesiastical and spiritual aforesaid, and every of them, and the reversion and reversions of them, and of all rents and profits unto the same or any of them incident or belonging, shall be ordered and answerable in and at the queen's highness' court of the exchequer, in every degree, sort, and condition, as they were at and before the said first day of the said parliament in the third and fourth years aforesaid; the said act made in the said third and fourth years, or any other matter or thing to the contrary thereof notwithstanding; and that all and every the said acts and

statutes made in the said eight and twentieth year of the said late King Henry the Eighth, and all articles, clauses, and sentences in them and every of them contained, shall be, remain, and continue in their full and perfect strength and forces, and be observed and put in due execution according to the tenour and purports of the same, and of every of them; and that the queen's majesty, her heirs, and successors, by authority of this present parliament shall from the said first day of this present parliament have, hold, possess, and enjoy for ever the advowsons, gifts, and patronages, of all vicarages belonging or incident to any of the said rectories and parsonages impropriate in the same sort, quality, condition, and degree, to all intents and purports, as the same were in the person and possession of the late Queen Mary at and before the said first day of the said parliament, in the said third and fourth years; any thing or act done by the same late cardinal, or any grant or grants by letters patents made by the said late Queen Mary of the said advowsons and patronages, or any of them, to any ecclesiastical or spiritual person or persons, or any spiritual corporation, to the contrary in any wise notwithstanding; saving to all and every person and persons, bodies politic and corporate, and their heirs, executors, successors, and assigns, and every of them, other than such persons as be mentioned and named in any letters patents, made by the said Queen Mary at any time sithence the said first day of the said parliament in the said third and fourth years, or claiming only by or under the authority and strength of the same act or letters patents, or any of them, all such right, title, interest, estate, offices, leases, grants, annuities, pensions, fees, corrodies, rents, and other yearly profits and commodities, as they or any of them ought or should have had, perceived, or enjoyed of, in, or by reason of any the parsonages, rectories, or of any other the premises, in case the said former act now repealed and this present act of repeal had never been had ne made; any thing in the same acts, or any of them contained or sounding to the contrary thereof, in any wise to the contrary notwithstanding.

STAT. 2 ELIZ.
c. 3. [1r.]

The queen to have advowson of vicarages belonging to rectories, &c.

Saving the rights of others.

“II. And be it further enacted by the authority aforesaid, that from and after the said twentieth day of November, and so from thenceforth from time to time, the said pensions, annuities, rents, corrodies, fees, and other yearly payments, shall be paid and payable only by our said sovereign lady, her heirs and successors, at the receipt of the exchequer, or in such other places as the queen's majesty, her heirs and successors, shall appoint, to all and every person or persons, that ought to have and enjoy the same, in such sort, order, and form, as the same should or ought to have been paid and payable, in case the said act now repealed had never been had ne made, any thing therein or else in this act contained to the contrary thereof in any wise notwithstanding.

Pensions, &c. how to be paid.

“III. And be it further enacted by the authority aforesaid, that all and singular incumbents, proprietaries, tenants, fermors, lessees, and occupiers of the premises, or any part thereof, their heirs, executors, and assigns, which the said first day of this present parliament were behind or in any arrearages of and with the rents, farms, tenths, twentieth part, or other revenues, profits, or duties, by them or any of them, due and payable for or by reason of the premises, or any of them, shall and may by the authority of this act be severally chargeable, accomptable, and answerable to the queen's majesty, her heirs, and successors, in and at the said court of the exchequer, of and for the same arrearages and duties, as other the accomptants been and shall be in the same court; any thing in the said act now repealed in this act, or any other matter or cause to the contrary thereof in any wise notwithstanding.

Arrear of rents, &c. chargeable to the queen.

“IV. And yet nevertheless, the queen's most excellent majesty at the humble request of her said subjects, of her abundant grace and bountifulness, is pleased and contented, that it be enacted by the authority aforesaid, that all and singular vicarages, not exceeding the yearly value of six pounds, thirteen shillings, four pence, after the rate and value upon the records and books of the rates and values of the first-fruits and twentieth part, now remaining in the exchequer, or that shall hereafter come and remain in the same court, and also all and singular parsonages, not exceeding the yearly value of five pounds after the like rate and

Vicarages not exceeding 6*l.* 13*s.* 4*d.* and parsonages 5*l.* after the books of rates in the exchequer, discharged from first-fruits.

STAT. 2 ELIZ.
c. 3. [1R.]

Incumbent living half a year after last avoidance, so as he hath, or without fraud might have received the profits, and before end of the other half year dying, or lawfully evicted, chargeable only with the fourth part of first-fruits.
If he lives one year, chargeable with a moiety.

Living a year and a half, chargeable with three parts.

Living two years, chargeable with the whole.

Leases before 20th December, 1 Eliz. for twenty-one years, or three lives, of the premises, commonly let to farm, then out of lease, or only one year to come, and

valuation, and the incumbents thereof, and every of them, their executors, administrators, successors, and sureties, and every of them, from the said twentieth day of November shall be free and clearly discharged and acquitted for ever against the said queen's majesty, her heirs and successors, of and from the said first-fruits; any thing in these acts of the first-fruits, made in the said eight and twentieth year of the reign of the said late King Henry the Eighth, or in this act of repeal, or any other act or acts before recited, to the contrary thereof, in any wise notwithstanding.

"V. Provided always, and be it enacted by the authority aforesaid, that if any incumbent of any such promotion spiritual, as is aforesaid, charged or chargeable to the payment of the said first-fruits, happen to live to the end of one half year next after the last avoidance of the same promotion spiritual, so as he hath received, or without fraud or covin, might lawfully have received and enjoyed, the rents and profits of that half year, and before the end of the other half year then next following shall happen to die, or to be lawfully evicted, removed, or put from the promotion spiritual by judgment in any action at the common law, without fraud or covin, that then every such incumbent, his heirs, executors, administrators, and sureties, shall be charged and chargeable but only with the fourth part of the first-fruits due, to be paid for such his promotion, and with no more of the said first-fruits; any thing in this act contained, or any bond or writing to be made for the payment of the said first-fruits, or any other matter or cause to the contrary notwithstanding: and if it shall happen any such incumbent to live by the space of one whole year next after the last avoidance of the same promotion spiritual, and after before the end of one half year then next following shall fortune to die, or to be lawfully evicted, removed, or put from the said promotion spiritual by judgment in any action at the common law without fraud or covin, that then every such incumbent, his heirs, executors, administrators, and sureties, shall be charged and chargeable but only with the moiety and one half of the first-fruits due to be paid for such his promotion spiritual, and with no more of the same first-fruits; any thing in this act contained, or any bond or writing obligatory to be made for the payment of the same first-fruits, or any other matter or cause to the contrary, notwithstanding. And if it shall happen any such incumbent to live to the end of one whole year and half next after the last avoidance of such promotion spiritual, and after and before the end of six months then next following, shall fortune to die, or to be lawfully evicted, removed, or put from the said promotion spiritual by judgment in any action at the common law without fraud or covin, that then every such incumbent, his heirs, executors, administrators, and sureties, shall be charged and chargeable but only with three parts of the first-fruits of the same promotion spiritual, in four parts to be divided, and with no more; any thing in this act contained, or any bond or writing obligatory had or made for the payment of the first-fruits, or any other matter or cause to the contrary, notwithstanding. And if it shall happen any such incumbent to live to the end of two whole years next after the last avoidance of the same promotion spiritual, and not to be lawfully evicted, removed, or put from the said promotion spiritual, as is aforesaid, then every such incumbent, his heirs, executors, administrators, and sureties, shall content and pay to our said sovereign lady the queen, her heirs and successors, the whole first-fruits due to be paid for the same promotion spiritual, according to the statutes aforesaid.

"VI. Provided also, and be it enacted, that all leases made before the twentieth day of December in the first year of your majesty's reign for one and twenty years, or three lives at the most, by any person or persons, bodies politick or corporate, being lawfully seised of or in any of the said parsonages impropriate, or of or in any other the premises, wont commonly to be set or let to ferm, then being out of lease, or whereof there was not at the time of the making of the said lease or leases any former lease to endure above one year then to come at the most, and upon which new lease or leases the old yearly rent accustomed to be paid for the same the space of twenty years last before the making of such lease or leases, or more yearly rent is reserved and payable during the said term, and all

other lawful grants by them or any of them heretofore made of any office or offices, in old time wont commonly to be granted, shall be as good and effectual in the law, as though this act or any thing therein contained had not been had or made.

years last reserved, and also grants of offices wont to be granted,

“VII. Provided always, and be it further enacted by the authority of this parliament, that no person or persons presented, instituted, or inducted, at any time sithence the first day of this present parliament, or that shall be presented, instituted, or inducted on this side of the feast of the Annunciation of our blessed lady Saint Mary next coming, to any the said spiritual or ecclesiastical promotions, chargeable to or with the payment of the first-fruits, or one year’s profits of such promotion, shall incur any penalty or forfeiture by entering into any of the said spiritual or ecclesiastical promotions, or by taking the profits thereof for the non-payment or not compounding of or for the first-fruits thereof; so that he, or any other for him, shall or do compound for the same first-fruits according to the true meaning of this statute before the said feast of the Annunciation of our blessed lady Saint Mary; any thing in this act contained to the contrary notwithstanding.

“VIII. Provided also, that this act, or any thing therein contained, shall not in any wise extend to charge any hospital founded and used, and the possessions thereof employed, to and for the relief of poor people, or any school or schools, or the possessions or revenues of them, or any of them, with the payment of any twentieth part or first-fruits; any thing in this act before mentioned to the contrary in any wise notwithstanding.”

X. STAT. 2 ELIZABETHÆ, c. 4. [IRELAND.] A.D. 1560.

“An Act for the Conferring and Consecrating of Archbishops and Bishops within this Realm.”

“Forasmuch as the elections of the archbishops and bishops by deans and chapters within the queen’s majesty’s realm of Ireland at this present time be as well to the long delay as to the great costs and charges of such persons, as the queen’s majesty giveth any archbishoprick or bishoprick unto: and whereas the said elections be in very deed no elections, but only by a writ of *conge d’eslire*, have colours, shadows, or pretences of elections, serving nevertheless to no purpose, and seeming also derogatory and prejudicial to the queen’s prerogative royal, to whom only appertaineth the collation and gift of all archbishopricks, and bishopricks and suffragan bishops within this her highness’ realm: for a due reformation hereof, be it therefore enacted by the queen’s highness with the assent of the lords spiritual and temporal and the commons in this present parliament assembled, and by the authority of the same, that from henceforth no such *conge d’eslire* be granted, nor election of any archbishop or bishop by the dean and chapter made, but that the queen’s majesty, her heirs and successors, may by their letters patents under the great seal of England or of this realm, or the lord deputy, or other governor or governors of this realm for the time being, having instructions, letters missive, or other warrant signed by the queen’s majesty, her heirs and successors, for the same purpose, may by letters patents to be made by his or their warrant under the great seal of this realm at all times when any archbishoprick or bishoprick be void, confer the same to any person, whom the queen, her heirs or successors, shall think meet; the which collation so by letters patents made in manner aforesaid, and delivered to the person whom the queen, her heirs or successors, shall confer the same archbishoprick or bishoprick, or to his sufficient proctor and attorney, shall stand to all intents, constructions, and purposes, to as much and the same effect as though *conge d’eslire* had been given, the election duly made, and the same confirmed; and that upon that the said person, to whom the said archbishoprick, bishoprick, or suffraganship is so conferred, collated, or given, may be consecrated, and sue his livery or *ouster le maine*, and do other things, as well as if all the said ceremonies and elections had been done and made.

“II. And be it likewise enacted by the said authority, that every such colla-

STAT. 2 ELIZ.
c. 3. [Ir.]

upon which
the old rent
for twenty
shall be valid.

Persons presented, &c.
since the first
day of this
parliament, or
on this side
the feast of
Annunciation
next, not to
incur penalty
or forfeiture,
so that they
compound
before the
Annunciation.

Hospitals for
the poor, and
schools, not
to be charged
with first-fruits
or twentieth
part.

STAT. 2 ELIZ.
c. 4. [Ir.]

Eng. 1 Edw
6, c. 2.
Elections of
bishops by
deans and
chapters, being
to the delay,
costs, and
charges of the
persons.
And being only
shadows of
elections.
And derogatory
to king’s
prerogative.
No such election
to be made
or *conge
d’eslire* granted,
but the
queen, or deputy,
&c. by
warrant may
by letters patents
collate such
persons as
the queen,
&c. shall think
fit.
Upon which
the person collated
may be
consecrated,
&c. as if all
said ceremonies
observed.

STAT. 2 ELIZ.
c. 4. [1R.]

If to a bishoprick, signified to the archbishop of the province; if the see void, then to such archbishop as by the queen, or deputy, instructed as aforesaid.

Which archbishop and bishop shall, with all speed, invest and consecrate the person conferred, give the pall, &c. without suing to foreign power.

Persons so conferred, and suing their temporalities, and making oath and fealty only to the queen, shall be thronized and installed, and have their restitution out of the queen's hands, and obeyed as archbishops, &c.

Penalty of *præmunire*, in the statutes 25 Edw. 3, and 16 Rich. 2, c. 5, upon refusing to invest and consecrate within twenty days after the letters patent come to their hands, or executing any thing to contrary of this act.

tion to be made in manner aforesaid, if it be to the office and dignity of a bishop, shall be signified to the archbishop of the province, where the see of the same bishoprick is void; if the see of the said archbishoprick be then full, and not void; and if it be void, then to be signified to such archbishop within this realm as shall please the queen's highness, her heirs or successors, or the lord deputy, or other governor or governors of this realm, for the time being, having instructions, letters missive, or warrant signed by the queen's majesty, her heirs or successors, in manner aforesaid; and if any such collation shall happen to be made, to the dignity of any archbishop, then the same shall be signified in manner and form aforesaid, to one such archbishop, and two such bishops, or else to four such bishops in this realm, as shall be assigned by our said sovereign lady, her heirs and successors, or by the lord deputy or other governor or governors of this realm, for the time being, having instructions, letters missive, or other warrants, as is aforesaid.

"III. And be it enacted by the authority aforesaid, that whensoever any such collation shall be made by the queen's highness, her heirs or successors, or by the lord deputy or other governor or governors of this realm, for the time being, in manner aforesaid, by virtue and authority of this act, and according to the tenor of the same, that then every archbishop and bishop, to whom any such collation shall be signified, shall, with all speed and celerity, invest and consecrate the person conferred aforesaid, to the office and dignity that such person shall be so conferred unto, and give use to him, pall, and all other benedictions, ceremonies, and things requisite for the same, without suing, procuring, or obtaining hereafter any bulls, or other things, by or from any foreign authority or power, for any such office or dignity, in any behalf.

"IV. And be it further enacted by the authority aforesaid, that every person and persons, being hereafter conferred, invested, and consecrated to the dignity or office of any archbishoprick, or bishoprick within this realm, according to the form, tenor, and effect of this present act, and suing their temporalities out of the queen's hands, her heirs and successors, as hath been accustomed, and making such oath and fealty only to the queen's majesty, her heirs and successors, and to none other, as shall be limited and appointed for that purpose, shall and may from henceforth be thronized, or installed, as the case shall require, and shall have and take their only restitution out of the queen's hands, and of all the possessions and profits, spiritual and temporal, belonging to the said archbishoprick or bishoprick, whereunto they shall be so conferred, and shall be obeyed in all manner of things, according to the name, title, degree, and dignity, that they shall be so conferred unto, and do and execute every thing and things, touching the same, as any archbishop, or bishop of this realm, without offending of the prerogatives royal of this crown, and the laws and customs of this realm, might at any time heretofore do.

"V. And be it further enacted by the authority aforesaid, that if any archbishop or bishop within this realm, after such collation shall be signified unto them, in manner and form before rehearsed, shall refuse, and do not invest and consecrate with all due circumstance, as is aforesaid, every such person that shall be so conferred, and to them signified, as is above mentioned, within twenty days next after the queen's letters patents, of such collation as shall come to their hands, or else, if any of them, or any other person or persons admit, maintain, allow, obey, do, or execute any censures, excommunications, interdictions, inhibitions, or any other process or act, of what name, nature, or quality soever it be, to the contrary or let of due execution of this act, that then every archbishop and bishop, and all other persons so offending, and doing contrary to this act, or any part thereof, and their aiders, counsellors and abettors, shall run in the dangerous pains and penalties of the Statutes of Provisors and *Præmunire*, made within the realm of England, in the five-and-twentieth year of the reign of King Edward the Third, and in the sixteenth year of King Richard the Second."

XI. STAT. 2 ELIZABETHÆ, c. 7. [IRELAND.] A.D. 1560.

STAT. 2 ELIZ.
c. 7. [IR.]

“An Act for the Restitution of the late Priory or Hospital of St. John’s, Jerusalem, in Ireland, and of all the Manors, Lordships, Commandries, and Hereditaments of the same, to the Imperial Crown of this Realm.”

XII. STAT. 5 ELIZABETHÆ, c. 1 (1). A.D. 1562.

STAT. 5 ELIZ.
c. 1.

“An Act for the Assurance of the Queen’s Royal Power over all Estates and Subjects within her Dominions.”

“For preservation of the queen’s most excellent highness, her heirs and successors, and the dignity of the imperial crown of this realm of England, and for the avoiding both of such hurts, perils, dishonours, and inconveniences, as have before-time befallen, as well to the queen’s majesty’s noble progenitors, kings of this realm, as for the whole estate thereof, by means of the jurisdiction and power of the see of Rome, unjustly claimed and usurped within this realm and the dominions thereof, and also of the dangers by the fautors of the said usurped power, at this time grown to marvellous outrage and licentious boldness, and now requiring more sharp restraint and correction of laws, than hitherto in the time of the queen’s majesty’s most mild and merciful reign have been had, used, or established:

“II. Be it therefore enacted, ordained, and established, by the queen our sovereign lady, and the lords spiritual and temporal, and the commons, in this present parliament assembled, and by authority of the same, that if any person and persons, dwelling, inhabiting, or resiant within this realm, or within any other the queen’s dominions, seigniories, or countries, or in the marches of the same, or elsewhere within or under her obeisance and power, of what estate, dignity, pre-eminence, order, degree, or condition soever he or they be, after the first day of April, which shall be in the year of our Lord God one thousand five hundred sixty-three, shall by writing, cyphering, printing, preaching, or teaching, deed or act, advisedly and wittingly hold or stand with, to extol, set forth, maintain, or defend the authority, jurisdiction, or power of the Bishop of Rome, or of his see, heretofore claimed, used, or usurped within this realm, or in any dominion or country, being of, within, or under the queen’s power or obeisance; or by any speech, open deed or act, advisedly and wittingly attribute any such manner of jurisdiction, authority, or pre-eminence to the said see of Rome, or to any bishop of the same see for the time being, within this realm, or in any the queen’s dominions or countries: that then every such person or persons so doing or offending, *their abettors, procurers, and counsellors, and also their aiders, assistants, and comforters* (2), upon purpose, and to the intent to set forth, further, and extol the said usurped power, authority, or jurisdiction of any of the said bishop or bishops of Rome, and every of them, being thereof lawfully indicted or presented within one year next after any such offences by him or them committed, and being lawfully convicted or attainted at any time after, according to the laws of this realm, for every such default and offence, shall incur into the dangers, penalties, pains, and forfeitures ordained and provided by the Statute of Provision and Præmunire, made in the sixteenth year of the reign of King Richard the Second.

The penalty for maintaining the authority of the bishop or see of Rome.
28 Hen. 8,
c. 10.
13 Eliz. c. 2.

16 Rich. 2,
c. 5.

“III. And it also enacted by the authority aforesaid, that as well justices of assize in their circuits, as justices of the peace within the limits of their commission and authorities, or two of every such justices of the peace at the least, whereof one to be of the quorum, shall have full power and authority, by virtue of this act, in their quarter or open sessions, to inquire of all offences, contempts and transgressions, perpetrated, committed, or done contrary to the true meaning of the

What justices may inquire of, and certify the offences aforesaid.

(1) *Vide post.* Stat. 13 Eliz. c. 2. Stat. 23 Eliz. c. 1. Stat. 23 Geo. 2, c. 28. Stat. 1 & 2 Gul. 4, c. 9.

(2) *Their abettors, procurers, and counsellors, and also their aiders, assistants, and comforters*—An indictment against any

such person must be, *knowing* the principal to be a maintainer of the jurisdiction of the Pope; and to say, *against the form of the statute* only, is not sufficient. 3 Burn’s E. L. by Phillimore, 145.

STAT. 5 ELIZ.
c. 1.

The penalty for
default of cer-
tificate of the
said offences.

The justices
of the King's
Bench may hear
and determine
the offences
aforesaid.

These shall
take the oath
set forth anno
1 Eliz. c. 1.

Takers of
ecclesiastical
orders, degrees
in the universi-
ties, school-
masters, utter-
barristers,
benchers, read-
ers, ancients,
prothonotaries,
attorneys, phi-
lizers, sheriffs,
escheators,
feodaries,
officers at the
common law,
officer of any
court.

1 Eliz. c. 1.

The bishop
may tender the

premises, in like manner and form as they may of other offences against the queen's peace; and shall certify every presentment afore them or any of them had or made concerning the same, or any part thereof, before the queen, her heirs and successors, in her or their court, commonly called the King's Bench, within forty days next after any such presentment had or made, if the term be then open; and if not, at the first day of the full term next following the said forty days; upon pain that every of the justices of assize, or justices of the peace, before whom such presentment shall be made, making default of such certificate, contrary to this statute, to lose and forfeit for every such default one hundred pounds to the queen's highness, her heirs and successors.

"IV. And it is enacted by the authority aforesaid, that the justices of the King's Bench, as well upon every such certificate, as by inquiry before themselves, within the limits of their authorities, shall have full power and authority to hear, order, and determine every such offence done or committed contrary to the true meaning of this present act, according to the laws of this realm, in such like manner and form to all intents and purposes, as if the person or persons, against whom any presentment shall be had upon this statute, had been presented upon any matter or offence expressed in the said statute made in the said sixteenth year of the reign of King Richard the Second.

"V. And moreover, be it enacted by the authority aforesaid, that as well all manner of persons expressed and appointed in and by the act made in the first year of the queen's majesty's reign that now is, intituled, 'An Act restoring to the Crown the ancient Jurisdiction over the Estate Ecclesiastical and Spiritual, and abolishing all Foreign Powers repugnant to the same,' to take the oath expressed and set forth in the same: as all other persons which have taken or shall take orders, commonly called *ordines sacros*, or ecclesiastical orders, have been or shall be promoted, preferred, or admitted to any degree of learning in any university within this realm or dominions to the same belonging: and all school-masters and public and private teachers of children; as also all manner of person and persons that have taken or hereafter shall take any degree of learning in or at the common laws of this realm, as well utter-barristers as benchers, readers, ancients in any house or houses of court, and all principal treasurers, and such as be of the grand company of every inn of Chancery, and all attorneys, prothonotaries and philizers, towards the laws of this realm, and all manner of sheriffs, escheators, and feodaries, and all other person and persons which have taken or shall take upon him or them, or have been or shall be admitted to any ministry or office, in, at, or belonging to the common law, or any other law or laws, of, to, or for the execution of them, or any of them, used or allowed, or at any time hereafter to be used or allowed, within this realm or any of the dominions or countries belonging, or which hereafter shall happen to belong, to the crown or dignity of the same; and all other officers or ministers of or towards any court whatsoever, and every of them, shall take and pronounce a corporal oath upon the Evangelists, before he or they shall be admitted, allowed, or suffered to take upon him or them to use, exercise, supply, or occupy any such vocation, office, degree, ministry, room, or service, as is aforesaid, and that in the open court whereunto he doth or shall serve or belong: and if he or they do not or shall not serve or belong to any ordinary or open court, then he or they shall take and pronounce the oath aforesaid, in an open place before a convenient assembly, to witness the same, and before such person or persons as have or shall have authority by common use or otherwise, to admit or call any such person or persons, as is aforesaid, to any such vocation, office, ministry, room, or service, or else before such person or persons, as by the queen's highness, her heirs or successors, by commission under the great seal of England, shall be named or assigned, to accept and take the same, according to the tenour, effect, and form of the same oath verbatim, which is, and as it is already set forth to be taken, in the aforesaid act made in the first year of the queen's majesty's reign.

"VI. And also be it enacted by the authority of this present parliament, that every archbishop and bishop within this realm, and dominions of the same, shall

have full power and authority by virtue of this act, to tender or minister the oath aforesaid, to every or any spiritual or ecclesiastical person within their proper diocese, as well in places and jurisdictions exempt, as elsewhere.

“VII. And be it enacted by the authority aforesaid, that the lord chancellor or keeper of the great seal of England for the time being shall and may at all times hereafter, by virtue of this act, without further warrant, make and direct a commission or commissions under the great seal of England, to any person or persons, giving them or some of them thereby authority to tender and minister the oath aforesaid, to such person or persons, as by the aforesaid commission or commissions the said commissioners shall be authorized to tender the same oath unto.

“VIII. And be it also further enacted by the authority of this present parliament, that if any person or persons appointed or compellable by this act, or by the said act made in the said first year, to take the said oath; or if any person or persons to whom the said oath by any such commission or commissions shall be limited and appointed to be tendered, as is aforesaid, do or shall, at the time of the said oath so tendered, refuse to take or pronounce the said oath in manner and form aforesaid, that then the party so refusing, and being thereof lawfully indicted or presented within one year next after any such refusal, and convicted or attainted at any time after, according to the laws of this realm, shall suffer and incur the dangers, penalties, pains, and forfeitures, ordained and provided by the Statute of Provision and Premunire aforesaid, made in the sixteenth year of the reign of King Richard the Second.

“IX. And furthermore be it enacted by the authority aforesaid, that all and every such person and persons, having authority to tender the oath aforesaid, shall within forty days next after such refusal or refusals of the said oath, if the term be then open, and if not, then at the first day of the full term next following the said forty days, make true certificate under his or their seal or seals of the names, places, and degrees of the person or persons so refusing the same oath, before the queen, her heirs or successors, in her or their court, commonly called the King's Bench; upon pain that every of the said persons having such authority to tender the said oath, making default of such certificate, shall for every such default forfeit an hundred pounds to the queen's highness, her heirs or successors; and that the sheriff of the county where the said court, commonly called the King's Bench, shall for the time be holden, shall or may by virtue of this act impanel a jury of the same county, to inquire of and upon every such refusal and refusals; which jury shall or may upon every such certificate, and other evidence to them in that behalf to be given, by virtue of this act, proceed to indict the person and persons so offending in such sort and degree, to all intents and purposes, as the same jury may do of any offence or offences against the queen's majesty's peace, perpetrated, committed, or done within the same county, of and for which the same jury is so impanelled.

“X. And for stronger defence and maintenance of this act, it is further ordained, enacted, and established by the authority aforesaid, that if any such offender or offenders, as is aforesaid, of the first part or branch of this statute, that is to say, by writing, cyphering, printing, preaching, or teaching, deed or act, advisedly and wittingly hold or stand with, to extol, set forth, maintain, or defend the authority, jurisdiction, or power of the Bishop of Rome, or of his see, heretofore claimed, used, or usurped within this realm, or in any dominion or country, being of, within or under the queen's power and obeisance: or by any speech, open deed or act, advisedly and wittingly attribute any such manner of jurisdiction, authority, or pre-eminence to the said see of Rome, or to any bishop of the same see for the time being, within this realm, or in any the queen's dominions or countries; or be to any such offender or offenders abetting, procuring, or counselling, or aiding, assisting, or comforting, upon purpose, and to the intent to set forth, further, and extol the said usurped power, authority, or jurisdiction, after such conviction and attainder as is aforesaid, do afterwards commit or do the said offences or any of them, in manner and form aforesaid, and be thereof duly convicted and attainted as is aforesaid.

STAT. 5 ELIZ. c. 1.

oath to any spiritual person. The lord chancellor may direct a commission to take the oath of any person.

The penalty for the first refusal of the oath.

16 Rich. 2, c. 5.

Certificate of refusal into the King's Bench. Savil, 47.

Dyer, 234.

Indictment of the offender.

It shall be treason the second time to maintain the authority of the bishop or see of Rome, or to refuse the oath.

STAT. 5 ELIZ.
c. 1.

No corruption
of blood or
forfeiture of
dower for any
attainder by
this act.

How the oath
expressed anno
1 Eliz. c. 1,
shall be ex-
pounded.

In what courts
and places this
act shall be
published.

"XI. And also, that if any the persons above named and appointed by this act to take the oath aforesaid, do after the space of three months next after the first tender thereof, the second time refuse to take and pronounce, or do not take and pronounce the same, in form aforesaid to be tendered, that then every such offender or offenders, for the same second offence and offences, shall forfeit, lose, and suffer such like and the same pains, forfeitures, judgment and execution, as is used in cases of high treason.

"XII. Provided always, that this act, nor any thing therein contained, nor any attainder to be had by force and virtue of this act, shall not extend to make any corruption of blood, the disheriting of any heir, forfeiture of dower, nor to the prejudice of the right or title of any person or persons, other than the right or title of the offender or offenders, during his, her, or their natural lives only.

"XIII. And that it shall and may be lawful to every person and persons, to whom the right or interest of any lands, tenements, or hereditaments, after the death of any such offender or offenders, should or might have appertained, if no such attainder had been, to enter into the same, without any *ouster le main* to be sued, in such sort as he or they might have done, if this act had never been had ne made.

"XIV. Provided also, that the oath expressed in the said act made in the said first year, shall be taken and expounded in such form as is set forth in an *admonition* (1) annexed to the queen's majesty's injunctions, published in the first year of her majesty's reign; that is to say, to confess and acknowledge in her majesty, her heirs and successors, none other authority than that was challenged and lately used by the noble King Henry the Eighth and *King Edward the Sixth* (2); as in the said admonition more plainly may appear.

"XV. And be it enacted by the authority aforesaid, that this act shall be openly read, published, and declared at every quarter-sessions by the clerk of the peace, and at every leet and law-day by the steward of the court, and once in every term in the open hall of every house and houses of court and chancery, at

(1) *Admonition*.—Which admonition was in the following words:

"The queen's majesty being informed, that in certain places of the realm, sundry of her native subjects being called to ecclesiastical ministry of the church, be, by sinister persuasion and perverse construction, induced to find some scruple in the form of an oath, which by an act of the last parliament is prescribed to be required of divers persons, for the recognition of their allegiance to her majesty; which certainly never was meant, nor by any equity of words or good sense can be thereof gathered; would, that all her loving subjects should understand, that nothing was, is, or shall be meant or intended by the same oath to have any other duty, allegiance, or bond required by the same oath, than was acknowledged to be due to the most noble kings of famous memory, King Henry the Eighth, her majesty's father, or King Edward the Sixth, her majesty's brother.

"And further, her majesty forbiddeth all manner her subjects to give ear or credit to such perverse and malicious persons, which most sinisterly and maliciously labour to notify to her loving subjects, how by words of the said oath it may be collected, that the kings or queens of this realm, possessors of the crown, may challenge authority and power of ministry of divine service in the church, wherein her said subjects be much abused by such evil disposed persons. For

certainly her majesty neither doth, nor ever will challenge any authority, than that was challenged and lately used by the said noble kings of famous memory, King Henry the Eighth, and King Edward the Sixth, which is, and was of ancient time, due to the imperial crown of this realm, that is, under God, to have the sovereignty and rule over all manner of persons born within these her realms, dominions, and countries, of what estate, either ecclesiastical or temporal, soever they be, so as no other foreign power shall or ought to have any superiority over them. And if any person, that hath conceived any other sense of the form of the said oath, shall accept the same oath with this interpretation, sense, or meaning, her majesty is well pleased to accept every such in that behalf, as her good and obedient subjects, and shall acquit them of all manner of penalties contained in the said act, against such as shall peremptorily or obstinately take the same oath."

(2) *King Edward the Sixth*.—In whose reign the Reformatio Legum thus expresses the notion then entertained of the royal supremacy: "Rex tam in archiepiscopos, episcopos, clericos, et alios ministros, quam in laicos infra sua regna et dominia, plenissimam jurisdictionem, tam civilem quam ecclesiasticam habet, et exercere potest; cum omnis jurisdictio et ecclesiastica et secularis ab eo tanquam ex uno et eodem fonte derivantur."

the times, and by the persons thereunto to be limited and appointed by the lord chancellor or keeper of the great seal for the time being.

“XVI. And be it further enacted, that every person which hereafter shall be elected or appointed a knight, citizen, or burgess, or baron for any of the five ports, for any parliament or parliaments hereafter to be holden, shall from henceforth, before he shall enter into the parliament-house, or have any voice there, openly receive and pronounce the said oath before the lord steward for the time being, or his deputy or deputies for that time to be appointed: and that he which shall enter into the parliament-house without taking the said oath, shall be deemed no knight, citizen, burgess, nor baron for that parliament, nor shall have any voice, but shall be to all intents, constructions, and purposes, as if he had never been returned nor elected knight, citizen, burgess, or baron for that parliament, and shall suffer such pains and penalties, as if he had presumed to sit in the same without election, return, or authority.

“XVII. Provided alway, that forasmuch as the queen’s majesty is otherwise sufficiently assured of the faith and loyalty of the temporal lords of her high court of parliament; therefore this act, nor any thing therein contained, shall not extend to compel any temporal person, of or above the degree of a baron of this realm, to take or pronounce the oath abovesaid, nor to incur any penalty limited by this act, for not taking or refusing the same; anything in this act to the contrary in any wise notwithstanding.

“XVIII. Provided, and be it enacted by the authority aforesaid, that *charitable giving of reasonable alms* (1) to any of the offender or offenders above specified, without fraud or covin, shall not be taken or interpreted to be any such abatement, procuring, counselling, aiding, assisting, or comforting, as thereby the giver of such alms shall incur any pain, penalty, or forfeiture appointed in this act.

“XIX. Provided also, and be it enacted by the authority of this present parliament, that if any peer of this realm shall hereafter offend contrary to this act or any branch or article thereof, that in that and all such case and cases they shall be tried by their peers, in such manner and form as in other cases of treasons they have used to be tried, and by none other means.

“XX. Provided also further, and be it enacted, that no person shall be compelled by virtue of this act to take the oath above-mentioned, at or upon the second time of offering the same, according to the form appointed by this statute, except the same person hath been, is, or shall be an ecclesiastical person, that had, hath, or shall have in the time of one of the reigns of the queen’s majesty’s most noble father, brother, or sister, or in the time of the reign of the queen’s majesty, her heirs or successors, charge, cure, or office in the church; or such person or persons as had, hath, or hereafter shall have, any office or ministry in any ecclesiastical court of this realm, under any archbishop or bishop, in any the times or reigns aforesaid; or such person or persons as shall wilfully refuse to observe the orders and rites for divine service, that be authorized to be used and observed in the Church of England, after that he or they shall be publicly by the ordinary, or some of his officers for ecclesiastical causes, admonished to keep and observe the same; or such as shall openly and advisedly deprave by words, writings, or any other open fact, any of the rites and ceremonies at any time used and authorized to be used in the Church of England; or that shall say or hear the private mass prohibited by the laws of this realm; and that all such persons shall be compellable to take the oath upon the second tender or offer of the same, and incur the penalties for not taking of the said oath, and none other.

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c. 1.

Every knight, citizen, and burgess of the parliament, shall take the said oath before the lord steward or his deputy.

None of or above the degree of a baron shall be compelled to take the said oath.

Charitable giving of alms to offenders shall be no cause of forfeiture.

Peers offending shall be tried by their peers.

Who only shall be compelled to take the oath upon the second tender.

(1) *Charitable giving of reasonable alms*:—This special clause of giving alms not to make an aider or comforter, if the alms be reasonable and without covin, though the offender be not imprisoned nor under bail, is in accordance with the principles of the common law; and it seems even by the common law, if a physician or surgeon min-

ister help to an offender sick or wounded, though he know him to be an offender even in treason, this makes him not a traitor, for it is done upon the account of common humanity; but it will be misprision of treason if he know it, and do not discover him. 3 Burn’s E. L. by Phillimore, 145.

STAT. 5 ELIZ.
c. 1.

It is not lawful
to slay one
attainted in a
præmunire.
25 Edw. 3,
St. V. c. 22.

“XXI. And forasmuch as it is doubtful, whether by the laws of this realm there be any punishment for such as kill or slay any person or persons attainted in or upon a *præmunire*: be it therefore enacted by authority aforesaid, that it shall not be lawful to any person or persons, to slay or kill any person or persons in any manner attainted, or hereafter to be attainted, of, in, or upon any *præmunire*, by pretence, reason, or authority of any judgment given, or hereafter to be given, in or upon the same, or by pretence, reason, or force of any word or words, thing or things contained or specified in any Statute, or Law of Provision and *Præmunire* or in any of them; any law, statute, or opinion, or exposition of any law or statute to the contrary in any wise notwithstanding.

Punishments
inflicted by
former laws.

“XXII. Saving always the due execution of all and every person and persons attainted, or to be attainted, for any offence whereupon judgment of death now is or ought to be, or hereafter may lawfully be given, by reason of this statute or otherwise; and saving always all and every such pains of death, or other hurt or punishment, as heretofore might, without danger of law, be done upon any person or persons that shall send or bring into this realm, or any other the queen’s dominions, or within the same, shall execute any summons, sentence, excommunication, or other process against any person or persons, from the Bishop of Rome for the time being, or by or from the see of Rome, or the authority or jurisdiction of the same see.

Upon what
proof only any
person may be
indicted.

“XXIII. Provided always, and be it enacted by the authority aforesaid, that no person or persons shall hereafter be indicted for assisting, aiding, maintaining, comforting, or abetting of any person or persons for any the said offences, in extolling, setting forth, or defending of the usurped power and authority of the Bishop of Rome, unless he or they be thereof lawfully accused by such good and sufficient testimony or proof, as by the jury by whom he shall so be indicted, shall be thought good, lawful, and sufficient, to prove him or them guilty of the said offences.”

STAT. 5 ELIZ.
c. 5.

XIII. STAT. 5 ELIZABETHÆ, c. 5. A.D. 1562.

“An Act touching Politick Constitutions for the Maintenance of the Navy.”

[Ss. XIV.—XXIII., XXXVI.—XXXIX., LI., respecting abstinence from flesh meat, repealed.]

STAT. 5 ELIZ.
c. 9.

XIV. STAT. 5 ELIZABETHÆ, c. 9. A.D. 1562.

“An Act for Punishment of such as shall procure or commit any wilful Perjury.”

[S. XI., rights of the ecclesiastical court to punish for perjury, reserved.]

STAT. 5 ELIZ.
c. 23.

XV. STAT. 5 ELIZABETHÆ, c. 23 (1). A.D. 1562.

“An Act for the due Execution of the Writ De Excommunicato Capiendo.”

The order of
awarding and
returning the
writ of *excommu-
nicato capi-
endo*: what is
to be done up-
on the party’s
appearance,
and what if he
cannot be
found, and the
cause of award-
ing this writ.
4 Inst. 219.
Cro. El. 144.
1 Bulstr. 122.

“Forasmuch as divers persons offending in many great crimes and offences appertaining merely to the jurisdiction and determination of the ecclesiastical courts and judges of this realm are many times unpunished for lack and want of the good and due execution of the writ *de excommunicato capiendo*, directed to the sheriff of any county, for the taking and apprehending of such offenders: the great abuse whereof, as it should seem, hath grown for that the said writ is not returnable into any court that might have the judgment of the well-executing and serving of the said writ according to the contents thereof; but hitherto have been left only to the discretion of the sheriffs and their deputies, by whose negligences and defaults for the most part the said writ is not executed upon the offenders as it ought to be: by reason whereof such offenders be greatly encouraged to continue their sinful and criminous life, much to the displeasure of Almighty God, and to the great contempt of the ecclesiastical laws of this realm.
3 Bulstr. 92. 3 Inst. 39. 12 Co. 77. 1 Roll. 174.

(1) *Vide* Stat. 53 Geo. 3, c. 127. Stat. Stat. 2 & 3 Gul. 4, c. 93. Stat. 3 & 4 Gul. 11 Geo. 4 & 1 Gul. 4, c. 70, ss. 13 & 14. 4, c. 41, s. 28. Stat. 6 & 7 Gul. 4, c. 87.

“II. Wherefore, for the redress thereof, be it enacted by the queen’s most excellent majesty, with the assent of the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, that from and after the first day of May next coming, every writ of *excommunicato capiendo* that shall be granted and awarded out of the high court of Chancery, against any person or persons within the realm of England, shall be made in the time of the term, and returnable before the queen’s highness, her heirs and successors, in the court commonly called the *King’s Bench* (1), in the term next after the *teste* of the same writ; and that the same writ shall be made to contain at the least twenty days between the *teste* and the return thereof: and after the same writ shall be so made and sealed, that then the said writ shall be forthwith *brought into the said court* (2) of King’s Bench, and there, in the presence of the justices, shall be opened and delivered of record to the sheriff or other officer to whom the serving and execution thereof shall appertain, or to his or their deputy or deputies: and if afterwards it shall or may appear to the justices of the same court for the time being, that the same writ so delivered of record be not duly returned before them at the day of the return thereof, or that any other default or negligence hath been used or had in the not well serving and executing of the said writ; that then the justices of the said court shall and may, by authority of this act, assess such amerciamment upon the said sheriff or other officer in whom such default shall appear, as to the discretion of the said justices shall be thought meet and convenient; which amerciamment so assessed shall be estreated into the court of exchequer, as other amerciamments have been used.

“III. And be it further enacted by the authority aforesaid, that the sheriff or other officer to whom such writ of *excommunicato capiendo*, or other process by virtue of this act shall be directed, shall not in any wise be compelled to bring the body of such person or persons as shall be named in the said writ or process, into the said court of the King’s Bench at the day of the return thereof; but shall only return the same writ and process thither, with declaration briefly how and in what manner he hath served and executed the same, to the intent that thereupon the said justices may then further therein proceed, according to the tenor and effect of this present act.

“IV. And if the said sheriff or other officer to whom the execution of the said writ shall so appertain, do or shall return that the party or parties named in the said writ cannot be found within his bailiwick; that then the said justices of the King’s Bench for the time being, upon every such return, shall award one writ of *capias* (3) against the said person or persons named in the said writ of *excommunicato capiendo*, returnable in the same court in the term-time, two months at least next after the *teste* thereof, with a proclamation to be contained within the said writ of *capias*, that the sheriff or other officer to whom the said writ shall be directed, in the full county-court, or else at the general assizes and gaol-delivery to be holden within the said county, or at a quarter-sessions to be holden before the justices of the peace within the said county, shall make open proclamation ten days at the least before the return, that the party or parties named in the said

STAT. 5 ELIZ.
c. 23.

Awarding and returning of *excommunicato capiendo*.

1 Salk. 293.

Cro. Jac. 567.
Cro. Car. 583.
1 Sid. 165,
285.

The sheriff shall be amerced for not returning of the writ.

What shall be done with the body of the excommunicate.

If the sheriff return *non est inventus*.

First *capias*.
Cro. Jac. 566.
Latch, 174.
1 Sid. 181.
1 Roll. 174.

(1) *King’s Bench*.—Before this statute, the writ was returnable into Chancery; and there the *significavit* was quashed if undue; but now, the judgment of that, by this statute, is devolved to the court of King’s Bench. *St. David’s (the Bishop of) case*, cit. Gibson’s Codex, 1056.

(2) *Brought into the said court*.—It was held, in *Anon.* (Cro. Jac. 567,) that this form of taking out the writ, and the several steps therein, (as contained in this clause of the act,) ought to be precisely pursued, and that the writ should be brought and delivered openly in court, and for default thereof, the parties would be discharged. *Parker’s case*, Cro. Car. 583. *Rex v. Colgate*, Sid. 165.

(3) *Capias*.—The penalties of this act were only inflicted upon those who were excommunicated for some of the causes specified in sect. 13; the *capias*, accordingly, could not be with penalty, in any other case; (*Brown’s case*, Latch, 174; *Anon.* Sid. 181;) or, if it issued so by mistake, a *supersedeas* would have been granted by the court upon motion; and, if the party were taken, the court would, upon pleading, (after the *habeas corpus* was granted and returned,) have discharged him from the penalties, though not from the imprisonment. In consideration of which pleading, and the trouble and charge that attended it, it was said, that he might have an attachment against the plaintiff. *Sterling’s case*, 1 Roll. 174.

STAT. 5 ELIZ.
c. 23.

write shall, within six days next after such proclamation, yield his or their body or bodies to the gaol or prison of the said sheriff or other such officer, there to remain as a prisoner, according to the tenour and effect of the first writ of *excommunicato capiendo*, upon pain of forfeiture of ten pounds: and thereupon after such proclamation had, and the said six days past and expired, then the said sheriff or other officer to whom such writ of *capias* shall be directed, shall make return of the same writ of *capias* into the said court of the King's Bench, of all that he hath done in the execution thereof, and whether the party named in the said writ have yielded his body to prison or not.

Ten pounds
forfeiture for
not appearing
upon the first
capias.

"V. And if upon the return of the said sheriff it shall appear that the party or parties named in the same writ of *capias*, or any of them, have not yielded their bodies to the gaol and prison of the said sheriff or other officer according to the effect of the same proclamation; that then every such person that so shall make default, shall for every such default forfeit to the queen's highness, her heirs and successors, ten pounds; which shall likewise be estreated by the said justices into the said court of Exchequer, in such manner and form as fines and amercia-ments there taxed and assessed are used to be.

Second *capias*.

"VI. And thereupon the said justices of the King's Bench shall also award forth one other writ of *capias*, against the person or persons that so shall be returned to have made default, with such like proclamation as was contained in the first *capias*, and a pain of twenty pounds, to be mentioned in the said second writ and proclamation: and the sheriff or other officer to whom the said writ of second *capias* shall be so directed, shall serve and execute the said second writ in such like manner and form as before is expressed for the serving and executing of the said first writ of *capias*. And if the sheriff or other officer shall return upon the said second *capias*, that he hath made the proclamation according to the tenour and effect of the same writ, and that the party hath not yielded his body to prison according to the tenour of the said proclamation, that then the said party that so shall make default, shall for such his contempt and default forfeit to the queen's highness, her heirs and successors, the sum of twenty pounds; which said sum of twenty pounds the said justices of the King's Bench for the time being shall likewise cause to be estreated into the said court of Exchequer, in manner and form aforesaid.

Twenty pounds
forfeiture upon
the second
capias.

Third *capias*.

"VII. And then the said justices shall likewise award forth one other writ of *capias* against the said party, with such like proclamation and pain of forfeiture, as was contained in the said second writ of *capias*; and the sheriff or other officer to whom the said third writ of *capias* shall so be directed, shall serve and execute the said third writ of *capias* in such like manner and form as before in this act is expressed and declared, for the serving and executing of the said first and second writs of *capias*. And if the sheriff or other officer to whom the execution of the said third writ shall appertain, do make return of the said third writ of *capias*, that the party upon such proclamation hath not yielded his body to prison according to the tenour thereof; that then every such party for every such contempt and default shall likewise forfeit to the queen's majesty, her heirs, and successors, other xx. *li.*, which sum of xx. *li.* shall likewise be estreated into the said court of the Exchequer in manner and form aforesaid: and thereupon the said justices of the King's Bench shall likewise award forth one writ of *capias* against the said party, with like proclamation and like pain of forfeiture of xx. *li.* And that also the said justices shall have authority by this act, infinitely to award such process of *capias*, with such like proclamation and pain of forfeiture of xx. *li.* as is before limited, against the said party that so shall make default in yielding of his body to the prison of the sheriff, until such time as by return of some of the said writs before the said justices, it shall and may appear, that the said party hath yielded himself to the custody of the said sheriff or other officer, according to the tenour of the said proclamation; and that the party upon every default and contempt by him made against the proclamation of any of the said writs so infinitely to be awarded against him, shall incur like pain and forfeiture of xx. *li.*, which shall likewise be estreated in manner and form aforesaid.

Twenty pounds
forfeit upon
the third
capias.
Awarding of
capias infi-
nitely, and xx.
li. forfeit upon
every of them.

“VIII. And be it further enacted by the authority aforesaid, that when any person or persons shall yield his or their body or bodies to the hands of the sheriff or other officer, upon any of the said writs of *capias*, that then the same party or parties that shall so yield themselves, shall remain in the prison and custody of the said sheriff (1) or other officer, without bail (2), baston, or mainprize, in such like

STAT. 5 ELIZ. c. 23.

The offender yielding his body shall be committed to prison.

(1) *Shall remain in the . . . custody of the said sheriff*:—In *Slipper v. Mason*, (2 Ld. Raym. 788,) the plaintiff obtained sentence against the defendant for 210*l.* for non-payment of tithes and costs. The defendant for non-payment was excommunicated and arrested upon an *excommunicato capi-endo*, and the sheriff let him escape. The plaintiff brought a special action against the sheriff, and had a verdict against him for the 210*l.* It was moved in arrest of judgment, that the action would not lie. But it was adjudged, that the action could be maintained; and the court relied upon the case, where it was held, that an action could be sustained against the sheriff for suffering a man to escape, who had been arrested upon a *capias ullagatum* after outlawry upon *mesne* process.

(2) *Without bail*:—Under Stat. 3 Edw. 1, c. 15, (*antè* 7,) the sheriff derived no authority to replevy persons excommunicate, taken at the request of the bishop, either by the common writ, *de homine replegiando*, nor without writ, that is, *ex officio*; but in *Hall v. King*, (1 Bulst. 122,) all the judges agreed, that a person taken by force of a *capias* upon this statute was bailable by the court of King's Bench; except *Williams*, who held, that the statute dispenseth only with the penalty of 10*l.*

If due caution be offered by the party excommunicated, and admitted by the bishop, then the bishop may command the sheriff to deliver him out of prison. Which caution, in the civil law, is of three sorts: 1. *Fide jussoria*; as where a man bindeth himself with sureties to perform somewhat. 2. *Pignoratitia*, or *realis cautio*; as when a man engageth goods, or mortgageth lands, for the performance. 3. *Juratoria*; when the party which is to perform any thing, taketh a corporal oath to do it. (For the doctrine of the civil law on the subject of putting in cautions, *vide* Justinian's Inst. l. 4, tit. 11, with the Commentaries of Vinnius and Huber.)

Respecting such cautions Bishop *Gibson* observes, (Codex, 1063,) that the last of them, *viz.* an oath “*de parendo juri et stando mandatis ecclesiæ, in formâ juris*,” is that, which is often accepted by ordinaries; and as to the second, it is expressly mentioned in the Ancient Register, (ff. 65 (a), 67 (b),) and hath always been acknowledged in the temporal courts to be good in law. But as to the first, under which is comprehended the taking of a *bond* for performance, it was declared, in *Hall v. King*, (1 Bulst. 122,) to be against law; but as that was only a judgment given *by the way*, it was urged, when the same matter came under consideration again, in *Exon (Bishop of) v. Star*, (Raym. (Sir T.), 226; 2 Lev. 36,) that by the tenour of the writ the choice of the caution is left to the discretion of the ordinary, and that caution by obligation, is as much a caution as

either of the other two, and more for the ease of the party than a pledge, and that this was the constant use and practice of the ecclesiastical courts. Upon this, *Hale* doubted, whether it was good or not; but *Wild* held it was good, saying, such bonds had been frequent, and that they had been allowed in the court of Common Pleas. But the cause being moved again, the court would not proceed in it, because the excommunication and offence were taken off by the king's general pardon.

If good and sufficient caution be offered, and not admitted, then a writ to the bishop is provided in the Register, to command him, (after having taken sufficient caution,) to order the person to be delivered. *Gibson's Codex*, 1063. And if the bishop do not deliver him upon such writ, then the party may have another writ to the sheriff, to command him to apply personally to the bishop, and admonish him to deliver the party, after having taken sufficient caution; and if the bishop will not do the same in presence of the sheriff, then the sheriff to deliver him. *Ibid.* Reg. 66 (a), *et seq.* Fitz. N. B. 62 (b), 63. 3 Black. Com. by Chitty, 101.

And the reason thereof is, that by the excommunication the party is disabled to sue any action, or to have any remedy for any wrong done unto him, so long as he shall remain excommunicate.

In cases of this sort, the party grieved may have his action upon the case, (*Beaurain v. Scott (Sir W.)*, 3 Camp. 388,) against the bishop; in like manner, as he may, when the bishop doth excommunicate him for a matter which belongeth not to ecclesiastical cognizance. Also the bishop, in those cases, may be indicted at the suit of the king. 2 Inst. 623.

In like manner, if one appear in the spiritual court, and be excommunicated for refusing to answer, where he is not bound by the law to answer, (as, for instance, when he cannot obtain a copy of the libel,) prohibition is granted, with a clause to absolve and deliver the party. *Gibson's Codex*, 1063. *Scurr v. Burrell (Dr.)*, Sid. 232. 12 Co. Prohibition, 76. 10 Vin. Abr. *Excommunication*, 527 (G).

“But although, in case the party excommunicated rests in the sentence given against him, there is no legal means for his deliverance, but submission and caution as is aforesaid; yet if he appeal from such sentence to a superior ecclesiastical judge, this puts the party in the same state that he was in before the sentence given;—which the law orders, by reason of the present doubtfulness, whether it was valid or invalid. Add to this, that by appeal, the judge *à quo* doth cease to be his judge in that cause; and if the party was imprisoned, and were to continue so, he would thereby be hindered from the prosecution of his appeal, which may happen to prove just. Wherefore, upon allegation

STAT. 5 ELIZ.
c. 23.

1 Bulstr. 122.

The forfeiture
of a sheriff for
a false return.

manner and form, to all intents and purposes, as he or they should or ought to have done, if he or they had been apprehended and taken upon the said writ of *excommunicato capiendo*.

"IX. And be it further enacted by the authority aforesaid, that if any sheriff or other officer by whom the said writ of *capias* or any of them shall be returned, as is aforesaid, do make an untrue return upon any of the said writs, that the party named in the said writ hath not yielded his body upon the said proclamations, or any of them, where indeed the party did yield himself according to the effect of the same, that then every such sheriff or other officer, for every such false and untrue return shall forfeit to the party grieved and damnified by the said return, the sum of forty pounds; for the which sum of forty pounds the said party grieved shall have his recovery and due remedy by action of debt, bill, plaint, or information, in any of the queen's courts of record; in which action, bill, plaint, or information, no essoin, protection, or wager of law shall be admitted or allowed for the party defendant:

"X. Saving and reserving to all archbishops and bishops, and all others having authority to certify any person excommunicated, like authority to accept and receive the submission and satisfaction of the said person so excommunicated, in manner and form heretofore used, and him to *absolve and release* (1), and the same to signify, as heretofore hath been accustomed, to the queen's majesty, her heirs, and successors, into the high court of chancery; and thereupon to have such writs for the deliverance of the said person, so absolved and released from the sheriff's

The bishop's
authority to
receive sub-
mission, and
deliver the ex-
communicate.
Regist. 66, 67.
2 Lev. 26, 36.
Raym. 225.

in behalf of the party against whom the writ is gone out, that he hath appealed, and upon proof made thereof by an authentic instrument, a writ of *supersedeas*, (without any appearance of a *scire facias* proceeding,) is provided for him in the Register." Gibson's Codex, 1063. *Powell v. Harman*, Moore (Sir T.), 849.

"But the usual way, (especially in cases where it is doubtful whether objections may not lie against his being delivered,) is, the issuing a *scire facias* to warn the bishop and the party prosecuting, to show cause why the sheriff should not surcease from attaching the excommunicate, or why he should not deliver him, if he be in prison. And if the bishop in cases of office, and the prosecutor in cases of instance, do not appear in Chancery, the party is delivered; but if they appear, and not the party, then a re-attachment goes forth to imprison him." 2 Burn's E. L. by Phillimore, 259. Reg. 68, 69.

In *Rex v. St. David's (Bishop of)*, (1 Salk. 294,) the defendant was taken upon a writ of *excommunicato capiendo*, and being in custody in Newgate, prayed a *habeas corpus*, and was brought into court thereupon; and it appeared by the return, that the writ of *excommunicato capiendo* was not yet returnable; the court held, "that one taken on a writ of *excommunicato capiendo* cannot come into this court but by *habeas corpus*; and if he be brought in before the writ is returnable, he shall not be allowed to plead, or move, to quash the writ."

But in *Rex v. Theed*, (Str. 43; 10 Mod. 350,) "after the writ had been opened, and entered of record, it was delivered out, in order to take up the defendant; and before the return, the defendant moved, and had it superseded; for the court said, they could judge of it by the entry, and since it appeared the defendant could not be legally detained upon it if he was taken; it was

proper to supersede it, to prevent the man's being restrained of his liberty, contrary to law; that the intent of the statute, which directs the writ to be delivered in open court, was to apprise the court of the nature of the cause; that this was now to be considered as a writ *improvidè emanavit*; and they were not to wait till the return, till all the inconveniences which they should have prevented by not issuing the writ had happened." The writ *de excommunicato capiendo*, in this case, was in a suit *pro correctione morum* generally, and held to be ill on the authority of *Rex v. Gapp*, (cit. 2 Burn's E. L. by Phillimore, 259,) which was in *quodam negotio pro reformatione et correctione morum*. And, in *Rex v. Munnery*, (Str. 76,) a writ *de excommunicato capiendo* was quashed, being only for not appearing to answer *certis articulis animæ suæ salutem morumque correctionem concernentibus*. In these and similar cases, to use the expression of Mr. Justice Blackstone, (3 Black. Com. by Chitty, 103,) the courts of Westminster Hall exercise "a parental authority, in correcting the excesses of inferior courts, and keeping them within their legal bounds; but, on the other hand, they afford them a parental assistance in repressing the insolence of contumacious delinquents, and rescuing their jurisdiction from that contempt which, for want of sufficient compulsive powers, would otherwise be sure to attend it."

(1) *Absolve and release*.—If a person be excommunicated by divers excommunications, for divers offences, and produceth letters of absolution from one sentence, he shall not be discharged until he be absolved from them all. 1 Inst. 134.

If after a person is excommunicate, there comes a general act of pardon, which pardons all contempts, it seems that the offence is taken away, without any formal absolution. 2 Burn's E. L. by Phillimore, 260.

custody or prison, as heretofore they or any of them had, or of right ought or might have had; any thing in this present statute specified or contained to the contrary hereof in any wise notwithstanding

“XI. Provided always, that in Wales, the counties palatines of Lancaster, Chester, Durham, and Ely, and in the Cinque Ports, being jurisdictions and places exempt, where the queen’s majesty’s writ doth not run, and process of *capias* from thence not returnable into the said court of the King’s Bench, after any *significavit* being of record in the said court of Chancery, the tenour of such *significavit* by *mittimus* shall be sent to such of the head officers of the said county of Wales, counties palatines, and places exempt, within whose offices, charge, or jurisdiction the offenders shall be resiant; that is to say, to the chancellor or chamberlain for the said county palatine of Lancaster and Chester, and for the Cinque Ports to the lord warden of the same, and for Wales and Ely, and the county palatine of Durham, to the chief justice or justices there: and thereupon every of the said justices and officers to whom such tenour of *significavit* with *mittimus* shall be directed and delivered, shall by virtue of this statute have power and authority to make like process to the inferior officer and officers to whom the execution of process there doth appertain, returnable before the justices there at their next sessions or courts, two months at the least after the *teste* of every such process; so always as in every degree they shall proceed in their sessions and courts against the offenders, as the justices of the said court of King’s Bench are limited by the tenour of this act in term times to do and execute.

“XII. Provided also, and be it enacted, that any person, at the time of any process of *capias* aforementioned awarded, being in prison, or out of this realm in the parts beyond the sea, or within age, or of *non sanæ memoriæ*, or woman covert, shall not incur any of the pains or forfeitures aforementioned, which shall grow by any return or default happening during such time of nonage, imprisonment, being beyond the sea, or *non sanæ memoriæ*: and that by virtue of this statute the party grieved may plead every such cause or matter in bar of and upon the distress, or other process that shall be made for levying of any of the said pains or forfeitures.

“XIII. And that if the offender against whom any such writ of *excommunicato capiendo* shall be awarded, shall not in the same writ of *excommunicato capiendo* have a sufficient and lawful addition (1), according to the form of the statute of *primo* of Henry the Fifth, in cases of certain suits whereupon process of exigent are to be awarded: or if in the *significavit* (2) it be not contained (3), that the excom-

STAT. 5 ELIZ. c. 23.

Process out of liberties where the queen’s writ runneth not.

Certain persons discharged of the penalty aforesaid.
1 Shower, 16.

Addition according to the Stat.
1 Hen. 5, c. 5.
1 Salk. 294.
3 Mod. 42, 89.

(1) *Shall not in the same writ . . . have a sufficient and lawful addition*:—In *Regina v. Sangway*, (1 Salk. 294,) the defendant was excommunicated for a certain cause of jactitation of marriage, and taken upon a *capias*, and brought up by *habeas corpus*; and exception was taken to the writ, that therein no addition was given to the defendant; but the court held, that for any of the nine causes mentioned in the statute, the defendant’s addition ought to be in the writ, but that in other cases no addition was necessary.

(2) *In the significavit*:—The judgment of this, which was before in Chancery, is, as previously observed, now in the court of Queen’s Bench, in consequence of the writ’s being returnable to that court; by reason of which, the court of Chancery cannot judge what the cause of excommunication is.

(3) *If in the significavit it be not contained, &c.*:—In *Rex v. Fowler*, (1 Ld. Raym. 619,) *Holt*, (Chief Justice,) observed, “At common law the cause had no need to be shown in the writ of *excommunicato capiendo*; but it was sufficient to say, that the party was excommunicate *pro contumacia manifesta*; but in the *significavit* it ought to be shown. And now since Stat.

5 Eliz. c. 23, the cause ought to be shown in the writ.”

In *Rex v. Fowler*, (1 Salk. 293,) “the return to a writ of *habeas corpus* was, that *Fowler* was taken and in custody by a writ of *excommunicato capiendo*, and the excommunication was in the writ recited to be *pro quibusdam causis subtractionis decimarum, sive aliorum jurium ecclesiasticorum*; and because this return was uncertain, the court was moved, that he might be discharged; and the question was, whether this return was uncertain, or whether that uncertainty would vitiate the writ;” and the court resolved: 1. “That the return was uncertain, for that the *alia jura* might be such matters as were out of their jurisdiction, and they ought to show the matter was within their jurisdiction, for of that the king’s courts are to be judges, and not they themselves. 2. The cause of excommunication must be set forth in the writ. At common law, the writ *de excommunicato capiendo* was always general, *pro contumacia*, not containing a special cause. And the writ was returnable in Chancery, and founded on a *significavit* or a certificate of the bishop, which certificate set forth the cause before, and the party could not be discharged but by *supersedas* in Chan-

STAT. 5 ELIZ.
c. 23.

Latch, 174, 204.
Cro. Car. 197,
199.

1 Roll. 175.
1 Jones, 226.

Latch, 204.

2 Jones, 89.

1 Show. 17.

Causes of
excommunication.

Addition with
a *nuper*.

munication doth proceed upon some cause or contempt of some original matter of heresy, or refusing to have his or their child baptized, or to receive the holy communion as it is now commonly used to be received in the church of England, or to come to divine service now commonly used in the said church of England, or error in matters of religion or doctrine now received and allowed in the said church of England, incontinency, usury, simony, perjury in the ecclesiastical court, or idolatry: that then all and every *pains and forfeitures* (1) limited against such persons excommunicate by this statute, by reason of such writ of *excommunicato capiendo* wanting sufficient addition, or of such *significavit wanting* (2) all the causes aforementioned, shall be utterly void in law; and by way of plea to be allowed to the party grieved.

“XIV. And if the addition shall be with a *nuper* of the place, then in every such case, at the awarding of the first *capias* with proclamation, according to the form aforementioned, one writ of proclamation (without any pain expressed)

cery, if the cause were insufficient. But now the cause must be set forth in the writ *de excommunicato capiendo* itself, because by the statute of 5 Eliz. the writ is made returnable in this court, which would be to no purpose, if the cause were not to be set forth in the writ, and this court judge of that cause. 3. The court held, they might discharge the party upon the insufficiency of the return. Before Stat. 5 Eliz. there were no discharges in this court on *excommunicato capiendo*'s, but where a man was excommunicated pending a prohibition; now the case is altered, for this court may quash the writ of *excommunicato capiendo*, or award a *supersedeas*, because this court are judges of the cause, and have it before them, and the party cannot go into Chancery for a *supersedeas* now, because the writ is returnable here. Accordingly, the writ was quashed, and this special entry was made on the *habeas corpus*, viz. that the party was discharged, because the writ *de excommunicato capiendo* was quashed.”

In *Rex v. Eyre*, (Str. 1067; *sed vide Exp. Little*, 3 Atk. 479,) “two *significavits* were quashed, being only said to be in a cause which came by appeal concerning a matter merely spiritual. For per Lord Talbot, ‘We are not to lend our assistance but where it appears clearly they have jurisdiction, and are not to trust them to determine what is a matter merely spiritual. It is no more than saying, it is within their jurisdiction, which is never endured. In *Fowler’s case*, (Salk. 293,) it was in *causis juriurum ecclesiasticorum*, and held not sufficient.’”

In *Rex v. Payton*, (7 T. R. 153,) it was held, that a writ *de excommunicato capiendo*, which stated, that the defendant was excommunicated in a cause of *defamation and slander merely spiritual*, was good. If the sentence of the greater, instead of the lesser, excommunication be pronounced, it is only a ground of *appeal*, and the court of King’s Bench will not quash a writ *de excommunicato capiendo* for that objection. It is not necessary, that the defendant should be resident in the diocese at the time of the excommunication; it is sufficient, if he were there at the time of the citation. As to the method of proceeding to obtain the discharge of a party; vide *Rex v. Blake*, 2 B. & Ad. 139; *Rex v. Hewitt*, 6 A. & E. 547.

Austen v. Dugger, (1 Add. 307,) has, however, established the principle, that if

a party for non-payment of costs be committed under an *erroneous process*, (which cannot fairly be ascribed to the party suing it out, or be shown to have occasioned the other party material or any inconvenience,) and be in consequence released, the court is bound, at the application of the party to whom they are still due, to issue a new motion for the payment of such costs.

But a party will not be discharged from this writ by showing, that the sum for which he was attached is less than the 20*l.* prescribed by Stat. 48 Geo. 3. c. 123, because he is committed for contempt. *Vide Exp. Kaye*, 1 B. & Ad. 652.

(1) *Pains and forfeitures*.—This statute did not take away or affect the *excommunicato capiendo* at common law, (*Anon.* 1 Sid. 181,) but, in the particular cases mentioned in this clause, gives a greater penalty to enforce it. “And therefore, the writ doth not only issue upon excommunications in many other cases, but, (as hath been often adjudged,) though a *capias* with proclamations and penalties go forth, in a matter not within this statute, and the person is thereupon imprisoned, and prays to be discharged, because the matter for which he was excommunicated, (though of a spiritual nature,) is not within this statute; yet nothing shall be discharged but the penalties, and, (without any new writ obtained,) the excommunication and imprisonment may remain, as at common law, and not be discharged but by absolution in due form.” *Hugh’s case*, Cro. Car. 197, 199. *Hughes v. Bendy*, Jon. (Sir W.), 226. *Brown’s case*, Latch, 204. *Beverly v. Powell*, Jon. (Sir T.), 89.

(2) *Significavit wanting*.—In *Rex v. Sneller*, (cit. Gibson’s Codex, 1058,) upon a motion for a *supersedeas* to the writ, by reason that the *significavit* was general and uncertain; it was said by my Lord Chancellor, that a *supersedeas* could not be granted upon that ground. But if the excommunication were not for any of the offences within Stat. 5 Eliz. c. 23, and the *significavit* did not express the same, the remedy expressly appointed by that statute, is a *habeas corpus*; and upon the return of it, the parties shall be discharged. But it being then alleged, that an appeal was brought, and security given to prosecute it with effect, a *supersedeas* was awarded, the lord chancellor saying, that the appeal was a *supersedeas* of itself.

shall be awarded into the county where the offender shall be most commonly resiant at the time of the awarding of the said first *capias*, with pain in the same writ of proclamation, to be returnable the day of the return of the said first *capias* with pain, and proclamation thereupon at some one such time and court, as is prescribed for the proclamation upon the said first *capias* with pain : and if such proclamation be not made in the county where the offender shall be most commonly resiant in such cases of additions of *nuper*, that then such offender shall sustain no pain or forfeiture by virtue of this statute, for not yielding his or her body, according to the tenour aforementioned ; anything before specified to the contrary hereof in any wise notwithstanding."

STAT. 5 ELIZ.
c. 23.

XVI. STAT. 5 ELIZABETHÆ, c. 28. A.D. 1562.

STAT. 5 ELIZ.
c. 28.

"An Act for the translating of the Bible and the Divine Service into the Welsh Tongue."

"Whereas the queen's most excellent majesty, like a most godly and virtuous princess, having chief respect and regard to the honour and glory of God, and the souls' health of her subjects, did in the first year of her reign, by the authority of her high court of parliament, chiefly for that purpose called, set forth a Book of Common Prayer and Order for the Administration of Sacraments in the vulgar English tongue, to be used through all her realm of England, Wales, and the marches of the same, that thereby her highness' most loving subjects understanding in their own language the terrible and fearful threatenings rehearsed in the Book of God against the wicked and malefactors, the pleasant and infallible promises made to the elect and chosen flock, with a just order to rule and guide their lives according to the commandments of God, might much better learn to love and fear God, to serve and obey their prince, and to know their duties towards their neighbours ; which book being received as a most precious jewel with an unspeakable joy of all such her subjects as did and do understand the English tongue, the which tongue is not understood of the most and greatest number of all her majesty's most loving and obedient subjects inhabiting within her highness' dominion and country of Wales, being no small part of this realm, who therefore are utterly destitute of God's holy Word, and do remain in the like or rather more darkness and ignorance than they were in the time of papistry. Be it therefore enacted by the queen our sovereign lady, the lords spiritual and temporal, and the commons in this present parliament assembled, and by the authority of the same, that the Bishops of Hereford, Saint David, Asaph, Bangor and Llandaff, and their successors, shall take such order amongst themselves for the souls' health of the flocks committed to their charge within Wales, that the whole Bible, containing the New Testament and the Old, with the Book of Common Prayer and Administration of the Sacraments, as is now used within this realm in English, to be truly and exactly translated into the British or Welsh tongue ; and that the same so translated, being by them viewed, perused and allowed, be imprinted to such number at the least, that one of either sort may be had for every cathedral, collegiate and parish church, and chapel of ease, in such places and countries of every the said dioceses where that tongue is commonly spoken or used, before the first day of March, anno Dom. one thousand five hundred sixty-six. And that from that day forth, the whole Divine Service shall be used and said by the curates and ministers throughout all the said dioceses where the Welsh tongue is commonly used, in the said British or Welsh tongue, in such manner and form as is now used in the English tongue, and differing nothing in any order or form from the English book : for the which books so imprinted, the parishioners of every of the said parishes shall pay the one half or moiety, and the parson and vicar of every of the said parishes (where both be), or else the one of them where there is but one, shall pay the other half or moiety : the prices of which books shall be appointed and rated by the said bishops and their successors, or by three of them at the least ; the which things if the said bishops or their successors neglect to do, then every one of them shall forfeit to the queen's majesty, her

The Bible and Book of Common Prayer to be translated into the Welsh tongue.

STAT. 5 ELIZ. heirs and successors, the sum of forty pounds, to be levied on their goods and chattels.

"II. Be it further enacted by the authority aforesaid, that every minister and curate within the dioceses beforesaid, where the Welsh tongue is commonly used, shall, from the feast of Whitsuntide next ensuing, until the foresaid day of March, which shall be in the year one thousand five hundred sixty and six, at all times of communion declare or read the Epistle and Gospel of the day in the Welsh tongue, to his or their parishioners in every of the said churches, and chapels; and also once every week, at the least, shall read or declare to their said parishioners in the said churches, the Lord's Prayer, the Articles of the Christian Faith, the Ten Commandments, and the Litany, as they are set forth in the English tongue, in the said Welsh tongue, with such other part of the Common Prayer, and divine service, as shall be appointed by the bishop of the diocese for the time being.

A Bible and Book of Common Prayer in English shall be in every church in Wales.

"III. And one book containing the Bible, and one other Book of Common Prayer, in the English tongue, shall be bought and had in every church throughout Wales, in which the Bible and Book of Common Prayer in Welsh is to be had by force of this act, (if there be none already,) before the first day of March, which shall be in the year of our Lord God one thousand five hundred sixty-six; and the same books to remain in such convenient places within the said churches, that such as understand them may resort, at all convenient times, to read and peruse the same: and also such as do not understand the said language, may, by conferring both tongues together, the sooner attain to the knowledge of the English tongue; any thing in this act to the contrary notwithstanding."

STAT. 8 ELIZ. c. 1.

XVII. STAT. 8 ELIZABETHÆ, C. 1. A.D. 1565.

"An Act declaring the making and consecrating of the Archbishops and Bishops of this Realm to be good, lawful, and perfect."

Acts made since 1 Eliz. for the consecrating, investing, &c. of any archbishop or

"Forasmuch as divers questions, by overmuch boldness of speech(1), and talk amongst many of the common sort of people, being unlearned, hath lately grown upon the making and consecrating of archbishops and bishops within this realm, whether the same were and be duly and orderly done, according to the law, or not, which is much tending to the slander of all the state of the clergy,

(1) *Boldness of speech*:—There were many slanders of this kind, printed and suggested by popish writers and emissaries; (Mason, 206;) as, that Bishop Ridley, immediately before his execution, sent a message to the queen, praying her, that the leases made by him, while Bishop of London, might stand good; as if he had been conscious, they were not valid in law; whereas, in reality, his request only was, (in the way of compassion,) that some poor people, who had taken leases of him, being cruelly ejected by his successor, might be relieved by the interposition of the queen, and is therefore an argument of nothing, but that Bishop Bonner did not acknowledge him lawful bishop. Then, that Judge Brooke, one of the judges of the Common Pleas, had represented it as a resolution of the judges, (Ibid. 205,) that King Edward's bishops were not consecrated, and by consequence, that the leases let by them were void: which, yet, he only mentions as a thing said by some people, and infers, that if it was true, the leases were void; but though all such leases had been declared void, in Queen Mary's time, this would not have made the bishops who granted them less lawful in reality, under Queen Elizabeth. A slander of the like

nature, (Stry. Ref. 341, 493,) was, that in the sixth and seventh of Queen Elizabeth, (a little before the making of this act,) on occasion of the oath of supremacy tendered to Bonner by his successor, Bishop Horne, and Bonner's plea, that Horne was not lawful bishop; which plea, *Dyer* says, was allowed by the judges; that is, the judges agreed, that this (being one of the exceptions to the indictment) was such, in its nature, as might be regularly pleaded, (*Dyer*, 234(a),) and would avail in the issue, in case it should appear to be true; which it never did, nor never could do; since the objection was, (as it appears in a rough draft of the exceptions said to be written by Bonner himself,) that Horne had no election nor consecration, which the Register of Archbishop Parker, (88,) (where the history of both is entered at length,) demonstrates to be impudently false. Not to mention the ridiculous story of Archbishop Parker's consecration at the Nag's Head Tavern, which the same records abundantly confute; (Ibid. 2, 10;) and which calumny, (as well as many others of the same sort,) hath been long since silenced for ever, by Mason, in his excellent work, intitled, "*Vindiciæ Ecclesiæ Anglicanæ*." Mason, 348. Gibson's Codex, 120.

being one of the great states of this realm: therefore, for the avoiding of such slanderous speech, and to the intent that every man that is willing to know the truth, may plainly understand that the same evil speech and talk is not grounded upon any just matter or cause, it is thought convenient hereby partly to touch such authorities as do allow and approve the making and consecrating of the same archbishops and bishops to be duly and orderly done, according to the laws of this realm, and thereupon further to provide for the more surety thereof, as hereafter shall be expressed.

“II. First, it is very well known to all degrees of this realm, that the late king of most famous memory, King Henry the Eighth, as well by all the clergy then of this realm, in their several convocations, as also by all the lords spiritual and temporal, and commons, assembled in divers of his parliaments, was justly and rightfully recognized and knowledged to have the supreme power, jurisdiction, order, rule, and authority over all the estate ecclesiastical of the same, and the same power, jurisdiction, and authority did use accordingly: and that also the said late king, in the five and twentieth year of his reign, did by authority of parliament, amongst other things, set forth a certain order of the manner and form how archbishops and bishops, within this realm, and other his dominions, should be elected and made, as by the same more plainly appeareth: and that also the late king of worthy memory, King Edward the Sixth, did lawfully succeed the said late King Henry his father, in the imperial crown of this realm, and did justly possess and enjoy all the same power, jurisdiction, and authority before mentioned, as a thing to him descended with the same imperial crown, and so used the same during his life: and that also the said late King Edward the Sixth, in his time, by authority of parliament, caused a godly and virtuous book, intituled, ‘The Book of Common Prayer, and Administration of Sacraments, and other Rites and Ceremonies in the Church of England,’ to be made and set forth, not only for one uniform order of service, common prayer, and the administration of sacraments, to be used within all this realm, and other his dominions, but also did add and put to the same book a very good and godly order of the manner and form how archbishops, bishops, priests, deacons, and ministers should from time to time be consecrated, made, and ordered within this realm and other his dominions, as by the same more plainly will and may appear; and although in the time of the late Queen Mary, as well the said act and statute made in the five and twentieth year of the reign of the said late King Henry the Eighth, as also the several acts and statutes made in the second, third, fourth, fifth, and sixth years of the reign of the said late King Edward, for the authorizing and allowing of the said Book of Common Prayer, and other the premises, amongst divers other acts and statutes touching the said supreme authority, were repealed: yet nevertheless, at the parliament holden at Westminster in the first year of the reign of our sovereign lady the queen’s majesty that now is, by one other act and statute there made, all such jurisdictions, privileges, superiorities, and pre-eminences spiritual and ecclesiastical, as by any spiritual or ecclesiastical power or authority hath heretofore been, or may lawfully be used over the ecclesiastical estate of this realm, and the order, reformation, and correction of the same, is fully and absolutely by the authority of the same parliament, united and annexed to the imperial crown of this realm: and by the same act and statute there is also given to the queen’s highness, her heirs, and successors, kings and queens of this realm, full power and authority, by letters patents under the great seal of England, from time to time to assign, name, and authorize such person or persons as she or they shall think meet and convenient, to exercise, use, occupy, and execute under her highness, all manner of jurisdiction, privileges, pre-eminences, and authorities, in any wise touching or concerning any spiritual or ecclesiastical power or jurisdiction within this realm, or any other her highness’ dominions or countries: and also by the same act and statute, the said act made in the five and twentieth year of the reign of the said late King Henry the Eighth, for the order and form of the electing and making of the said archbishops and bishops, together with divers other statutes touching the jurisdiction over the state ecclesiastical, is revived and made in full force and

STAT. 8 ELIZ.
c. 1.

bishop, shall
be good.
Dyer, 234.
A question
whether the
making of
bishops were
duly and
orderly done.
26 Hen. 8, c.
1.

25 Hen. 8, c.
20.

5 & 6 Edw. 6,
c. 1.

1 & 2 P. & M.
c. 8.

1 Eliz. c. 1.

STAT. 8 ELIZ.
c. 1.

1 Eliz. c. 2.

The queen by her supreme authority caused divers persons to be elected and consecrated archbishops and bishops.

The queen's dispensation of all doubts of imperfections or disability of electing bishops.

effect, as by the same act and statute more plainly appeareth: and that also by another act and statute made in the said parliament in the first year of the reign of our said sovereign lady, intituled, 'An Act for the Uniformity of Common Prayer, and Service in the Church, and the Administration of Sacraments,' the said Book of Common Prayer, and the Administration of Sacraments, and other the said orders, rites, and ceremonies before mentioned, and all things therein contained, with certain additions therein newly added and appointed by the said statute, is fully established and authorized to be used in all places within this realm, and all other the queen's majesty's dominions and countries; as by the said act, amongst other things, more plainly appeareth: whereupon our said sovereign lady the queen's most excellent majesty, being most justly and lawfully invested in the imperial crown of this realm, with all authorities, pre-eminences, and dignities thereunto appertaining, and thereby having in her majesty's order and disposition all the said jurisdictions, power, and authorities over the state ecclesiastical and temporal, as well in causes ecclesiastical as temporal, within this realm and other her majesty's dominions and countries, hath by her supreme authority at divers times sithence the beginning of her majesty's reign, caused divers and sundry grave and well learned men to be duly elected, made, and consecrated archbishops and bishops of divers archbishopricks and bishopricks within this realm, and other her majesty's dominions and countries, according to such order and form, and with such ceremonies in and about their consecrations, as were allowed and set forth by the said acts, statutes, and orders annexed to the said Book of Common Prayer before-mentioned: and further, for the avoiding of all ambiguities and questions that might be objected against the lawful confirmations, investing, and consecrations of the said archbishops and bishops, her highness in her letters patents under the great seal of England, directed to any archbishop, bishop, or others, for the confirming, investing, and consecrating of any person elected to the office or dignity of any archbishop or bishop, hath not only used such words and sentences as were accustomed to be used by the said late King Henry and King Edward, her majesty's father and brother, in their like letters patents made for such causes, but also hath used and put in her majesty's said letters patents divers other *general words* (1), and sentences, whereby her highness, by her supreme power and authority, hath dispensed with all causes or doubts of any imperfection or disability that can or may in any wise be objected against the same, as by her majesty's said letters patents remaining of record more plainly will appear: so that to all those that will well consider of the effect and true intent of the said laws and statutes, and of the supreme and absolute authority of the queen's highness, and which she by her majesty's said letters patents hath used and put in use in and about the making and consecrating of the said archbishops and bishops, it is and may be very evident and apparent, that no cause of scruple, ambiguity, or doubt, can or may justly be objected against the said elections, confirmations, or consecrations, or any other material thing meet to be used or had in or about the same; but that every thing requisite and material for that purpose hath been made and done as precisely, and with as great a care and diligence, or

(1) *General words*.—The words were, "Supplentes nihilominus, supremâ auctoritate nostrâ regiâ, ex mero motu, et certâ scientiâ nostris, si quid in hiis quæ juxta mandatum nostrum prædictum per vos fient, aut in vobis aut vestrum aliquo, conditione, statu, facultate vestris ad præmissa facienda desit aut deerit, eorum quæ per statuta hujus regni nostri, aut per leges ecclesiasticas in hac parte requiruntur, aut necessaria sunt; temporis ratione et rerum necessitate id postulante." Park. Reg. f. 3. And by way of further caution, (for, amidst the manifold slanders of the papists, too great caution could not be used,) the validity of the letters

patents was referred to the consideration of divers eminent civilians of that time; as appears by the following entry in the Register, (Ibid.) after such letters patents:

"We, whose names are here subscribed, think in our judgments, that by this commission, in this form penned, as well the queen's majesty may lawfully authorize the persons within named to the effect specified, as the said persons may exercise the act of confirming and consecrating in the same to them committed.

"William Maye.

"Robert Weston.

"Edward Leedes.

Henry Harvey.

Thomas Yale.

Nic. Bullingham."

rather more, as ever the like was done before her majesty's time, as the records of her majesty's said father and brother's time, and also of her own time, will more plainly testify and declare. STAT. 8 ELIZ. c. 1.

“III. Wherefore for the plain declaration of all the premises, and to the intent that the same may the better be known to every of the queen's majesty's subjects, whereby such evil speech as heretofore hath been used against the high state of prelacy may hereafter cease, be it now declared and enacted by the authority of this present parliament, that the said act and statute made in the first year of the reign of our said sovereign lady the queen's majesty, whereby the said Book of Common Prayer and the Administration of Sacraments, with other rites and ceremonies, is authorized and allowed to be used, shall stand and remain good and perfect, to all respects and purposes: *and that such order* (1), and form for the consecrating of archbishops and bishops, and for the making of priests, deacons, and ministers, as was set forth in the time of the said late King Edward the Sixth, and added to the said Book of Common Prayer, and authorized by parliament in the fifth and sixth years of the said late king, shall stand and be in full force and effect, and shall from henceforth be used and observed in all places within this realm, and other the queen's majesty's dominions and countries.

“IV. And that all acts and things heretofore had, made, or done by any person or persons in or about any consecration, confirmation, or investing of any person or persons elected to the office or dignity of any archbishop or bishop within this realm, or within any other the queen's majesty's dominions or countries, by virtue of the queen's majesty's letters patents or commission sithence the beginning of her majesty's reign, be and shall be by authority of this present parliament declared, judged, and deemed at and from every of the several times of the doing thereof, good and perfect to all respects and purposes; any matter or thing that can or may be objected to the contrary thereof in any wise notwithstanding.

beginning of her reign, shall be good.

“V. And that all persons that *have been* (2), or shall be made, ordered, or consecrated archbishops, bishops, priests, ministers of God's holy word and sacraments, or deacons, after the form and order prescribed in the said order and form how archbishops, bishops, priests, deacons, and ministers should be consecrated, made, and ordered, be in very deed, and also by authority hereof declared and enacted to be, and shall be archbishops, bishops, priests, ministers, and deacons, and rightly made, ordered, and consecrated; any statute, law, canon, or other thing to the contrary notwithstanding.

“VI. Provided always, and nevertheless be it enacted by the authority aforesaid, that no person or persons shall at any time hereafter be *impeached or molested* (3), in body, lands, livings, or goods, by occasion or mean of any certificate by any archbishop or bishop heretofore made, or before the last day of this present session of parliament to be made, by virtue of any act made in the first session of this present parliament, touching or concerning the refusal of the oath declared and set forth by act of parliament in the first year of the reign of our said sovereign lady Queen Elizabeth; any thing in this act, or any other act or statute heretofore made to the contrary notwithstanding.

“VII. And that all tenders of the said oath, made by any archbishop or bishop aforesaid, or before the last day of this present session to be made by authority of any act established in the first session of this present parliament, and all refusals of the same oath so tendered, or before the last day of this present session to be

A confirmation of the statute of 1 Eliz. c. 2, touching the Book of Common Prayer, and administration of the sacraments.

A confirmation of the statute of 5 & 6 Edw. 6, c. 1, touching the form of consecrating archbishops, &c.

All acts done by any person about consecration, or investing any person elected to be bishop by virtue of the queen's letters patent sithence the

beginning of her reign, shall be good. All persons made and to be made bishops, priests, ministers, &c. according to the statute of 5 & 6 Edw. 6, c. 1, be rightly made. 39 Eliz. c. 8.

No person shall be impeached by any certificate of any bishop heretofore made, touching the oath of supremacy made.

1 Eliz. c. 1.

(1) *And that such order*:—To avoid all cavils for the future, (*vide antè* 363, n. (2).) the title of the Book of Consecrating, &c., was here specially set down.

(2) *Have been*:—This retrospect, and that which followed in the thirty-sixth article, were both added to rectify the assumed defect in Queen Elizabeth's repeal and revival, (*Ibid.*) which the papists had raised and fomented in the nation.

(3) *Impeached or molested*:—This, and the following clause, were inserted out of tenderness to the popish bishops, (particularly, to Bonner, notwithstanding all his cruelties in the reign of Queen Mary,) who had refused the oath of supremacy, and thereby had incurred a *præmunire*, according to Stat. 5 Eliz. c. 1, s. 8, (*antè* 405.)

STAT. 8 ELIZ. c. 1. tendered, by any archbishop or bishop, by authority of any act established in the first session of this present parliament, shall be void and of none effect or validity in the law."

STAT. 8 ELIZ. c. 13.

XVIII. STAT. 8 ELIZABETHÆ, c. 13 (1). A.D. 1565.

"An Act concerning Sea-marks and Mariners."

"IV. And be it further ordained and enacted by the authority aforesaid, that no steeples, trees, or other things, now standing as beacons or marks for the sea, whereof to the owner or occupier of the place where the same doth grow or stand, before the first day of March next coming notice shall be given by the queen's majesty's letters under her signet, shall at any time hereafter be taken down, felled, or otherwise cut down; upon pain that every person by whose procurement or consent such offence shall be committed, shall forfeit the sum of one hundred pounds, whereof the one moiety to the queen's majesty, and the other moiety to be to the master, wardens, and assistants, of the said Trinity House. And if the said person or persons so offending be not of the value of one hundred pounds, then the same person and persons to be deemed convict of outlawry, *ipso facto*, to all constructions and purposes."

STAT. 12 ELIZ. c. 1. [Ir.]

XIX. STAT. 12 ELIZABETHÆ, c. 1 (2). [IRELAND.] A.D. 1570.

"An Act for the Erection of Free Schools."

STAT. 13 ELIZ. c. 1.

XX. STAT. 13 ELIZABETHÆ, c. 1 (3). A.D. 1570.

Treason,
3 Inst. 6, 10,
12, 14.
4 Inst. 36.
Poph. 122.

"I. It shall be high treason to intend destruction or bodily harm to the queen, or to levy war, or to move others to war against her, or to affirm that the queen ought not to enjoy the crown, but some other person; or to publish that the queen is an heretic, schismatic, tyrant, infidel, or usurper of the crown; or to claim right to the crown, or to usurp the same during the queen's life; or to affirm the right in succession of the crown in some other than the queen; or to affirm that the laws and statutes do not bind the right of the crown, and the descent, limitation, inheritance, or governance thereof."

STAT. 13 ELIZ. c. 2.

XXI. STAT. 13 ELIZABETHÆ, c. 2 (4). A.D. 1570.

"An Act against the bringing in, and putting in execution of Bulls, Writings, or Instruments, and other superstitious things, from the See of Rome."

A rehearsal of
the statute of
5 Eliz. c. 1,
touching the
abolishing of
the authority
of the bishop
and see of
Rome.

"Where in the parliament holden at Westminster in the fifth year of the reign of our sovereign lady the queen's majesty that now is, by one act and statute then and there made, intituled, 'An Act for the assurance of the Queen's Majesty's Royal Power over all States and Subjects within her Highness' Dominions,' it is among other things very well ordained and provided, for the abolishing of the usurped power and jurisdiction of the Bishop of Rome and of the see of Rome, heretofore unlawfully claimed and usurped within this realm, and other the dominions to the queen's majesty belonging, that no person or persons shall hold or stand with, to set forth, maintain, defend, or extol, the same usurped power, or attribute any manner of jurisdiction, authority, or pre-eminence, to the same, to be had or used within this realm, or any the said dominions, upon pain to incur the danger, penalties, and forfeitures, ordained and provided by the Statute of Provision and Premunire, made in the sixteenth year of the reign of King Richard the Second, as by the same act more at large it doth and may appear: and yet nevertheless, divers seditious and very evil-disposed people, without the respect of their duty to Almighty God, or of the faith and allegiance which they ought to bear and

16 R. 2, c. 5.

(1) *Vide* Stat. 6 & 7 Gul. 4, c. 79.

(2) *Vide* Stat. 53 Geo. 3, c. 107.

(3) Expired.

(4) *Vide* Stat. 23 Eliz. c. 1, (*post*. 440.)

Stat. 23 Geo. 2, c. 28, s. 2.

have to our said sovereign lady the queen, and without all fear and regard had to the said good law and statute, or the pains therein limited, but minding, as it should seem, very seditiously and unnaturally, not only to bring this realm and the imperial crown thereof, (being in very deed of itself most free,) into the thralldom and subjection of that foreign, usurped, and unlawful jurisdiction, pre-eminence, and authority, claimed by the said see of Rome; but also to estrange and alienate the minds and hearts of sundry her majesty's subjects from their dutiful obedience, and to raise and stir sedition and rebellion within this realm, to the disturbance of the most happy peace thereof; have lately procured and obtained to themselves from the said Bishop of Rome and his said see, *divers bulls* (1) and writings, the effect whereof hath been, and is, to absolve and reconcile all those that will be contented to forsake their due obedience to our most gracious sovereign lady the queen's majesty, and to yield and subject themselves to the said feigned, unlawful, and usurped authority; and by colour of the said bulls and writings, the said wicked persons very secretly, and most seditiously, in such parts of this realm where the people, for want of good instruction, are most weak, simple, and ignorant, and thereby farthest from the good understanding of their duties towards God and the queen's majesty, have by their lewd and subtil practices and persuasions so far forth wrought, that sundry simple and ignorant persons have been contented to be reconciled to the said usurped authority of the see of Rome, and to take absolution at the hands of the said naughty and subtil practisers; whereby hath grown great disobedience and boldness in many, not only to withdraw and absent themselves from all divine service, now most godly set forth and used within this realm, but also have thought themselves discharged of and from all obedience, duty, and allegiance, to her majesty, whereby most wicked and unnatural rebellion hath ensued, and to the further danger of this realm is hereafter very like to be renewed, if the ungodly and wicked attempts in that behalf be not by severity of laws in time restrained and bridled:

"II. For remedy and redress whereof, and to prevent the great mischiefs and inconveniences that thereby may ensue, be it enacted by the queen's most excellent majesty, with the assent of the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, that if any person or persons, after the first day of July next coming, shall use or put in ure in any place within this realm, or in any of the queen's dominions, any such bull, writing, or instrument, written or printed, of absolution or reconciliation, at any time heretofore obtained and gotten, or at any time hereafter to be obtained or gotten, from the said Bishop of Rome or any his successors, or from any other person or persons authorized or claiming authority by or from the said Bishop of Rome, his predecessors, or successors, or see of Rome; or if any person or persons after the said first day of July shall take upon him or them, by colour of any such bull, writing, instrument, or authority, to absolve or reconcile any person or persons, or to grant or promise to any person or persons within this realm, or any other the queen's majesty's dominions, any such absolution or reconciliation, by any speech, preaching, teaching, writing, or any other open deed; or if any person or persons within this realm or any the queen's dominions, after the said first day of July shall willingly receive and take any such absolution or reconciliation:

"III. Or else if any person or persons have obtained or gotten since the last day of the parliament holden in the first year of the queen's majesty's reign, or after the said first day of July shall obtain or get, from the said Bishop of Rome, or any his successors or see of Rome, any manner of bull, writing, or instru-

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c. 2.

The effect of
bulls brought
from Rome.

Putting in ure
any bull of
absolution or
reconciliation
from the
Bishop of
Rome.

Absolving or
reconciling of
any person,
and being
absolved or
reconciled.

Getting of any
bull from
Rome, con-
taining any
matter what.

(1) *Divers bulls*:—This statute was made A.D. 1571; and from the history of the preceding three years, it appears, that the Pope had granted authority to *Saunders* and others, to absolve all the English who would return to the church of Rome. That the same Pope had sent his bull into England by *Morton* the priest, to anathematize the Queen, deprive her of her throne, and ab-

solve her subjects from their oaths of obedience. That, in virtue thereof, many of the people were withdrawn from their allegiance, a dangerous rebellion raised, circular letters sent to the papists to rise and assist in the cause, and the bull itself published in the city of London, in a very insolent manner. Gibson's Codex, 533.

STAT. 13 ELIZ.
c. 2.

soever, or
publishing or
putting in ure
the same.

3 Inst. 101,
106.

Dyer, 363,
pl. 25.

Aiders, com-
forters, and
maintainers of
offenders after
the offence.
16 Rich. 2,
c. 5.

Concealing or
not disclosing
a bull or
reconciliation
offered.

Bringing into
the realm, or
using of *Agnus
Dei*, pictures,
crosses, &c.

16 Rich. 2,
c. 5.

Apprehending
an offender, or

ment, written or printed, containing any thing, matter, or cause, whatsoever, or shall publish, or by any ways or means put in ure, any such bull, writing, or instrument; that then all and every such act and acts, offence and offences, shall be deemed and adjudged by the authority of this act to be high treason; and the offender and offenders therein, their procurers, abettors, and counsellors, to the fact and committing of the said offence or offences, shall be deemed and adjudged high traitors to the queen and the realm; and being thereof lawfully indicted and attainted according to the course of the laws of this realm, shall suffer pains of death, and also lose and forfeit all their lands, tenements, hereditaments, goods, and chattels, as in cases of high treason by the laws of this realm ought to be lost and forfeited.

“IV. And be it further enacted by the authority aforesaid, that all and every aiders, comforters, or maintainers, of any the said offender or offenders, after the committing of any the said acts or offences, to the intent to set forth, uphold, or allow the doing or execution of the said usurped power, jurisdiction, or authority, touching or concerning the premises, or any part thereof, shall incur the pains and penalties contained in the Statute of Premunire, made in the sixteenth year of the reign of King Richard the Second.

“V. Provided always, and be it further enacted by the authority aforesaid, that if any person or persons, to whom any such absolution, reconciliation, bull, writing, or instrument, as is aforesaid, shall after the said first day of July be offered, moved, or persuaded to be used, put in ure, or executed, shall conceal the same offer, motion, or persuasion, and not disclose and signify the same by writing or otherwise, within six weeks then next following, to some of the queen's majesty's privy council, or else to the president or vice-president of the queen's majesty's council established in the north parts, or in the marches of Wales, for the time being, that then the same person or persons so concealing and not disclosing, or not signifying the said offer, motion, or persuasion, shall incur the loss, danger, penalty, and forfeiture, of misprision of high treason:

“VI. And that no person or persons shall at any time hereafter be impeached, molested, or troubled, in or for misprision of treason, for any offence or offences made treason by this act, other than such as by this act are before declared to be in case of misprision of high treason.

“VII. And be it further enacted by the authority aforesaid, that if any person or persons shall at any time after the said first day of July bring into this realm of England, or any the dominions of the same, any token or tokens, thing or things, called or named by the name of *Agnus Dei*, or any crosses, pictures, beads, or such like vain and superstitious things, from the bishop or see of Rome, or from any person or persons authorized or claiming authority by or from the said bishop or see of Rome, to consecrate or hallow the same; (which said *Agnus Dei* is used to be specially hallowed and consecrated, as it is termed, by the said bishop in his own person, and the said crosses, pictures, beads, and such like superstitious things, being also hallowed either by the same bishop, or by others having power or pretending to have power for the same by or from him or his said see; and divers pardons, immunities, and exemptions granted by the authority of the said see to such as shall receive and use the same:) and that if the same person or persons so bringing in, as is aforesaid, such *Agnus Dei* and other like things as have been before specified, shall deliver, or cause or offer to be delivered, the same, or any of them, to any subject of this realm, or of any the dominions of the same, to be worn or used in any wise: that then, as well the same person and persons so doing, as also all and every other person or persons which shall receive and take the same, to the intent to use or wear the same, being thereof lawfully convicted and attainted by the order of the common laws of this realm, shall incur the dangers, penalties, pains, and forfeitures, ordained and provided by the Statute of Premunire and Provision made in the sixteenth year of the reign of King Richard the Second.

“VIII. Provided nevertheless, and be it further enacted by the authority aforesaid, that if any person or persons, to whom any such *Agnus Dei* or other

the things aforesaid, shall be tendered and offered to be delivered, shall apprehend the party so offering the same, and bring him to the next justice of peace of that shire where such tender shall be made, if he shall be of power and able so to do, or for lack of such ability, shall within the space of three days next after such offer made as is aforesaid, disclose the name and names of such person or persons as so shall make the same offer, and the dwelling places, or place of resort of the same person or persons, (which he shall endeavour himself to know by all the ways and means he can,) to the ordinary of that diocese, or to any justice of peace of that shire where such person or persons to whom such offer shall be made, as is aforesaid, shall be resiant; and also if such person or persons to whom such offer shall be made shall happen to receive any such *Agnus Dei* or other thing above remembered, and shall within the space of one day next after such receipt deliver the same to any justice of peace within the same shire where the party so receiving shall be then resiant, or shall happen to be: that then every such person or persons doing any the acts or things in this provision above-mentioned, in form above-declared, shall not by force of this statute incur any danger or penalty appointed by this statute, or any other pain or penalty; this act or any thing therein contained to the contrary in any wise notwithstanding.

“IX. And be it further enacted by the authority aforesaid, that all and every person and persons which at any time since the beginning of the first year of the queen’s majesty’s reign that now is, have brought or caused to be brought into this realm any such bulls, writings, or instruments of reconciliation, only as are above-mentioned, and now have any of the same bulls, writings, or instruments, in his or their hands or custody, and shall and do within the space of three months next after the end of any session or dissolution of this present parliament, bring and deliver all such bulls, writings, and instruments, which they or any of them now have in his or their custody, to the bishop of the diocese where such absolution hath been given and received, to the intent that the same bulls, writings, or instruments, may be cancelled and defaced, and shall openly and publicly before such bishop confess and acknowledge his or their offence therein, and humbly desire to be received, restored, and admitted, to the church of England, shall stand and be clearly pardoned and discharged of all and every offence and offences done or committed in any matter or cause concerning any of the said bulls, writings, or instruments, for or touching such absolution or reconciliation only. And that all and every person or persons which have received or taken any absolution from the said Bishop of Rome, or his said see of Rome, or of any reconciliation unto the said Bishop of Rome, or to the said see of Rome, sithence the said first year of the reign of our said sovereign lady the queen, and shall within the said space of three months next after any session or dissolution of this present parliament come before the bishop of the diocese of such place where such absolution or reconciliation was had or made, and shall publicly and openly before the same bishop confess and acknowledge his or their offence therein, and humbly desire to be received, restored, and admitted, to the church of England, shall likewise stand and be clearly pardoned and discharged of all and every offence and offences done or committed in any matter or cause concerning the said bulls, writings, or instruments, for or touching only receiving of such absolution or reconciliation, and for and concerning all absolution or reconciliation had or received by colour of any the said bulls, writings, or instruments only.

“X. Provided also, and be it further enacted by the authority aforesaid, that if any justice of peace, to whom any matter or offence beforementioned shall be uttered, showed, or declared, as is aforesaid, do not within the space of fourteen days next after it shall be to him showed or uttered, signify or declare the same to some one of the queen’s majesty’s privy council, that then the same justice of peace shall incur the danger, pain, and forfeiture, provided by the said statute made in the said sixteenth year of King Richard the Second.

“XI. Provided also, and be it further enacted by the authority aforesaid, that if any nobleman, being a peer of this realm, shall at any time hereafter happen to

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c. 2.

disclosing his name.

Delivering an *Agnus Dei* to the ordinary, or a justice of peace.

A pardon to them that shall bring in to be cancelled those bulls which before they received.

A pardon of all those that have been reconciled to the Bishop of Rome, and to confess it, and submit themselves.

The penalty of a justice of peace not disclosing an offence declared unto him.

Trial of a nobleman by his peers.

STAT. 13 ELIZ. c. 2. be indicted for any the offence or offences aforesaid, that then every such nobleman and peer of this realm shall have his trial by his peers, as in cases of high treason and misprison of treason hath heretofore been accustomed or used :

A saving of the right of others.

Farther provisions relating hereto.

13 & 14 Car. 2, c. 4; 15 Car. 2, c. 6; 1 G. & M. St. I. c. 18; 5 Ann. c. 5; and 23 Geo. 2, c. 28.

"XII. Saving to all and every person and persons, bodies politic and corporate, their heirs and successors, and the heirs and successors of every of them, other than the said offenders and their heirs claiming only as heir or heirs to any such offenders, and such person and persons as claim to any their uses, all such rights, titles, interests, possessions, leases, rents, reversions, remainders, offices, fees, and all other profits, commodities, and hereditaments, as they or any of them shall have at the day of the committing of such offence or offences, or at any time before, in as large and ample manner to all intents and purposes, as if this act had never been had nor made; anything herein contained to the contrary thereof notwithstanding."

STAT. 13 ELIZ. c. 4. [Ir.]

XXII. STAT. 13 ELIZABETHÆ, c. 4. [IRELAND.] A.D. 1571.

"An Act authorizing the Primate of Ardmagh to set his Lands and Possessions in the Irish Pale for Years, without the Assent of his Chapter."

STAT. 13 ELIZ. c. 5.

XXIII. STAT. 13 ELIZABETHÆ, c. 5 (1). A.D. 1570.

"An Act against fraudulent Deeds, Alienations, &c."

STAT. 13 ELIZ. c. 8.

XXIV. STAT. 13 ELIZABETHÆ, c. 8 (2). A.D. 1570.

"An Act against Usury."

[In what case an offender shall be also punished by the ecclesiastical law.]

STAT. 13 ELIZ. c. 10.

XXV. STAT. 13 ELIZABETHÆ, c. 10 (3). A.D. 1570.

"Fraudulent Deeds made by Spiritual Persons to defeat their Successors of Remedy for Dilapidations, shall be void, &c. (4)."

Wrongs and frauds prac-

"Where divers and sundry ecclesiastical persons of this realm, being endowed and possessed of ancient palaces, mansion-houses, and other edifices (5) and build-

(1) *Vide* Stat. 40 Geo. 3, c. 41. Stat. 1 & 2 Gul. 4, c. 45, s. 14. Stat. 1 & 2 Vict. c. 107, s. 14. Stat. 3 & 4 Vict. c. 113, s. 76. Stat. 4 & 5 Vict. c. 39.

(2) Superseded by Stat. 12 Ann. St. II. c. 16. Stat. 5 & 6 Gul. 4, c. 41. Stat. 2 & 3 Vict. c. 37.

(3) It is stated in 2 Burn's E. L. by Philimore, 151, "There is no appearance of this statute being temporary; nevertheless, it is continued as temporary by Stat. 1 Jac. 1, c. 25, and further, by Stat. 21 Jac. 1, c. 28; and not further indefinitely, (as a great many other statutes were,) by 'Stat. 10 Car. c. 4.' So that, upon the whole, there may perhaps be some doubt whether this statute is now in force." To this crotchet it may be observed, that a continuation of a statute made under an erroneous view of it, cannot by implication amount to a repeal.

(4) Respecting general rights to property by ecclesiastical persons: *vide* Stat. 14 Eliz. c. 11. Stat. 18 Eliz. c. 11. Stat. 43 Eliz. c. 9. Stat. 3 Car. 1, c. 4. Stat. 17 Geo. 3, c. 53. Stat. 57 Geo. 3, c. 99. Stat. 1 & 2 Vict. c. 106. Stat. 2 & 3 Vict. c. 62, s. 15. Stat. 5 & 6 Vict. cc. 26, 27.

(5) *And other edifices*:—Although, in this preamble, nothing is referred to, as dilapidation, but decayed or ruinous buildings; nevertheless, under that name are comprehended, hedges, fences, ditches, and such like; and it has been adjudged concerning wood and

timber, that the felling of them by any incumbent, (otherwise than for repairs, or for fuel,) is dilapidation; from which the incumbent may be restrained by prohibition during his incumbency; and for which he is liable to be prosecuted, after he ceases to be incumbent.

In *Beck v. Rebou*, 1 P. Wms. 94; (*Chapman v. Barnaby*, 2 Bulst. 279; *Knowel v. Harvey*, 3 Bulst. 158; 1 Roll. 335;) the question related to pictures on the staircase, and over the doors and chimneys, and likewise the pier-glasses, hangings, and chimney-glasses, which the plaintiff alleged were as wainscot, and fixed to the freehold of the house. Upon which the lord keeper declared, that hangings and looking-glasses were only matter of ornament and furniture, and not to be taken as part of the house, or freehold, but removable by the lessee of the house.

In *Cave v. Cave*, (2 Vern. 508,) the lord keeper was of opinion, "that although pictures and glasses, generally speaking, are part of the personal estate; yet, if put up instead of wainscot, or where otherwise wainscot would have been put, they shall go to the heir. The house ought not to come to the heir, maimed and disfigured." To which the report adds the *case of Harlackenden*, (4 Co. 64(a),) where it is expressly declared, that wainscot put up with screws, shall remain to the freehold; against the evasion of using screws instead of nails.

These cases are set down here, as parallel

ings, belonging to their ecclesiastical benefices or livings, have of late years not only suffered the same for want of due reparations partly to run to great ruin and decay, and in some part utterly to fall down to the ground, converting the timber, lead, and stones to their own benefit and commodity; but also have made deeds of gift, colourable alienations, and other conveyances of like effect, of their goods and chattels in their lives-time, to the intent and of purpose, after their deaths, to defeat and defraud their successors of such just actions and remedies as otherwise they might and should have had for the same against their *executors* (1) or administrators of their goods, *by the laws ecclesiastical* (2) of this realm, to

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c. 10.

tised by divers
ecclesiastical
persons.
Hob. 84.
2 Roll. 169.

to the disputes which sometimes happen between succeeding incumbents, and the executors of their predecessors, as to what may or may not be taken away; and how far the taking them away shall be accounted dilapidation.

The rule in the *Reformatio Legum*, (f. 39(b).) is as follows: "Si quis arbores, arbusta, lucos, nemora, sylvas, saltus, fructiceta, vel hujusmodi quascunque, lignorum opportunitates, ullius ad se beneficii ecclesiastici jure pertinentes, licentiosius quam necessitas tulerit, sine consensu proprii illius ditionis episcopi, venderit, succiderit, amputarit, asportarit, aut quocunque modo corruperit et vastarit; precium is universum, et aestimationem omnium hujusmodi lignorum, distractorum et eversorum, in cistam pauperum attributum plenè conferet: præterea, tantum in hac re successori satisfacet, quantum episcopus æquum esse putabit."

(1) *Executors*.—This act only makes provision against the particular abuse of fraudulent deeds, to defeat the successor, after the incumbent is dead; but, by the rules of the church, (as appears by the foregoing constitutions,) the ordinary, in case of dilapidations, hath a right to take cognizance of them, during the life of the incumbent, either by voluntary inquisition, or upon complaint made to him; and to enforce reparation by the sequestring of profits, or by ecclesiastical censures, even to deprivation. *Knowl v. Harvey*, 3 Bulst. 158. 3 Inst. 204.

As to the proportion of the profits to be sequestered, that is left to the discretion of the ordinary, according as particular occasions require: and there is no certain rule for it; but only an example, in the injunctions of King Henry the Eighth, which is as follows: "Also, that all parsons, vicars, and clerks, having churches, chapels, or mansions, within this deanry, shall bestow yearly hereafter upon the same mansions, or chancels of their churches, being in decay, the fifth part of their benefices, till they be fully repaired; and the same so repaired, shall always keep and maintain in good state." 1 Burn. App. 163. *Vide Stat. 1 & 2 Vict. c. 106.*

The same injunction is continued, in those which were published by Edward the Sixth and Queen Elizabeth; (Coll. Can. pt. 6, 70;) but the rule in the *Reformatio Legum*, (f. 39(a).) was the seventh part: "Episcopus septimam annui portionem emolumentum apud sequestros faciet seponi, donec, aut domus nova omnibus ministri necessitatibus apta, denuò construat, aut ruinosa ædes sartæ tectæ fiant." And Archbishop Bancroft's circular letter, (Reg. Bancr. 168(a).) in the article for the sequestration of livings, where

houses are out of repair, leaves the proportion to the ordinary, with this only limitation: "Allowing a fit portion for the incumbents to live upon."

In a suit for dilapidations in the spiritual court, the executor of an administrator prayed a prohibition, upon oath, that he had no goods of the first intestate; and the court agreed, that the executor of the administrator is not liable, unless he hath goods of the first intestate, or be administrator *de bonis non administratis* by the administrator; upon which the prohibition was granted and stood. *Carter v. Pecke*, 3 Keb. 619.

Executors, who are chargeable with dilapidations, are bound to make satisfaction for them, before the payment of any legacies. But it seems, that damages for dilapidations are to be postponed in order of payment, to the debts of the deceased. The repairing of dilapidations is, in the strictest sense, a debt to the church; (*vide Const. Edmundi*, 751;) and it seems hard, that private debts should be satisfied out of the spoils of the church, and the church herself be denied the common right of restitution. For whatever substance any incumbent gets from the church, and dies possessed of, is greater, in proportion to his neglect of repairs; and that part that grows from such neglect, is not better than a theft from the church; whose rights and privileges were, anciently, the first care of the law; but the common law prefers the payment of debts before damage for dilapidations. *Degge's Parson's Counsellor*, 135. *Williams on Executors*, 823.

(2) *By the laws ecclesiastical*.—In acknowledgment of the right of the ecclesiastical courts to the sole cognizance upon this head of dilapidations; a writ of consultation (*vide Stat. 1 Gul. 4, c. 21*.) was provided to screen them from the encroachments of the temporal courts. Reg. f. 48(a).

Pursuant to the plain meaning and tenour of such writ, this statute refers the persons aggrieved to the ecclesiastical courts; and the first writer who advanced the notion of an action upon the case in the temporal courts, for dilapidations, was Sir *Simon Degge*; (*Parson's Counsellor*, 138;) who also referred, for proof of it, to divers precedents before the Reformation.

But in *Jones v. Hill*, (3 Lev. 268; Carth. 224,) the Lord Chief Justice *Polluxfen* held at Warwick assizes, that, being a cause of dilapidations, it was only triable in the spiritual court. Notwithstanding which, when the same cause was brought into the court of Common Pleas, although it appeared upon examination of the records, that judgment

STAT. 13 ELIZ. c. 10. the great defacing of the state ecclesiastical, and intolerable charges of their successors, and evil precedent and example for others, if speedy remedy be not provided:

How the successor shall have remedy where the predecessor doth make a fraudulent deed to defeat him for dilapidations.

14 Eliz. c. 11, s. 17.

1 Leon. 307.

"II. Be it therefore enacted by the queen's most excellent majesty, the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, that if any archbishop, bishop, dean, archdeacon, provost, treasurer, chaunter, chancellor, prebendary, or any other having any dignity or office in any cathedral or collegiate church within this realm; or if any parson, vicar, or other incumbent (1), of any ecclesiastical living whereunto do belong any house or houses, or other buildings, which by law or custom he is bound to keep and maintain in reparation; do from henceforth make any deed or deeds of gift or alienation, or other like conveyances of his moveable goods or chattels, to the intent and purpose aforesaid; that then the successor and successors of him that shall make such deed or deeds of gift or alienation, shall and may commence suit, and have such remedy in any court ecclesiastical of this realm competent for the matter against him or them to whom such deed or deeds of gift or alienation shall be so made, for the amendment and reparation of so much of the said dilapidations and decays, or just recompense for the same, as hath happened by his fact or default (2), in such sort as he might, should, or ought lawfully to have, if he or they to whom such deed or deeds of gift or alienation shall be so made, were executor or executors of the testament and last will of him that made such deed or deeds of gift or alienation, or were administrator or administrators of

was not given in any of the precedents cited by Sir *Simon Degge*, and *Pollexfen* strongly adhered to his first opinion, and the court inclined the same way, although it had been otherwise determined, in *Day v. Hollington*; (8 Vin. Abr. *Dilapidations*, 482;) yet, the cause being delayed and reheard, and *Pollexfen* and *Ventris* both dead in the mean time, judgment was afterwards given by the other two justices, that the action did well lie in the temporal court; and the same thing was, in effect, resolved again in *Oke v. Ange*, (3 Lev. 413,) inasmuch as the plaintiff in the spiritual court was adjudged to be barred from suing there, by his having before brought an action on the case, in the temporal court, upon the same matter.

How to proceed against sequestrator, incumbent, and executor for dilapidations, vide Stephens on Clerical Law, tit. DILAPIDATIONS. *Hubbard v. Beckford*, 1 Consist. 307. *Whinsfield v. Watkins*, 2 Phill. 8. *North v. Barker*, 3 Phill. 307. *In re Little, Hallingbury, Essex*, 1 Curt. 556. *Degge's Parson's Counsellor*, 134—145. *Jones v. Hill*, 3 Lev. 268. *Radcliffe v. D'Oyly*, 2 T. R. 630. *Young v. Munby*, 4 M. & S. 183. *Bird (Clerk) v. Relf*, 4 B. & Ad. 826. *Ibid.* 2 A. & E. 772. *Percival (Clerk) v. Cooke*, 2 C. & P. 460. *Wright (Clerk) v. Smythies (Clerk)*, 10 East, 409. *Wise v. Metcalfe*, 10 B. & C. 299. Stat. 1 & 2 Vict. c. 106.

(1) *Or other incumbent*:—In the case of the Curate of *Orpington*, (3 Keb. 614,) who was appointed by the impropiator, and licensed by the archbishop as ordinary, the court held, that being but curate at will, and not instituted nor inducted, he was not an incumbent within this statute, nor liable to dilapidations; and accordingly, prohibition was awarded, to stay suit against him in the spiritual court.

(2) *By his fact or default*:—This statute in the particular case of a fraudulent conveyance, seems at first sight to limit the suit to the dilapidations that have grown in the time of the last incumbent; which, (in case his predecessor did also leave dilapidations, and die insolvent,) cannot be known, but by a regular survey of the defects at his first coming in, that thereby the respective dilapidations of the two predecessors may be distinguished. But, in other cases, the last incumbent, or his executors, are chargeable with the whole dilapidations, in whose time soever they have grown; and the reason is, because he had the same remedy against the executors or administrators of his predecessors, and it was his own fault if he did not make use of it. And if such predecessor was insolvent, he accepted the benefice with that charge and incumbrance upon it.

Agreeably to this general rule, may this statute also be interpreted, so as to make this clause, *by his fact or default*, to be exclusive, not of dilapidations, which have grown in the time of the predecessors to the deceased, but of such as may have grown between the time of his decease and the prosecution for them; that is, either in the time of the vacation of the benefice, or since the time of the present incumbent.

This, in some cases, may prove a very great hardship; particularly, where a burden of dilapidations is left by one who died insolvent, and the successor enjoys the benefice for a short time, and dies: in which case, the *Reformatio Legum*, (39(b),) had provided the following mitigation: "*Spatium tamen possessionis erit considerandum; quod si totum annum non impleverit, nihil postulabitur: quantum autem anno fuerit amplius, ad id æquitas judicis ecclesiastici satisfaciendi rationem accommodabit.*"

his goods or chattels; any law, custom, or other thing to the contrary in any wise notwithstanding. STAT. 13 ELIZ. c. 10.

“III. And for that *long and unreasonable leases* (1), made by colleges, deans, and chapters, parsons, vicars, and other having spiritual promotions, be the chiefest causes of the dilapidations and the decay of all spiritual livings and hospitality, and the utter impoverishing of all successors incumbents in the same; be it enacted by the authority aforesaid, that from henceforth all leases, gifts, grants, feoffments, conveyances, or estates, to be made, had, done, or suffered by any *master and fellows* (2) of any college, dean and chapter of any cathedral or collegiate church, master or guardian of any hospital, parson, vicar, or *any other* (3) having any spiritual or ecclesiastical living, or *any houses* (4), lands, tithes, tene-ments, or *other hereditaments* (5), being any parcel of the possessions of any such college, cathedral church, chapter, hospital, parsonage, vicarage, or other spiritual promotion, or any ways appertaining or belonging to the same, or any of them, *to any person* (6) or persons, bodies politick or corporate, (*other than* (7) *for* (8) the term

1 Roll. 151,
168, 171.
2 Roll. 169,
170, 275, 403,
405, 408.
What convey-
ances, and for
what time
spiritual per-
sons may make
of their lands,
tithes, &c.
2 Bulst. 305.
Moor, 593,
pl. 802.
No new lease

(1) *Long and unreasonable leases*:—Corporations aggregate might always let such leases without any confirmation; and so might sole corporations, with confirmation, until this act was made; none but bishops being restrained by Stat. 1 Eliz. c. 19 (*antè*, 379). But by this statute, all other corporations, sole and aggregate, are put under the same restraints that bishops were; the two acts being of the same tenour and form. Vide *Doe d. Richardson v. Thomas*, (9 A. & E. 556,) in which the enabling powers and restrictions are discussed, and likewise the question, whether a perpetual curate can grant a lease not confirmed by the ordinary.

In *Doe d. Tennyson v. Yarborough* (Lord), (1 Bing. 24,) it was held, that in order to render a lease valid under Stat. 13 Eliz. c. 10, it must be made of land which had been previously let, or on which some rent had been reserved. Therefore a lease by a vicar, for three lives, of unclosed and waste land, not proved to have been before let, was held not to be binding on his successor, although the lease covenanted therein to inclose the land, and pay a rack-rent for it; it was held also, that Stat. 32 Hen. 8, c. 28, and Stat. 13 Eliz. c. 10, must be taken together, as being *in pari materiâ*.

In *Doe d. Cates v. Somerville*, (6 B. & C. 126,) a lease by a rector of his glebe lands, and other rectorial property, made between the years 1803 and 1816, while Stat. 13 Eliz. c. 10, continued repealed, was held valid.

(2) *Master and fellows*:—This includes all colleges, by what name soever incorporated, and of what nature soever the foundations be, ecclesiastical, temporal, or mixed; the statute being construed most largely and beneficially, against destructive leases. *Magdalen College case*, 11 Co. 76.

For the same reason, though it is said, dean and chapter, it extends to chapters where there are no deans; and though it is only said, master or guardian of any hospital, yet it extendeth to all manner of hospitals, by what name soever incorporated. *The Collegiate Church of Southwell* (*The Chapter of*), *v. Lincoln* (*The Bishop of*), 1 Mod. 204.

(3) *Or any other*:—That this is a general law, as it concerns all the clergy, hath been often declared and adjudged, though at first much doubted. But it was always agreed,

notwithstanding this general clause, that bishops were not included, because the statute begins with an order inferior to them. *Holland's case*, 4 Co. 76. *The Collegiate Church of Southwell* (*The Chapter of*) *v. Lincoln* (*The Bishop of*), 1 Mod. 205. *Carter v. Cromwell*, Sav. 129.

(4) *Any houses*:—Respecting houses in corporate towns, *vide p.* 434, St. 14 Eliz. c. 11.

(5) *Other hereditaments*:—Before this statute, although tithes, usually let to farm, could not be leased for life, so as to bind the successor, yet they might by bond, for twenty-one years. *Talentine v. Denton*, Mo. (Sir F.), 778. Harg. Co. Lit. 44(b), n. (3).

(6) *To any person*:—For some time after the making of this act, it was considered, (in practice at least,) that the king was not comprehended in this restraint, but that long leases might be let to him, as before; and, accordingly, some such leases were in fact letten. But it was resolved by *Popham* and *Anderson*, assistants to the lords in parliament, that Queen Elizabeth was restrained by this act; and, in 1 Jac. 1, when a motion was made in parliament, upon the bill then depending, that the clergy, as well as bishops, might be restrained from alienating, &c. to the crown, it was again resolved by the justices' assistants, that they were already restrained by this statute; and for that reason they were left out of such bill. *Magdalen College case*, 11 Co. 75(b).

As to the leases, which, through mistake, had been let by deans and chapters to the king, *after* the making of this statute; the law favourably supposed, that the king's assignees could not understand such doubtful points; and so (upon composition made with the deans and chapters) the leases were made good to them by decrees in Chancery. 1 Rol. Abr. *Chancerie*, 378 (R).

(7) *Other than*:—Although ecclesiastical corporations aggregate are not within Stat. 32 Hen. 8, c. 28, (*antè* 262,) yet was that statute a pattern for leases by them made, in many things, which are not here specified. And as to leases made by sole corporations, according to this statute; they are not good, without confirmation, unless they be also made according to the limitations of Stat. 32 Hen. 8, c. 28.

(8) *Other than for*:—The ancient rule of

STAT. 13 ELIZ. c. 10. of one and twenty years, or three lives, from the time as any such lease or grant shall be made or granted, whereupon the accustomed yearly rent or more shall be reserved and payable yearly during the said term,) shall be *utterly void* (1) and of none effect, to all intents, constructions, and purposes; any law, custom, or usage to the contrary any ways notwithstanding.

to be made unless the first expires, &c. within three years, &c. 18 Eliz. c. 11, s. 1, by 14 Eliz. c. 11, s. 17, &c., not to extend to leases of houses, and which are otherwise provided for by that statute. 1 Mod. 204. Cro. Eliz. 430. Cro. Car. 259. Vaugh. 204. 4 Co. 26. Savil. 129. 2 Co. 46. 6 Co. 37. 11 Co. 67. 2 Mod. 56. Co. Lit. 44 (a) (b). Moor, 459, pl. 636. Goldsb. 171, pl. 102. 1 Brownl. 182. 8 Co. 70. Hob. 269. Declared to include bedehouses, &c. 14 Eliz. c. 14.

Leases limited by the private statutes of any college.

“IV. Provided nevertheless, and be it enacted by the authority aforesaid, that this act, nor any thing therein contained, shall be taken or construed to make good any lease or other grant to be made by any such college or collegiate church within either of both the universities of Oxford and Cambridge, or elsewhere within the realm of England, for more years than are limited by the private statutes of the same college.

New leases made upon the surrender of old or former covenants.

“V. Provided always, that this act shall not extend to any lease hereafter to be made upon surrender of any lease heretofore made, or by reason of any covenant or condition contained in any lease heretofore made, and now continuing, so that the lease to be made do not contain more years than the residue of the years of the former lease now continuing shall be at the time of such lease hereafter to be made, nor any less rent than is reserved in the said former lease.”

1 Anders. 65. Hob. 7. 2 Roil. 401, 406.

STAT. 13 ELIZ. c. 12.

XXVI. STAT. 13 ELIZABETHÆ, c. 12. A.D. 1570.

“An Act for the Ministers of the Church to be of sound Religion.”

This act enforced by 5 Ann. c. 5. 2 & 3 Edw. 6, c. 1. 5 & 6 Edw. 6, c. 1. Every ecclesiastical person shall subscribe to the articles touching the confession of the faith, and declare his assent thereunto. March, 119.

“That the churches of the queen’s majesty’s dominions may be served with pastors of sound religion, be it enacted by the authority of this present parliament, that every person under the degree of a bishop, which doth or shall pretend to be a priest or minister of God’s holy Word and Sacraments, by reason of any other form of institution, consecration, or ordering, than the form set forth by parliament in the time of the late king of most worthy memory, King Edward the Sixth, or now used in the reign of our most gracious sovereign lady before the feast of the Nativity of Christ next following, shall in the presence of the bishop or guardian of the spiritualities of some one diocese where he hath or shall have ecclesiastical living, declare his assent, and subscribe to all the articles of religion, which only concern the confession of the true Christian faith and the doctrine of the sacraments, comprised in a book imprinted, intituled, ‘Articles, whereupon it was agreed by the Archbishop and Bishops of both Provinces, and the whole

alienations, is thus set down in the Reformatio Legum: (40(a):) “Qui gubernandis ecclesiis admoti sunt, nec domos, nec agros, nec ullas ecclesiarum possessiones aut fructus vendent, permutabunt, donabunt, aut quocunque genere contractus vel conventionis in omne tempus ab alienabunt, nisi suum patronus et episcopus consensum interposuerint.”

And so favourable were the administrators of the common law to those prejudicial grants, if made to the laity with such consent; that where one granted a rent-charge, to commence after his own death, and it was confirmed by patron and ordinary, they adjudged it to be good; because the grant was *present*, though it was not to take effect in the life of the grantor.

But under the provisions of this statute, all gifts, grants, &c. as well as leases contrary to its provisions, would be utterly void, notwithstanding any subsequent consent or confirmation.

(1) *Utterly void*:—It was held by *Hale*, (Chief Baron,) in the case of a lease made by the petty canons of St. Paul’s, (*Morrice v. Antrobus*, Hardr. 336,) that if a corporation aggregate make a lease not warranted by this statute, such lease will be void against themselves, as it is said to have been often adjudged; but if a sole corporation make such a lease, it shall bind him, though it be void against his successor.

In *Hunt v. Singleton*, (cit. 3 Co. 60,) it was resolved, that if a dean and chapter let a lease contrary to the tenour of this act, or to Stat. 14 Eliz. c. 11, (*post*. 434,) it shall not be void till after the death of the dean who was party to the lease, and who is the principal member of the corporation; but that after his death, the succeeding dean, with the chapter, shall avoid it.

Stat. 1 Geo. 1. St. II. c. 10, s. 13, authorizes the exchanges of lands, &c. with the consent of the governors of Queen Anne’s Bounty.

Clergy in the Convocation holden at London in the year of our Lord God one thousand five hundred sixty and two, according to the Computation of the Church of England, for the avoiding the Diversities of Opinions, and for the establishing of Consent touching true Religion put forth by the Queen's Authority; and shall bring from such bishop or guardian of spiritualities in writing, under his seal authentick, a testimonial of such assent and subscription; and openly on some Sunday in the time of the public service afore noon, in every church where by reason of any ecclesiastical living he ought to attend, read both the said testimonial and the said articles; upon pain that every such person which shall not before the said feast do as is above appointed, shall be *ipso facto* deprived, and all his ecclesiastical promotions shall be void, as if he then were naturally dead.

"II. (1) And that if any person ecclesiastical, or which shall have ecclesiastical living, shall advisedly maintain or affirm any doctrine directly contrary or repugnant to any of the said articles, and being convented before the bishop of the diocese of the ordinary, or before the queen's highness' commissioners in causes ecclesiastical, shall persist therein, or not *revoke his error* (2), or after such revocation eftsoon affirm such untrue doctrine, such maintaining or affirming and persisting, or such eftsoon affirming, shall be just cause to deprive such person of his ecclesiastical promotions; and it shall be lawful to the bishop of the diocese or the ordinary, or the said commissioners, to deprive such persons so persisting or lawfully convicted of such eftsoons affirming, and upon such sentence of deprivation pronounced he shall be indeed deprived.

"III. And that no person shall hereafter be admitted to any benefice *with cure* (3), except he then be of the age of *three and twenty* (4) years at the least and *a deacon* (5),

(1) This section was confirmed by Stat. 13 & 14 Car. 2, c. 4, s. 6. Superseded by Stat. 23 Geo. 2, c. 28, s. 2.

(2) *Revoke his error*:—There must be an express revocation of past error; a promise to be silent for the future will not be sufficient. *H. M. Proc.-Gen. v. Stone*, 1 Const. 424.

(3) *With cure*:—This is meant of such benefices as have parochial churches belonging to them; and extends not to dignities or prebends, in cathedral and collegiate churches. And, therefore, where the case related to reading the articles, and it was not alleged in the declaration, that the benefice was a benefice with cure, it was held to be ill. *Reg. v. Lincoln (Bishop of)*, 1 And. 62.

(4) *Three and twenty*:—The more ancient rule of the church, was twenty-five; for so is the canon of the third Lateran Council, (Can. 3,) that none shall be admitted to deanry, archdeaconry, or cure of souls, "nisi qui jam vicesimum quintum ætatis annum attigerit." And so, in the Register of Archbishop Reynolds, (f. 31 (a),) it is stated, that the archbishop not being fully satisfied concerning the age, the presentee took an oath, "quod fuit ætatis viginti quinque annorum." And, in the same Register, (66 (b),) one who had been instituted under twenty-five, is cited to show cause, why he should not be deprived. But this was a circumstance, which the Pope could, and frequently did, dispense with.

In this statute, the age of institution is twenty-three; but by Stat. 13 & 14 Car. 2, c. 4, it is incidentally made twenty-four; inasmuch, as a necessity is created thereby, that the person instituted be a priest, and it is the law of our church, laid down in the preface to the Forms of Ordination and Con-

secration, that every man previously to his being admitted a priest, shall be full twenty-four years old.

(5) *A deacon*:—This was always necessary in the case of admission to a vicarage: "Admittendus verò ad vicariam, debet esse ad minus diaconus." Lyndw. de Inst. c. Cùm sec. v. *Idoneus*. But as to benefices of other kinds, it was sufficient, if the presentee was in the lowest degree of orders; "Debet instituendus in beneficio ad minus habere primam tonsuram, ut sit in ordine clericali;" (Lyndw. de Inst. c. Ex Sol. v. *Ordine*;) and, accordingly, institution has been frequently given to acolytes. *Reg. Winch. f. 50 (a, b), 52 (b), 53 (a), 55 (a, b)*. But in these, and other cases, where the person instituted was not a priest, the law of the church was, that he should take the order of priesthood, within one year after his institution, (Lyndw. de Inst. c. Cùm sec. v. *Idoneus*;) "Requiritur etiam, quòd possit, infra annum promoveri ad sacerdotium;" agreeably to the rule of the canon law, (Extra. l. 1, t. 14, c. 5,) "Præterea licet ad regimen parochialis ecclesiæ non debeat aliquis, nisi subdiaconus sit ad minus, admitti, dispensativè tamen in minoribus ordinibus constituti consueverunt assumi. Dum tamen tales sint, quod infra breve tempus possint in presbyteros ordinari;" which was frequently dispensed with; until the clause in this statute, requiring that he be admitted to minister the sacraments within one year, made it indispensable. Those indulgences had grown to a shameful excess, which is illustrated by the following rule of the canon law: (Extra. l. 1, t. 14, c. 3:) "Indecorum est, ut hi debeant ecclesias regere, qui non noverunt gubernare seipsos; cum ad ecclesiarum regimen tales personæ sint admit-

STAT. 13 ELIZ. c. 12.

Vaugh. 131-3. Lane, 4.

Dyer, 377.

Cro. Eliz. 252, 511, 679.

1 Roll. 83, 473.

Reading of the articles and testimonial.

Hob. 168.

6 Co. 29.

The penalty for maintaining of doctrine against the articles.

For farther provisions concerning religion, &c., see 23 Eliz. c. 1; 13 & 14 Car. 2, c. 4; 15 Car. 2, c. 6; 1 G. & M. St. l. c. 18; and 23 Geo. 2, c. 28.

STAT. 13 ELIZ. and shall first have subscribed *the said articles*(1) *in presence of the ordi-*
c. 12.

tendæ, quæ discretionē præmineant, et morum fulgeant honestate. Nolentes itaque sustinere, ut parvulis ecclesiæ regimen committatur, mandamus, quatenus nemini infra annum quartum decimum constituto, personatum cujuslibet ecclesiæ concedere præsumatis. Scituri pro certo, quod si contraire præsumperitis: quod inde feceritis, irritabimus, et inobedientiam vestram graviter puniemus."

The necessity of being in some sort of orders, (speaking with regard to ancient times,) is confirmed by the books of common law, as to benefices with cure; and in former times, a mere layman might have taken a title to a deanry, prebend, or other benefice without cure. Thus, in *Bland v. Maddox*, (Cro. Eliz. 79,) "It was agreed clearly, that a layman may be presented to a prebend, for *non habet curam animarum*." "But it follows not upon the foot of this statute, that if every person who shall be admitted to a benefice with cure, must be a deacon, therefore any person may be admitted to a benefice without cure, though he is a layman; and yet it may be doubted, whether this inference is the chief ground, as of that resolution, so of the admissions of some few laymen to dignities, in the reign of Queen Elizabeth, pursuant to it. Whereas, the most that can be built upon this statute, is, that admissions to benefices with cure, shall be made according to the directions and limitations here given; and, as to those without cure, (the statute touching them not,) they are to remain in the same state, as they were; that is, as ecclesiastical promotions to be enjoyed by such persons only who were *in ordine clericali*, and who might be dispensed with from entering into the order of priesthood. But that a mere laymen might be admitted to any thing that had the name of an ecclesiastical or spiritual promotion, (as the dignities of the church always had,) is a point that cannot be made out, either from the law, or the practice of the church." Gibson's Codex, 805.

However, by Stat. 13 & 14 Car. 2. c. 4, priesthood is made a necessary condition of being admitted to any ecclesiastical promotion whatsoever.

(1) *The said articles*:—It has been doubted, what articles are here meant; namely, whether all the Thirty-nine Articles, or only such of them, as are in this act above specified. The case is this: the act requires, first of all, that every person under the degree of a bishop, pretending to be a preacher or minister, by reason of any other form of institution, consecration, or ordering, than the form set forth in the time of Edward 6, or then used, should, before December 25, then next following, declare his assent and subscription to all the articles of religion, *which only concern the confession of the true Christian faith and the doctrine of the sacraments*; comprised in a book imprinted, intitled, "Articles, whereupon it was agreed by the Archbishops and Bishops of both Provinces, and the whole Clergy, in

the Convocation holden at London, in the year 1562," &c. After which follow the several clauses requiring subscription to the *said articles* in time to come; and the question is, whether to the whole book of articles, or only to such of them *as concern only the confession of the true faith, and the doctrine of the sacraments*, for these only were required in the former part of the act. There is a remarkable passage in D'Ewes' Journal, (p. 239,) which explains the aforesaid clause, requiring assent and subscriptions to some of the articles and not to all. Mr. Peter Wentworth, in a speech in the House of Commons, inveighing against a message of the queen to the house, *that they should not deal in any matters of religion, but first to receive from the bishops*, expresseth himself thus: "I have heard of old parliament-men, that the banishment of the Pope and popery, and the restoring of true religion, had their beginning from this house, and not from the bishops. And I have heard, that few laws for religion had their foundation from them. I do surely think, (before God I speak it,) that the bishops were the cause of that doleful message, and I will show you what moveth me so to think. I was, amongst others, the last parliament, sent unto the Bishop of Canterbury for the articles of religion that then passed this house. He asked us, why we did put out of the book the articles for the homilies, consecrating of bishops, and such like? Surely sir, said I, because we were so occupied in other matters, that we had no time to examine them, how they agreed with the word of God. What, said he, surely you mistook the matter, you will refer yourselves wholly to us therein? No! by the faith I bear to God, said I, we will pass nothing before we understand what it is, for that were but to make you popes; make you popes who list, said I, for we will make you none. And sure, Mr. Speaker, the speech seemed to me to be a pope-like speech, and I fear lest our bishops do not attribute this of the pope's canons unto themselves,—*Papa non potest errare*."

The articles which concern faith and doctrine, are, 1, 2, 3, 4, 5, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 22. Gibson's Codex, 321. *Vide De Lolme on the English Constitution*, by Stephens, 296, 297.

Refusal or neglect to read the articles, renders the church *ipso facto* void, without sentence of deprivation. *Baker v. Brent*, Cro. Eliz. 680.

By Can. 36, "No person shall, either by institution or collation, be admitted to any ecclesiastical living, except he shall first subscribe to these three articles following:

"1. That the king's majesty, under God, is the only supreme governor of this realm, and of all other his highness' dominions and countries, as well in all spiritual or ecclesiastical things or causes, as temporal; and that no foreign prince, person, prelate, state, or potentate, hath or ought to have any jurisdiction, power, superiority, pre-

nary(1), and publicly read the same in the parish church of that benefice, with declaration of his unfeigned assent to the same; and that every person after the end of this session of parliament, to be admitted to a benefice with a cure, except that *within two months*(2) after his induction he do publicly read the said articles *in the same church*(3) whereof he shall have cure, *in the time of common prayer there*(4), with declaration of his *unfeigned assent*(5) thereunto, and be admitted to minister the sacraments within one year after his induction, if he be not so admitted before, shall be *upon every such default*(6), *ipso facto*(7), immediately deprived.

“IV. And that no person now permitted by any dispensation or otherwise, shall retain any benefice with cure, being under the age of one and twenty years, or not being deacon at the least, or which shall not be admitted as is aforesaid, within one year next after the making of this act, or within six months after he shall accomplish the age of four and twenty years, on pain that such his dispensation shall be merely void.

“V. And that none shall be made minister, or admitted to preach or admi-

STAT. 13 ELIZ.
c. 12.

Several things required in him who shall be admitted to a benefice.

1 Leon. 230.

1 Anders. 62.

The age of a minister or preacher, and

eminence or authority, ecclesiastical or spiritual, within his majesty's said realms, dominions, and countries.

“2. That the Book of Common Prayer, and of ordering of bishops, priests, and deacons, containeth in it nothing contrary to the word of God, and that it may lawfully be used, and that he himself will use the form in the said book prescribed in public prayer and administration of the sacraments, and none other.

“3. That he alloweth the Book of Articles of Religion, agreed upon by the archbishops and bishops of both provinces, and the whole clergy, in the convocation holden at London in the year of our Lord God one thousand five hundred and sixty-two; and that he acknowledgeth all and every the articles therein contained, being in number nine and thirty, besides the ratification, to be agreeable to the word of God.

“To these three articles, whosoever will subscribe, he shall, for the avoiding of all ambiguities, subscribe in this order and form of words, setting down both his christian and surname, viz., ‘I, N. N., do willingly and *ex animo*, subscribe to these three articles above mentioned, and to all things that are contained in them.’ And if any bishop shall admit any as is aforesaid, except he first have subscribed in manner and form aforesaid, he shall be suspended from giving of orders and licences to preach for the space of twelve months.”

Which penalty seemeth not adequate to the offence; for this is punishing of others, rather than the bishop, for the bishop's default. 1 Burn's E. L. by Phillimore, 165. Vide *H. M. Proc.-Gen. v. Stone*, 1 Consist. 424.

(1) *In presence of the ordinary*:—Before this statute, institution was frequently given, (as inductions and institutions may still be,) by proxy. Gibson's Codex, 808.

(2) *Within two months*:—Computing twenty-eight days to the month; for in *Brown v. Spence*, (1 Lev. 101,) where the induction was Sep. 15, and the articles were read Nov. 15, this was judged insufficient. *Baker v. Brent*, Cro. Eliz. 679. *Sed vide* Stat. 23 Geo. 2, c. 28.

(3) *In the same church*:—In *Brown v. Spence*, (1 Keb. 503; 1 Lev. 101,) where the keys of the church could not be had, and so divine service was performed in the church porch, and the articles read there; this was held to be a sufficient reading within the statute, as Keble reports it; but by Levinz, what the court there held to be good, was, the reading of them in the porch of a chapel of ease within the parish.

(4) *In the time of common prayer there*:—And therefore not to be put off till divine service or common prayer is ended.

(5) *Unfeigned assent*:—In *Smith v. Clerke*, (Cro. Eliz. 252,) the jury found, that the incumbent, (who was sued in the spiritual court, in order to deprivation, for not giving assent to the articles,) did read the articles, and then said, “I give my consent unto them, so far forth as they agree with the word of God;” and it was adjudged, that this “was not such an unfeigned assent as the statute intendeth; but it ought to be absolute without condition.” For (as Lord Coke says,) “the act was made for avoiding a diversity of opinions, &c.; and by this addition, the party might, by his own private opinion, take some of them to be against the word of God; and by this means diversity of opinions should not be avoided, which was the scope of the statute, and the very act itself made, touching subscription hereby, of none effect.” 4 Inst. 324.

(6) *Upon every such default*:—But in a suit for tithes, or the like, *Monke v. Butler*, (1 Roll. 83,) though the parishioner may plead, that the parson did not read the thirty-nine articles, yet the law presumes the affirmative, and, (in that case,) the negative must be proved.

(7) *Ipso facto*:—So as the church is presently void, without any declaratory sentence; for avoidance by act of parliament, needs not any sentence declaratory. And if it did, the statute would be defrauded at the ordinary's pleasure if he would not deprive, *Green's case*, 6 Co. 29 (b). 4 Inst. 324. This is the received interpretation of the statute; although the contrary seems to be supposed in *Bacon v. Carlisle* (Bishop of), (Dyer, 346,) (which was but six years after

STAT. 13 ELIZ.
c. 12.

his testimo-
nials.

3 Bulst. 90.

3 Mod. 67.

4 Mod. 135,
136.

2 Salk. 539.

Who may have
a benefice of
the yearly value
of 30l.

Admissions,
inductions,
tolerations.

No lapse upon
deprivation,
but after notice.
Dyer, 377.

nister the sacraments, being under the age of *four and twenty* (1) years; nor unless he first bring to the bishop of that diocese, from men known to the bishop to be of sound religion, a testimonial both of his honest life and of his professing the doctrine expressed in the said articles: nor unless he be able to answer, and render to the ordinary an account of his faith, in Latin according to the said articles, or have special gift or ability to be a preacher: nor shall be admitted to the order of deacon or *ministry* (2), unless he shall first subscribe to the said articles.

"VI. And that none hereafter shall be admitted to any benefice with cure of or above the value of thirty pounds yearly in the queen's books, unless he shall then be a bachelor of divinity, or a preacher lawfully allowed by some bishop within this realm, or by one of the universities of Cambridge or Oxford.

"VII. And that all admissions to benefices, institutions, and inductions, to be made of any person contrary to the form or any provision of this act, and all tolerations, dispensations, qualifications, and licences whatsoever to be made to the contrary hereof, shall be merely void in law, as if they never were.

"VIII. Provided alway, that no title to confer or present by lapse, shall accrue upon any deprivation *ipso facto*, but after six months after *notice of such deprivation* (3) given by the ordinary to the patron."

STAT. 13 ELIZ.
c. 20.

XXVII. STAT. 13 ELIZABETHÆ, c. 20 (4). A.D. 1570.

"An Act touching Leases of Benefices, and other Ecclesiastical Livings with Cure."

Godb. 29,
pl. 38.
Poph. 8.

"That the livings appointed for ecclesiastical ministers may not by corrupt and indirect dealings be transferred to other uses; be it enacted by the authority of

making of the act,) inasmuch, as the notice given by the bishop is there declared insufficient, because, among other reasons, he did not notify, that he had deprived the clerk by such sentence.

(1) *Four and twenty*:—In *Roberts v. Pain*, (3 Mod. 67,) it appeared, that upon a person being presented to the parish of Christ Church, in Bristol, he was libelled against, because he was not twenty-three years of age when made deacon, nor twenty-four when made priest. A prohibition was prayed upon this suggestion, that if the matter was true, a temporal loss, *viz.* (*vide* sect. 7 of this statute,) deprivation would follow, and that, therefore, it was triable in the temporal court; but it was denied, because so it is also in the case of drunkenness and other vices, which are usually punished in the ecclesiastical courts, though temporal loss may ensue.

It may be here observed, that provisions respecting *age* are enforced by Stat. 44 Geo. 3, c. 43.

(2) *Ministry*:—The word *minister*, both in our statutes, canons, and rubric in the Book of Common Prayer, is sometimes equivocal, and it is frequently made to express the person officiating in general, whether priest or deacon; at other times, it denoteth the priest alone, as *contra*-distinguished from the deacon; and in such cases, the determination thereof, can only be ascertained from the connexion and circumstances.

(3) *Notice of such deprivation*:—In *Bacon v. Carlisle* (*Bishop of*), (Dyer, 346,) a question arose concerning the manner of giving notice. The Bishop of Carlisle had signified in an instrument under seal, that

Bacon had not subscribed to the articles, according to the statute; which instrument, the jury found, was publicly read in the church by the curate of the place, and afterwards affixed by the apparitor to the parsonage house. But this notice was declared insufficient, not only because no mention was made therein, either of the patron, or of the deprivation by declaratory sentence; but chiefly, because the notice ought to have been given to the patron immediately. And, accordingly, Lord Coke, (*Green's case*, 6 Co. 29,) lays down two qualifications of the notice mentioned in this act. It ought to be given by a person certain, that is, the ordinary; for, if any other, of his own head, giveth notice to the patron, it is not material. 2. The notice ought to be certain and particular; and therefore it is not sufficient for the ordinary, in such case, to give notice, that the presentee had not read the articles and subscribed, generally; but he ought, particularly, to inform the patron, that he had not read the articles, for which default he is deprived, and that, thereupon, it belongs to the patron to present. Gibson's Codex, 818. *Vide* *Powel v. Milbank*, Black. (Sir W.), 851.

(4) Repealed by Stat. 43 Geo. 3, c. 84, s. 10. Stat. 1 & 2 Vict. c. 106. *Sed vide* Stat. 14 Eliz. c. 11, s. 14. Stat. 35 Eliz. c. 7. Stat. 3 Car. 1, c. 4. Stat. 57 Geo. 3, c. 99.

It has been deemed expedient to print this statute, as a knowledge of its provisions may be practically useful in the construction of old ecclesiastical leases.

In *Sloane v. Packman* (*Clerk*), (11 M. & W. 770,) the declaration, which was in co-

this present parliament, that no lease after the fifteenth day of May next following the beginning of this parliament, to be made of any benefice or ecclesiastical promotion with cure, or any part thereof, and not being appropriated, shall endure any longer than while the lessor shall be ordinarily resident and serving the cure of such benefice without absence above four score days in any one year, but that every such lease, so soon as it or any part thereof shall come to any possession or use above forbidden, or immediately upon such absence, shall cease and be void; and the incumbent so offending shall for the same lose one year's profit of his said benefice, to be distributed by the ordinary among the poor of the parish: and that all chargings of such benefices, with cure hereafter with any pension, or with any profit out of the same to be yielded or taken, hereafter to be made, other than rents to be reserved upon leases hereafter to be made according to the meaning of this act, shall be utterly void.

No benefice with cure shall be charged with a pension. Goldsb. 154. 1 Brownl. 208. Noy, 116. Yelv. 106. Cro. Eliz. 78, 88, 123, 490, 564. Moor, 270, pl. 422. Dyer, 373, pl. 11. 14 Eliz. c. 11, s. 14.

“II. Provided, that every parson by the laws of this realm allowed to have two benefices, may demise the one of them upon which he shall not then be most ordinarily resident, to his curate only, that shall there serve the cure for him; but such lease shall endure no longer than during such curate's residence, without absence above forty days in any one year: this act to continue to the end of the next parliament.”

STAT. 13 ELIZ. c. 20.

How long the lease of a benefice shall endure. Co. 205.

1 Leon. 307, 333.

1 Bulst. 111.

Farther provisions relating hereto,

18 Eliz. c. 11, s. 7; 43 Eliz. c. 9, s. 8.

The parson's lease to his curate.

3 Leon. 102.

1 Leon. 100.

Goldsb. 162.

XXVIII. STAT. 13 ELIZABETHÆ, c. 29. A.D. 1570.

“An Act concerning the several Incorporations of the Universities of Oxford and Cambridge, and the Confirmation of the Charters, Liberties, and Privileges granted to either of them.”

STAT. 13 ELIZ. c. 29.

XXIX. STAT. 14 ELIZABETHÆ, c. 5 (1). A.D. 1572.

“An Act . . . for the Relief of the Poor and Impotent.”

STAT. 14 ELIZ. c. 5.

XXX. STAT. 14 ELIZABETHÆ, c. 7. A.D. 1572.

“An Act against the Deceits of Under-collectors of the Tenths and Subsidies of the Clergy.”

STAT. 14 ELIZ. c. 7.

venant, stated, that the defendant had granted an annuity to the plaintiff, and for the better securing the said annuity, demised a rectory and prebendal stall to certain trustees, and covenanted for payment of the annuity; and alleged as a breach the non-payment thereof:—to this declaration, the defendant being under terms of pleading issuably, pleaded, that the indenture was made with the view of charging, and was a charge upon the rectory, the same being a benefice with a cure of souls, contrary to Stat. 13 Eliz. c. 20, and that the indenture and security were made to evade the statute: it was held, that the plea was not an issuable one, as it stated no new fact upon which the plaintiff could go to the jury; and that the statute avoided the charge upon the benefice only, but not the covenant in the deed containing it.

The construction which has been given to the language of Stat. 13 Eliz. c. 20, will be ascertained from consulting *Saltmarshe v. Hewett (Clerk)*, 1 A. & E. 812. *Alchin v. Hopkins (Clerk)*, 1 Bing. N. C. 99. *Metcalfe v. York (Archbishop of)*, 6 Sim.

224. *Doe d. Crisp v. Barber*, 2 T. R. 749. *Doe d. Rogers v. Mears*, Cowp. 129. *Graham v. Peat*, 1 East, 244. *Flight v. Salter*, 1 B. & Ad. 673. *Britten v. Wait*, 3 Ibid. 915. *Gibbons v. Hooper (Clerk)*, 2 Ibid. 734. *Kirlew v. Butts*, Ibid. 736, *in not.* *Doe d. Wilks v. Ramsden (Clerk)*, 4 Ibid. 609. *Colebrook (Bart.) v. Layton (Clerk)*, Ibid. 578. *Newland v. Watkin*, 9 Bing. 113. *Bendry v. Price*, 7 Dowl. P. C. 753. *Bishop v. Hatch*, Ibid. 763. *Geale (Clerk) v. Wynntour*, Bunb. 211. *Mouys v. Leake (Clerk)*, 8 T. R. 415. *Frogmorton d. Fleming (Clerk) v. Scott (Clerk)*, 2 East, 467. *Hodson v. Sharpe*, 10 Ibid. 352. *Plowden v. Oldford*, Cro. Car. 582. *Mote v. Hales*, Cro. Eliz. 123. *Moore (Sir F.)*, 270. *Bayly v. Munday*, 2 Lev. 61. *Sidner v. Calver*, Noy, 116. *Gosnal v. Kindlemarsh*, Cro. Eliz. 88. *Shepherd v. Twoulsie*, 1 Bulst. 111. *Nunns v. Gee*, Cro. Eliz. 78. *Gibson's Codex*, 739.

(1) Repealed by Stat. 35 Eliz. c. 7, s. 24. Stat. 39 Eliz. cc. 4 & 18. Stat. 43 Eliz. c. 2.

STAT. 14 ELIZ.
c. 11.

XXXI. STAT. 14 ELIZABETHÆ, c. 11 (1). A.D. 1572.

"An Act for the continuation, explanation, perfecting, and enlarging of divers Statutes."

13 Eliz. c. 20.

"XI. And where also in the said parliament begun and holden at Westminster the said second day of April, there was also one other act and statute made for the avoiding of some leases in certain cases, to be made of ecclesiastical promotions with cure, intituled, 'An Act touching Leases of Benefices and Ecclesiastical Livings with Cure,' which act was likewise made to continue to the end of the next parliament.

Certain words
contained in
the statute of
13 Eliz. c. 20,
discontinued.

"XIV. Provided also, and be it enacted that these words, 'so soon as it or any part thereof shall come to any possession or use above forbidden, or,' which words are contained in the said statute made in the said thirteenth year, touching leases of benefices and other ecclesiastical livings with cure, shall not be revived by this act, but remain discontinued, and shall from henceforth be omitted out of the said act, anything in the said act or in this act to the contrary notwithstanding.

Co. 205.
Bonds and
covenants for
the enjoying of
leases shall be
void.

"XV. And where sundry evil-disposed persons have defrauded the true meaning of the said last mentioned statute made in the said thirteenth year, by bonds and covenants of suffering other persons to enjoy ecclesiastical livings, and the fruits thereof, for that such bonds and covenants are not in law taken to be leases, although indeed they amount to as much; be it therefore enacted, that all bonds, contracts, promises, and covenants, hereafter to be made for suffering or permitting any person to enjoy any benefice or ecclesiastical promotion with cure, or to take profits or fruits thereof, other than such bonds and covenants as shall be made for assurance of any lease heretofore made, shall be to all intents and purposes adjudged of such force and validity and not otherwise, as leases by the same persons made of such benefices and ecclesiastical promotions with cure.

43 Eliz. c. 9.
1 Bulst. 112.
3 Bulst. 202.
Moor, 641,
883.

"XVI. And be it further declared and enacted, that all leases, bonds, promises, and covenants, of and concerning benefices and ecclesiastical livings with cure, to be made by any curate, shall be of no other nor better force, validity, or continuance, than if the same had been made by the beneficed person himself that demised, or shall demise the same to any such curate.

Leases made
by curates, of
benefices, with
cure.

13 Eliz. c. 10.

"XVII. And where in one other act made in the said thirteenth year, intituled, 'An Act against fraudulent Gifts, to the intent to defeat Dilapidations of Ecclesiastical Livings, and for Leases to be granted by Collegiate Churches,' there is one branch to avoid certain leases to be made by masters and fellows of colleges, deans, and chapters of cathedral or collegiate churches, masters or guardians of any hospital, or by any parson, vicar, or any other, having any spiritual or ecclesiastical living; be it enacted, that the said branch, nor anything therein contained, shall not extend to any grant, assurance, or lease, of any houses belonging to any the persons or bodies politic or corporate aforesaid, nor to any grounds to such houses appertaining, which houses be situate in any city, borough, town corporate, or market town, or the suburbs of any of them, but that all such houses and grounds may be granted, demised, and assured, as by the laws of this realm, and the several statutes of the said colleges, cathedral churches, and hospitals, they lawfully might have been before the making of the said statute, or lawfully might be if the said statute were not; so alway that such house be not the capital or dwelling house used for the habitation of the persons abovesaid, nor have ground to the same, belonging above the quantity of ten acres; anything in the said act to the contrary notwithstanding.

Leases made
by spiritual
persons of
houses in cities
or corporate
towns.
2 Leon. 188.
1 Roll. 161.

Money reco-
vered for dila-
pidations shall

"XVIII. And be it further enacted, that all sums of money hereafter to be recovered, for or in the name of dilapidations, by sentence, composition, or otherwise,

(1) *Vide* Stat. 43 Eliz. c. 9. Stat. 40 Geo. 3, c. 41. Stat. 43 Geo. 3, c. 84. Stat. 54 Geo. 3, c. 175. Stat. 56 Geo. 3, cc. 6 & 123. Stat. 57 Geo. 3, c. 99. Stat. 1 & 2 Gul. 4, c. 45, s. 14. Stat. 1 & 2 Vict. c. 106. Stat. 5 & 6 Vict. c. 27.

This statute was repealed by Stat. 43 Geo. 3, c. 84; its provisions were revived by Stat. 57 Geo. 3, c. 99, so far as they applied to the charging of benefices; but Stat. 57 Geo. 3, c. 99, was repealed by Stat. 1 & 2 Vict. c. 106.

shall within two years after such receipt be truly employed upon the buildings and reparations, in respect whereof such money for dilapidations shall be paid ; on pain that every person so receiving and not employing as aforesaid, shall forfeit double as much as so shall be by him received and not employed ; the which forfeiture shall be to the use of the queen's majesty, her heirs, and successors.

STAT. 14 ELIZ. c. 11.

be employed in repair of the same houses.

"XIX. Provided alway, and be it enacted, that no lease shall be permitted to be made by force of this act, in reversion, nor without reserving the accustomed yearly rent at the least, nor without charging the lessee with the reparations, nor for longer term than forty years at the most ; nor any houses shall be permitted to be aliened, unless that in recompence thereof there shall be afore, with or presently after such alienation, good, lawful, and sufficient assurance, made in fee-simple, absolutely to such colleges, houses, bodies politic, or corporate, and their successors, of lands of as good value, and of as great yearly value at the least, as so shall be aliened ; any statute to the contrary notwithstanding."

Certain observations in the leases to be made by spiritual persons according to this statute. No college shall alien any house without present and sufficient satisfaction.

STAT. 14 ELIZ. c. 14.

XXXII. STAT. 14 ELIZABETHÆ, c. 14. A.D. 1572.

"An Act for the Assurance of Gifts, Grants, &c. made and to be made to and for the Relief of the Poor in the Hospitals, &c."

"Where our late sovereign lord of famous memory, King Edward the Sixth, by his letters patents dated the twenty-sixth day of June in the seventh year of his most gracious reign, did found, erect, and establish, three hospitals in and near to the city of London, called the hospitals of King Edward the Sixth, of Christ, Bridewell, and St. Thomas the Apostle ; and by his said letters patents gave and granted power and liberty for purchasing of lands, tenements, and hereditaments, for the relief and sustentation of the poor in the said hospitals, as by the said letters patents more plainly appeareth. And whereas also our late sovereign lord King Henry the Eighth, by his letters patents dated the thirteenth of January, in the thirty-eighth year of his reign, did found an hospital in West Smithfield, called Little St. Bartholomew's, near London. And whereas divers well-disposed and charitable persons have given lands, tenements, and hereditaments, to the relief and sustentation of the poor, not only in the said hospitals, but also in other hospitals. And as it is hoped many more hereafter will likewise charitably give, and where many of such gifts and assurances have been and are likely to be made by the last wills of the givers thereof, at which time, for want of counsel or other opportunities, it may happen that the right name of the said corporation hath not or shall not be truly named or expressed, whereby may grow some question of the validity of such grants, gifts, or devises ; be it therefore enacted by the queen's most excellent majesty, the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, that all gifts, grants, legacies, devises, and assurances, made or to be made of any lands, tenements, and hereditaments, by will, feoffments, or otherwise, to the use or for the relief of the poor in any hospital now remaining and being in *esse*, and employed to the relief or maintenance of the poor in the said hospitals, or any of them, shall be as good and available in law, according to the true meaning of any such donor, grantor, testator, devisor, or assurer, as if the said corporation had been or were in the writings or deeds of such gifts, grants, devise, or assurance, or in such last will or testament, rightly or truly named ; any such misnaming, misreciting, or not true naming or reciting of the said corporation to the contrary notwithstanding : saving to all and every person and persons, bodies politic and corporate, their heirs and successors, other than such donor, grantor, testator, devisor, and assurer, their heirs and successors, all such right, title, and interest, as they or any of them have or shall have in or to any lands, tenements, or hereditaments, so given, granted, devised, or assured, as if this act had never been had nor made. And where in the last parliament holden at Westminster, it was provided and enacted among other things, that from henceforth all leases, gifts, grants, feoffments, conveyances, or estates, to be had, made, or suffered, by any master and fellows of any college, dean and

13 Eliz. c. 10, s. 3.

STAT. 14 ELIZ. c. 14. chapter of any cathedral church, master or guardian of any hospital, parson, vicar, or any other having any spiritual living of any house, lands, tenements, or hereditaments, parcel of the possession of any such college, cathedral church, hospital, parsonage, vicarage, or other spiritual promotion, or pertaining to the same, or any of them, to any person or persons, bodies politic or corporate, other than for term of one and twenty years, or three lives, in manner and form as is mentioned in the said act, should be utterly void and of none effect. Be it enacted and declared by the authority of this present parliament, that these words, 'master or guardian,' of any hospital mentioned in the said former act, were intended and meant of all hospitals, *maison Dieu*, bead-houses, and other houses ordained for the sustentation or relief of the poor, and so shall be expounded, declared, and taken for ever."

STAT. 18 ELIZ. c. 3.

XXXIII. STAT. 18 ELIZABETHÆ, c. 3 (1). A.D. 1576.

[*An Act for setting the Poor on Work, &c.*]

[Any person may give lands, &c. towards the maintenance of abiding houses for twenty years, without licence of mortmain.]

STAT. 18 ELIZ. c. 6.

XXXIV. STAT. 18 ELIZABETHÆ, c. 6. A.D. 1576.

"*An Act for the Maintenance of the Colleges in the Universities, and of Winchester and Eton.*"

Upon leases made by colleges, a third part of the rent shall be reserved in corn.
1 Leon. 307.
Savil. 129.

"*For the better maintenance of learning* (2), and the better relief of scholars in the Universities of Cambridge and Oxford, and the Colleges of Winchester and Eaton, be it enacted by the queen's majesty, the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, that no master, provost, president, warden, dean, governor, rector, or chief ruler of any college, cathedral church, hall, or house of learning in any of the universities aforesaid, nor any provost, warden, or other head officer of the said Colleges of Winchester or Eaton, nor the corporation of any of the same, by what title, stile, or name soever they now be, shall or may be called, after the end of this present session of parliament, shall make any lease for live, lives, or years, of any farm, or any of their lands, tenements, or other hereditaments to the which any *tithes, arable land, meadow, or pasture, doth or shall appertain* (3), except that the one third part at the least of the old rent be reserved and paid in corn for the said

(1) Expired.

(2) *For the better maintenance of learning, &c.*:—Dr. Kennet says, "The memory of Sir Thomas Smith is highly to be honoured for promoting this act, which provideth, that a third part of the rent be reserved in corn, payable either in kind or money, after the rate of the best prices in the market. For, if a certain rate thereof had been fixed in money instead of corn, it would have been highly prejudicial to the colleges, the value of money abating as the value of land, and of the produce thereof, advanceth. This worthy knight is said to have been engaged in this service by the advice of Mr. Henry Robinson, soon after provost of Queen's College, in Oxford, and from that station advanced to the see of Carlisle." Kenn. Par. Ant. 605.

(3) *To the which any tithes, arable land, meadow, or pasture, doth or shall appertain*:—In *Haynes v. Hollingbridge*, (Sav. 68,) the question was, whether this should be intended of tithes of corn only, or also of tithes of money, or the like, as in London, where money is paid as the tithe of houses;

and it was adjudged by *Manwood*, (chief baron,) in the absence of *Shute*, that "it is to be intended of tithe corn; for the parliament never meant to cause those farmers to pay corn, but where they had corn, or land that beareth an annual crop, as arable, meadow, or pasture, and not of wood, heath, marsh, or the like:" the reporter then states, "afterwards a writ of error was brought," but the result is not stated.

This provision has failed in its object of perpetuating a *rack rent* upon such leases, although the money price of wheat is nearly eight times greater than it was when the act was passed. Fines are accordingly taken by colleges, upon the renewal of their leases.

Besides the restrictions above mentioned, there existed another mode prescribed by Stat. 13 Eliz. c. 20, by which the leases of beneficed clergymen were rendered void, in case of their *non-residence*; but that statute, as previously observed, (*antè* 432, n. (4),) was repealed by Stat. 43 Geo. 3, c. 84: Stat. 57 Geo. 3, c. 99, s. 2, (repealed by Stat. 1 & 2 Vict. c. 106, s. 1,) provided, that clergymen should not take to farm above eighty acres of

colleges, cathedral church, halls, and houses; that is to say, in good wheat after six shillings and eight pence the quarter or under, and good malt at five shillings the quarter or under, to be delivered yearly upon days prefixed, at the said colleges, cathedral church, halls, or houses; and for default thereof to pay to the said colleges, cathedral church, halls, or houses, in ready money, at the election of the said lessees, their executors, administrators, and assigns after the rate of the best wheat and malt in the market of Cambridge, for the rents that are to be paid to the use of the house or houses there; and in the market of Oxford, for the rents that are to be paid to the use of the house or houses there; and in the market of Winchester, for the rents that are to be paid to the use of the house or houses there; and in the market of Windsor, for the rents that are to be paid to the use of the house or houses at Eaton; is or shall be sold the next market-day before the said rent shall be due, without fraud or deceit: and that all leases otherwise hereafter to be made, and all collateral bonds or assurances to the contrary, by any of the said corporations, shall be void in law to all intents and purposes: the same wheat, malt, or the money coming of the same, to be expended to the use of the relief of the commons and diet of the said colleges, cathedral church, halls, and houses only, and by no fraud or colour let or sold away from the profit of the said colleges, cathedral church, halls, and houses, and the fellows and scholars in the same, and the use aforesaid, upon pain of deprivation of the governor and chief rulers of the said colleges, cathedral church, halls, and houses, and all other thereunto consenting.

STAT. 18 ELIZ.
c. 6.

“II. Provided always, that this act or any thing therein contained, shall not extend or be in any wise prejudicial to any lease to be made of a barn called Mouncken Barn, with a certain portion of tithes, rising, growing, and being in the parish of Southweek in the county of Sussex, being parcel of the possessions of Maudlin College in Oxford, so that the term demised in and by the said lease exceed not the number of ten years from and after the feast of St. Michael the Archangel next coming; any thing therein specified to the contrary notwithstanding.

Mouncken
Barn in
Sussex.

“III. Provided also, that this act shall not extend to any lease to be made by the president and scholars, of the College of St. John Baptist in Oxford, to any heir male of Sir Thomas White, late knight and alderman of London, founder of the said college; which lease shall be made according to the meaning of the foundation and statutes of the said college, of the manor of Fifield, and no other hereditaments.”

Fifield demised
to White.

XXXV. STAT. 18 ELIZABETHÆ, c. 7 (1). A.D. 1576.

STAT. 18 ELIZ.
c. 7.

“An Act to take away Clergy from the Offenders in Rape or Burglary, and an Order for the Delivery of Clerks convict without Purgation.”

XXXVI. STAT. 18 ELIZABETHÆ, c. 11 (2). A.D. 1576.

STAT. 18 ELIZ.
c. 11.

“An Act for Explanation of the Statutes, intituled, Against defeating of Dilapidations, and against Leases to be made of Spiritual Promotions in some respects.”

“Whereas by a statute made in a parliament holden at Westminster the second day of April in the thirteenth year of the reign of our most gracious sovereign lady, intituled, ‘An Act against fraudulent Gifts, to the Intent to defeat Dilapidations of Ecclesiastical Livings, and for Leases to be granted by Collegiate

A lease or
other convey-
ance to be
made of any
spiritual living,

land, without the consent of the bishop, and then not beyond seven years, under a penalty of 40s. per acre; which provision was re-enacted by Stat. 1 & 2 Vict. c. 106, s. 28; but neither the repealed or repealing statute contains any restriction against a lease of tithes being made to a clergyman.

(1) *Vide* Stat. 7 & 8 Geo. 4, c. 27. Stat. 9 Geo. 4, c. 31.

(2) *Vide* Stat. 43 Eliz. c. 9. Stat. 3 Car. 1, c. 4. Stat. 57 Geo. 3, c. 99. Stat. 1 & 2 Vict. c. 106. Stat. 5 & 6 Vict. cc. 26, 27, & 108

STAT. 18 ELIZ. c. 11.

whereof there is a lease in being, not to be determined within three years, and all bonds and covenants for renewing thereof, shall be void, &c. A rehearsal of the statute of 13 Eliz. c. 10, touching assurances

made by spiritual persons, of their lands, tithes, &c.

Practices to defeat the meaning of the aforesaid statute.

1 And. 65.

Leases by spiritual persons of their lands in lease.

A bond or covenant for the renewing of a lease. Moor, 789, pl. 1089. Godb. 29.

Leases made before this statute.

Churches,' it was amongst other things enacted by the authority of parliament, that from thenceforth all leases, gifts, grants, feoffments, conveyances, or estates to be made, had, done, or suffered, by any master and fellows of any college, or by any dean and chapter of any cathedral or collegiate church, master or guardian of any hospital, parson, vicar, or any other having any spiritual or ecclesiastical living, or any houses, lands, tithes, tenements, or other hereditaments, being any parcel of the possessions of any such college, cathedral church, chapter, hospital, parsonage, vicarage, or other spiritual promotion, or any ways appertaining or belonging to the same, or of any of them, to any person or persons, bodies politick or corporate; other than for the term of twenty-one years or three lives, from the time of any such lease or grant shall be made or granted, whereupon the accustomed yearly rent or more shall be reserved and payable yearly during the said term; shall be utterly void and of none effect, to all intents, constructions, and purposes; any law, custom, or usage to the contrary notwithstanding, as in the said act more plainly appeareth:

"II. Sithence the making of which said statute, divers of the said *ecclesiastical* (1) and spiritual persons and others, having spiritual or ecclesiastical livings, have from time to time made leases for the term of twenty-one years or three lives, long before the expiration of the former years, contrary to the true meaning and intent of the said statute: be it therefore enacted by this present parliament, that all leases hereafter to be made by any of the said ecclesiastical, spiritual, or collegiate persons, or others, of any their said ecclesiastical, spiritual, or collegiate lands, tenements, or hereditaments, whereof any former lease for years is in being, not to be expired, surrendered, or ended within three years next after the making of any such new lease, shall be void, frustrate, and of none effect; any law, usage, or custom to the contrary notwithstanding.

"III. And be it likewise enacted by the authority aforesaid, that all and every bond and covenant whatsoever hereafter to be made, for renewing or making of any lease or leases, contrary to the true intent of *this act*, or of the said act (2) made in the said *thirteenth year* (3), shall be utterly void; any law, statute, ordinance, or other thing whatsoever to the contrary in any wise notwithstanding.

"IV. Provided always, that this act, nor any thing therein contained, shall extend or be prejudicial to make frustrate or void any lease or leases heretofore made by any of the said spiritual or ecclesiastical person or persons or any of them, but that the same and every of them are of the like force and effect, as they or any of them were before the making of this present statute; this act or any thing therein contained to the contrary notwithstanding.

(1) *Said ecclesiastical*:—Bishops were not comprehended in this statute; but were left to make concurrent leases, either according to Stat. 32 Hen. 8, c. 28, (*antè* 262,) without confirmation, where the old lease was to expire within a year; or, with confirmation, at any time, according to the course of the common law.

(2) *This act, or of the said act*:—A parson covenanted with another, that he should have his tithes for thirteen years; afterwards he resigned, and another parson was inducted; the lessee brought an action of covenant against the lessor, and the defendant pleaded this statute in bar; but *Coke*, *Dodderidge*, and *Haughton*, agreed, that the covenant was not made void by this statute, which was only intended to void bonds and covenants contrary to Stat. 13 Eliz. c. 20, (*antè* 432,) but does not extend to bonds and covenants made for the enjoyment of leases, which become void by common law, as leases

do by resignation, &c. *Rudge v. Thomas*, 3 Bulst. 202.

But when a dean and canons made bonds among themselves, to acquaint each other the benefit of particular leases, and the whole body engaged, under such and such forfeitures, to make the leases, respectively, as there should be occasion; they were held to be void bonds under this statute. And where a dean and chapter obliged themselves to make to one a lease of lands, which were then in lease to another for fifteen years to come; the covenant was declared void, under this statute. *Windsor (Dean & Canons of) v. Penwin*, Moore (Sir F.), 789.

(3) *In the said thirteenth year*:—This statute did not avoid bonds and covenants, touching leases of houses in cities, boroughs, corporations, or markets, according to Stat. 14 Eliz. c. 11 (*antè* 434). *Crane v. Taylor*, Hob. 269. *Bayly v. Murin*, 1 Vent. 246

“V. And where Sir Thomas White, late knight and alderman of London, for advancement of good learning, hath founded one college in the University of Oxford, called St. John Baptist’s College, and being seised of the manor of Fishyde, alias Fifield, in the county of Berks, did, together with all other his lands, tenements, and hereditaments, give and assure the said manor, with the appurtenances, to the president and scholars of the said college for ever: and nevertheless the said Sir Thomas White having then one Ralph White his brother living, and sundry kinsmen, to whom, by course of the common law, his lands might have descended, did devise and order, and by the statutes which he provided for the said house, and by order of the now visitor of the said college, it is ordained, that the said manor of Fishyde, alias Fifield, with the appurtenances, should be demised by the said president and scholars for the time being, to the said Ralph for the term of ninety-nine years, if the said Ralph should so long live, and so it is intended, that from heir male to heir male of the said Sir Thomas White, new devises should from time to time be made of the said manor with the appurtenances, to every such heir male successively for the term of ninety-nine years, if such heir male should so long live, yielding to the said president and scholars for the time being, such rent as now is reserved, with such further covenants and conditions, as by the said Sir Thomas White or visitor is agreed and appointed:

“VI. And where since the decease of the said Sir Thomas White, the said assurances to the said president and scholars, in all, or the most part of the lands, tenements, and hereditaments of the said founder, were found in some respect imperfect and insufficient in law, and that thereupon the said Ralph White, to whom the advantage of such imperfection came by law, did nevertheless take no such advantage, but did willingly make perfect the said assurances according to the true meaning of the said Sir Thomas White his brother, accepting only one lease of the said manor, in such sort as by the said visitor was appointed, with the copyholds and other appurtenances of the said manor: for remedy whereof, be it enacted, that the president and scholars of the said college may from time to time demise the said manor, copyholds, and other appurtenances to every heir male of the said Sir Thomas White successively, according to the form of lease thereof already made to the said Ralph, and that every such lease so to be made, and every covenant made or to be made for the performance of the same, shall be good in law, as if the said act made in the said thirteenth year had never been had nor made; any thing in the said act made in the said thirteenth year, or any other act or matter whatsoever to the contrary notwithstanding.

“VII. And whereas in one other statute made in the said thirteenth year of her majesty, intituled, ‘An Act touching Leases of Benefices, and other Ecclesiastical Livings with Cure,’ one clause is contained, that the incumbent offending the purport of the said statute shall for the same lose one year’s profit of his said benefice, to be distributed by the ordinary among the poor of the parish, as by the said branch in the said last recited statute appeareth: be it therefore enacted by the authority aforesaid, that after complaint made to the ordinary, and sentence given upon any offence committed by the incumbent, whereby he shall or ought to lose one year’s profit of his benefice as afore showed, that the ordinary within two months after such sentence given, and request to him made by the churchwardens of the said parish or one of them, shall grant the sequestration of such profits to such inhabitant or inhabitants within the parish where such benefice shall be, as to him shall seem meet and convenient; and upon default therein by the ordinary, that it may and shall be lawful to every parishioner where the benefice is, to retain and keep his or their tithes, and likewise for the churchwardens of the said parish, to enter and take the profits of the glebe lands, and other rents and duties of every such benefice, to be employed to the use of the poor as aforesaid, until such time as sequestration shall be committed by the ordinary, and then as well the churchwardens as the parishioners, to yield account of, and make payment to him or them to whom such sequestration shall be committed; and that he or they to whom such sequestration shall be committed from time to

STAT. 18 ELIZ.
c. 11.

Sir Thomas
White, founder
of St. John’s
College in
Oxford.

A lease may
be made to
Ralph White
of the manor
of Fifield by
St. John’s
College in
Oxford.

13 Eliz. c. 10.

13 Eliz. c. 20.

In what case
sequestration
may be granted
by the ordinary
of a benefice
demised contrary
to the statute of
13 Eliz. c. 20.
In what case
the parishioners
may retain
the tithes.

STAT. 18 ELIZ. c. 11. time shall justly and truly employ and bestow the said profits, or the true and just value thereof, without fraud or guile, to such uses as by the said statute is limited and appointed, upon pain of forfeiture of the double value of such withheld profits, to be recovered in the ecclesiastical court by the poor of the said parish."

STAT. 23 ELIZ. c. 1. XXXVII. STAT. 23 ELIZABETHÆ, c. 1 (1). A.D. 1581.

"An Act to retain the Queen's Majesty's Subjects in their due Obedience."

13 Eliz. c. 2.
3 Inst. 198.

"Where sithence the statute made in the thirteenth year of the reign of the queen our sovereign lady, intituled, 'An Act against the bringing in, and putting in execution of Bulls, Writings, and Instruments, and other superstitious things from the See of Rome,' divers evil affected persons have practised, contrary to the meaning of the said statute, by other means than by bulls or instruments written or printed, to withdraw divers the queen's majesty's subjects from their natural obedience to her majesty, to obey the said usurped authority of Rome, and in respect of the same to persuade great numbers to withdraw their due obedience from her majesty's laws, established for the due service of Almighty God.

Treason to
withdraw any
from the reli-
gion established
to the Romish
religion.
1 Leon. 239.

"II. For reformation whereof, and to declare the true meaning of the said law, be it declared and enacted by the authority of this present parliament, that all persons whatsoever, which have or shall have, or shall pretend to have power, or shall by any ways or means put in practice to absolve, persuade, or withdraw any of the queen's majesty's subjects, or any within her highness' realms and dominions, from their natural obedience to her majesty: or to withdraw them for that intent from the religion now by her highness' authority established within her highness' dominions, to the Romish religion, or to move them or any of them to promise any obedience to any pretended authority of the see of Rome, or of any other prince, state, or potentate, to be had or used within her dominions, or shall do any overt act to that intent or purpose; and every of them shall be to all intents adjudged to be traitors, and being thereof lawfully convicted, shall have judgment, suffer and forfeit, as in case of high treason. And if any person shall, after the end of this session of parliament, by any means be willingly absolved or withdrawn as aforesaid, or willingly be reconciled, or shall promise any obedience to any such pretended authority, prince, state, or potentate, as is aforesaid, that then every such person, their procurers and counsellors thereunto, being thereof lawfully convicted, shall be taken, tried, and judged, and shall suffer and forfeit as in cases of high treason.

It shall be
treason to be
reconciled or
withdrawn to
the Romish
religion.

The penalty of
aiders, main-
tainers, and
concealers.

"III. And be it likewise enacted and declared, that all and every person and persons, that shall wittingly be aiders or maintainers of such persons so offending as is above expressed, or any of them, knowing the same, or which shall conceal any offence as aforesaid, and shall not within twenty days at the furthest, after such person's knowledge of such offence, disclose the same to some justice of peace or other higher officer, shall be taken, tried, and judged, and shall suffer and forfeit, as offenders in misprision of treason.

The forfeiture
for saying or
hearing of
mass.

"IV. And be it likewise enacted, that every person which shall say or sing mass, being thereof lawfully convicted, shall forfeit the sum of two hundred marks, and be committed to prison in the next gaol, there to remain by the space of one year, and from thenceforth till he have paid the sum of two hundred marks: and that every person which shall willingly hear mass, shall forfeit the sum of one hundred marks, and suffer imprisonment for a year.

The penalty for
not coming to
the church by
the space of a

"V. Be it also further enacted by the authority aforesaid, that every person above the age of sixteen years, which shall not repair to some church, chapel, or usual place of common prayer, but forbear the same, contrary to the tenour of a statute made in the first year of her majesty's reign, for uniformity of common

(1) *Vide* Stat. 29 Eliz. c. 6. Stat. 35 *Campion's case*, Sav. 3. *Rex v. Hurst*,
Eliz. c. 1. Stat. 1 Jac. 1, c. 4. Stat. 31 *Skin*. 99.
Geo. 3, c. 32. *Foster's case*, 11 Co. 60.

prayer, and being thereof lawfully convicted, shall forfeit to the queen's majesty for every month, after the end of this session of parliament, which he or she shall so forbear, twenty pounds of lawful English money; and that over and besides the said forfeitures, every person so forbearing by the space of twelve months as aforesaid, shall for his or her obstinacy, after certificate thereof in writing made into the court commonly called the King's Bench, by the ordinary of the diocese, a justice of assize and gaol delivery, or a justice of peace of the county where such offender shall dwell or be, be bound with two sufficient sureties in the sum of two hundred pounds at least, to the good behaviour, and so to continue bound, until such time as the persons so bound do conform themselves and come to the church, according to the true meaning of the said statute made in the said first year of the queen's majesty's reign.

1 Leon. 241. 2 Leon. 5. 1 Anders. 138. Hob. 205. 11 Co. 56. Cro. Jac. 480. 1 Roll. 60, 91. Bridg. 120. 2 Bulst. 324. 3 Bulst. 87.

“VI. And be it further enacted, that if any person or persons, body politic or corporate, after the feast of Pentecost next coming, shall keep or maintain any school-master which shall not repair to church as is aforesaid, or be *allowed by the bishop* (1) or ordinary of the diocese where such school-master shall be so kept, shall forfeit and lose for every month so keeping him, ten pounds.

(1) *Allowed by the bishop*:—The authority of the bishop over schools and school-masters, appears clearly from their original institution, and from the ancient as well as modern laws of the church.

In the ninth century, under Pope Eugenius the Second, the following constitution was made: (Dist. 37, c. 12:) “De quibusdam laicis ad nos refertur, neque magistros, neque curam inveniri pro studio literarum. Idcirco, in universis episcopis, subjectisque plebibus, et aliis locis, in quibus necessitas occurrerit, omnino cura, et diligentia adhibeatur, ut magistri et doctores constituantur, qui studia literarum, liberaliumque artium dogmata assidue doceant: quia in his maxime divina manifestantur atque declarantur mandata.” By another canon, it was ordered: (Extra. l. 3, t. 1, c. 2:) “Ut quisque presbyter, qui plebem regit, clericum habeat, qui possit scholas tenere, et admonere suos parochianos, ut filios suos ad fidem discendam mittant ad ecclesias; quos ipse cum omni castitate erudiat.” And (not to mention the decrees and orders of particular churches, which are very numerous in the ancient councils,) in the third council of Lateran, held under Alexander the Third, the following constitution was made, and afterwards inserted in the body of the canon law: (Extra. l. 5, t. 3, c. 1:) “Quoniam ecclesia Dei, sicut pia mater, providere tenetur ne pauperibus, qui parentum opibus juvari non possunt, legendi et proficiendi opportunitas subtrahatur; per unamquamque cathedralem ecclesiam, magistro, qui clericos ejusdem et scholares pauperes gratis doceat, competens aliquod beneficium præbeatur.” The same constitution was not only confirmed, but enlarged, in the fourth Lateran council, under Innocent the Third, A.D. 1215. “Nos, prædictum roborantes statutum adjicimus, ut non solum in qualibet cathedrali ecclesiâ, sed etiam in aliis, quarum sufficere poterunt facultates, constituatur magister idoneus, à prelato cum capitulo, seu majori et saniori parte capituli eligendus,

qui clericos ecclesiarum ipsarum gratis, in grammaticâ facultate, ac alios, instruant, juxta posse.”

Agreeable to the canons and constitutions abroad, was the law and practice of the church in England, with relation to the erection and government of schools; so, in the Saxon church, where public schools are plainly spoken of, as in being, and under the direction of the spiritual power; (“Si quis ex presbyteris voluerit nepotem suum, aut aliquem consanguineum ad scholam mittere in ecclesiâ, quæ nobis concessæ sunt ad regendum, ei licentiam id faciendi concedimus;”) and the very next constitution is: “Presbyteri per villas et vicos scholas habeant; et si quislibet fidelium suos parvulos ad discendas literas eis commendare vult, eos suscipere et docere non renuant.” 1 Spel. 595. So also, it was decreed by the synod of Westminster, A.D. 1138: “Ut si magistri scholarum aliis scholas suas locaverint regendas pro pretio, ecclesiasticæ vindictæ subjaceant.” 2 Ibid. 42.

It was provided in the third council of Lateran, and by certain decretal epistles of Alexander the Third, (Extra. l. 5, t. 5, cc. 1, 2, 3,) that nothing be taken *pro licentiâ docendi*; the same was made an express law of the English church, in the council of London, A.D. 1200: “His adjicimus, ne pro licentiâ celebrandi divina à sacerdotibus, vel docendi à magistris, aliquid exigatur.” 2 Spel. 126.

As therefore schools for the instruction and education of youth, are most properly under the direction of the spiritual power, being the places where children are to be taught the first principles of their religion; so it appears, that, in fact, they have ever been under such direction; and that this statute was framed according to the known law of the church of England; in like manner, as the injunction of Queen Elizabeth, set forth (among many others) in the first year of her reign, had also been: (Spar. Coll. 78, Inj. 40:) “No man shall take upon him to teach, but such as shall be allowed by

STAT. 23 ELIZ. c. 1.

month according to the statute 1 Eliz. c. 2.

The king may seize two parts of the offenders' lands, &c. in lieu of the twenty pounds. 3 Jac. 1, c. 4, s. 11.

Hob. 127. 89, 92. Lane,

The forfeiture for keeping of a schoolmaster not repairing to the church, or not allowed by the ordinary.

STAT. 23 ELIZ.
c. 1.

“VII. (Provided that no such ordinary or their ministers shall take any thing for the said allowance.) And such school-master or teacher, presuming to teach contrary to this act, and being thereof lawfully convicted, shall be disabled to be a teacher of youth, and shall suffer imprisonment without bail or mainprise for one year.

What justices
may inquire of
offences done
against the
statute of
1 Eliz. c. 1.

“VIII. And be it likewise enacted, that all and every offences against this act, or against the acts of the first, fifth, or thirteenth years of her majesty's reign, touching acknowledging of her majesty's supreme government in causes ecclesiastical, or other matters touching the service of God or coming to church, or establishment of true religion in this realm, shall and may be inquirable, as well before

the ordinary, and found meet, as well for his learning and dexterity in teaching, as for sober and honest conversation, and also for right understanding of God's true religion.”

Which injunction is followed and confirmed, not only by the Canons of 1571, and 1603, but also by licences to teach school, (Coll. Can. 239,) which appear without number, on the records of particular sees; and by the denial of prohibitions or granting of consultations in the temporal courts, where they have been prayed by schoolmasters, to protect them from the censures of the spiritual courts for teaching without licence. So, in the case of *William Bates*, (1 Vent. 41,) who was sued before the commissary of Richmond, for teaching school without a bishop's licence; it was said, that prohibition was granted, because they endeavoured to turn him out; whereas, they could only censure him, he coming in by the presentation of the founder; and that prohibition would not have been granted, if the spiritual court had only attempted to punish him for teaching without licence. *Bales v. Kendall*, 2 Keb. 544.

But at the same time, it was held, that where the patronage is not in the ordinary, but in feoffees or other patrons; the ordinary cannot put a man out, and prohibition was granted, the suggestion for which was, that he came in by election, and that it was his freehold. *Ibid.* 538. “The consequence from such decisions is, that such a schoolmaster being once licensed, and having subscribed, as he is bound, to the articles and liturgy of the church of England; although he shall afterwards instil into the youth under his care, doctrines that are contrary not only to these, but to the Christian religion in general, and although this shall appear *never* so plainly; yet he shall go on, in defiance of the ordinary, to corrupt youth, and to act in downright contradiction to what he subscribed before him; and shall not be questioned in order to deprivation, but by feoffees or patrons, *i. e.* by those who (ordinarily speaking) are very incapable of judging whether he be guilty or innocent, upon these important heads.

“As to his election and freehold; if these are a bar to his being deprived by ordinary authority; why is not presentation by a lay patron, and the parson's freehold in the benefice, as good a plea against deprivation by the like authority? And yet this plea hath been always rejected by the temporal courts. And, as it is said in that case, that the loss of the freehold is only an effect or consequence of the sentence of depriva-

tion; why may it not be allowed in this, that it is only an effect or consequence of the revocation of the licence, or inhibition to teach in virtue of it; since by the laws of all kinds, whether common, canon, or statute law, the licence appears to be no less necessary in one case, than institution and induction are in the other case.” *Gibson's Codex*, 1100.

The fact is, in our records before the Reformation, schools are often spoken of as *ecclesiastical* places; and the possessors of them, in *ecclesiastical* terms. So, where archbishops or bishops were patrons, the grant of them is styled collation; (Reg. Winch. 50(a), 300(b); Suddb. 57(b); Courtn. 10(b);) and that this is no improper language, appears from the ancient register, where a writ upon this head, is of the following tenor:

“Rex officario curiæ Cantuar' et ejus commissariis salutem, cum placita de collationibus scholarum in regno nostro Angliæ ad coronam et dignitatem nostram specialiter pertineant, ac abbas et conventus de Bello Wilhelmum Pipard' clericum super collatione scholarum grammaticarum de Feren-don' trahant coram vobis in placitum in curia Christianitatis, sicut ex relatu plurium accepimus: vobis prohibemus ne placitum illud teneatis in curia Christianitatis, maxime cum hujusmodi placita ad nos, et non ad alium pertineant in eodem regno. T. Custode. anno, E. iii. Angliæ xvii. et Franciæ quarto. Parning. Canc.” Reg. 35(a).

As the grant of a school by an archbishop or bishop within his own diocese, is in law a collation, the right to which (if it come in question) is recoverable in the temporal courts, as the right of collation to a benefice is; so, by the same reason, may election or nomination, with presentment of the person elected or nominated to the bishop, for his licence, and the grant of such licence, be well allowed in law, the name, or at least the nature, of presentation and institution. And if so, it is not easily conceived, how lay election or nomination, and freehold, come to be a stronger bar against deprivation in the case of a school, than lay presentation and freehold are in the case of a benefice. It is certain, that in one circumstance at least, the being deprived of a school, notwithstanding the notion of a freehold, is more naturally supposed, than the deprivation of a benefice; because the licence to the first is only *durante beneplacito*, whereas the institution to the second is absolute and unlimited. *The Protector and Craford*, Style, 457. *Gibson's Codex*, 1100.

justices of peace, as other justices named in the same statutes, within one year and a day after every such offence committed: any thing in this act, or in any other act, to the contrary notwithstanding.

“IX. Be it likewise enacted, that the justices of Oyer and Terminer, and justices of assize and of gaol delivery, in their several limits, shall have power to inquire, hear, and determine of all offences against this statute: and justices of peace in their open quarter-sessions of peace shall have power by virtue of this act, to inquire, hear, and determine of all offences against this act, except treason and misprision of treason.

“X. Provided alway, that every person guilty of any offence against this statute, other than treason and misprision of treason, which shall, before he be thereof indicted, or at his arraignment or trial before judgment, submit and conform himself before the bishop of the diocese where he shall be resident, or before the justices where he shall be indicted, arraigned, or tried, (having not before made like submission at any his trial, being indicted for his first like offence,) shall upon his recognition of such submission in open assizes or sessions of the county where such person shall be resident, be discharged of all and every the said offences against this act (except treason and misprision of treason) and of all pains and forfeitures for the same.

“XI. And be it likewise enacted, that all forfeitures of any sums of money limited by this act, shall be divided in three equal parts, whereof one third part shall be to the queen's majesty to her own use, one other third part to the queen's majesty for relief of the poor in the parish where the offence shall be committed, to be delivered by warrant of the principal officers in the receipt of the exchequer without further warrant from her majesty; and the other third part to such person as will sue for the same in any court of record, by action of debt, bill, plaint, or information; in which suit no essoin, protection, or wager of law, shall be allowed: and that every person which shall forfeit any sums of money by virtue of this act, and shall not be able, or shall fail, to pay the same within three months after judgment thereof given, shall be committed to prison, there to remain until he have paid the said sums, or conform himself, or go to church, and there do as is aforesaid.

“XII. Provided also, that every person which usually on the Sunday shall have in his or her house the divine service which is *established by the law* (1) of this realm, and be thereat himself or herself usually or most commonly present, and shall not obstinately refuse to come to church, and there to do as is aforesaid, and shall also four times in the year at the least be present at the divine service in the church of the parish where he or she shall be resident, or in some other open common church or such chapel of ease, shall not incur any pain or penalty limited by this act for not repairing to church.

“XIII. And be it likewise enacted and declared, that every grant, conveyance, bond, judgment, and execution, had or made since the beginning of this session of parliament, or hereafter to be had or made, of covinous purpose to defraud any interest, right, or title, that may or ought to grow to the queen, or to any other person, by means of any conviction or judgment by virtue of this statute, or

STAT. 23 ELIZ.
c. 1.

5 ELIZ. c. 1.
13 ELIZ. c. 2.
Cro. Car. 10.
29 ELIZ. c. 6.

A remedy for a
guilty person
conforming
himself.
Co. Entr. 569.
Raym. 465.

Who shall have
the money for-
feited by this
statute.

He shall be
imprisoned
that is not
able or doth
not pay the
forfeiture.

Service in a
man's private
house.

Fraudulent
assurances
to defeat
forfeitures.
2 Leon. 132.
Moor, 523.
pl. 691.

(1) *Established by the law*:—Which law requires the licence of the bishop to celebrate divine service there: “Oratorium potest quis ædificare sine consensu episcopi, tamen sine licentiâ episcopi non potest ibi celebrari.” Lyndw. De Cel. Miss. c. Quam sit. v. *Oratoriis*. Such licences, both before and since the Reformation, remain in our ecclesiastical records, and are very numerous; (Reg. Cranm. ff. 15, 16, 17, 20, 34, 39, 40; Abb. 3, 142;) not only for prayers and sermons, but, in some instances, for sacraments also. But the law is, that such licences be granted sparingly: “Episcopi potentibus licentiam audiendi missas extra

ecclesiam parochialem, nisi cum magnâ difficultate, concedere non debent.” Lyndwood also states, in his Gloss. on the same constitution, “Hanc licentiam non concedet episcopus in majoribus festivitibus;” and that, without the like licence, they shall not have a bell: “In dictis tamen oratoriis non possunt imponi campanæ, sine auctoritate episcopi.” Which restrictions were laid on private oratories, out of a just regard to the places of public worship; that, while the laws of the church provided for great infirmities, or great distance, such indulgence might not be abused to an unnecessary neglect of public or parochial communion.

STAT. 23 ELIZ. c. 1. of the said statute of the said thirteenth year, shall be, and be adjudged to be, utterly void against the queen, and against such as shall sue for any part of the said penalties in form aforesaid.

29 Eliz. c. 6. Trial of a peer by his peers. "XIV. Provided always, that if any peer of this realm shall happen to be indicted of any offence made treason or misprision of treason by this act, he shall have his trial by his peers as in other like cases is accustomed.

Ecclesiastical censures. "XV. Provided also, that neither this act, nor any thing therein contained, shall extend to take away or abridge the authority or jurisdiction of the ecclesiastical censures of any cause or matter, but that the archbishops and bishops, and other ecclesiastical judges may do and proceed, as before the making of this act they lawfully did or might have done; any thing in this act to the contrary notwithstanding."

Farther provisions relating hereto, see 13 and 14 Car. 2, c. 4; 15 Car. 2, c. 6; 5 Ann. c. 5; and 23 Geo. 2, c. 28.

STAT. 27 ELIZ. c. 2. XXXVIII. STAT. 27 ELIZABETHÆ, c. 2 (1). A.D. 1585.

"An Act against Jesuits, Seminary Priests, and other such like disobedient Persons."

Jesuits and priests in England shall depart, and none shall come into this realm. The penalty for relieving of them, &c. The causes why Jesuits and priests do come into this realm. "Whereas divers persons called or professed Jesuits, Seminary Priests, and other Priests, which have been, and from time to time are made in the parts beyond the seas, by or according to the order and rites of the Romish church, have of late years come and been sent, and daily do come and are sent, into this realm of England and other the queen's majesty's dominions, of purpose, (as it hath appeared, as well by sundry of their own examinations and confessions, as by divers other manifest means and proofs,) not only to withdraw her highness' subjects from their due obedience to her majesty, but also to stir up and move sedition, rebellion, and open hostility, within the same her highness' realms and dominions, to the great endangering of the safety of her most royal person, and to the utter ruin, desolation, and overthrow of the whole realm, if the same be not the sooner by some good means foreseen and prevented:

All Jesuits and priests shall depart forth of the realm. Poph. 93. 1 Hale's P. C. 336. "II. For reformation whereof be it ordained, established, and enacted, by the queen's most excellent majesty, and the lords spiritual and temporal, and the commons in this present parliament assembled, and by the authority of the same parliament, that all and every jesuits, seminary priests, and other priests whatsoever made or ordained out of the realm of England or other her highness' dominions, or within any of her majesty's realms or dominions, by any authority, power, or jurisdiction, derived, challenged, or pretended from the see of Rome, since the feast of the Nativity of St. John Baptist, in the first year of her highness' reign, shall within forty days next after the end of this present session of parliament, depart out of this realm of England, and out of all other her highness' realms and dominions, if the wind, weather, and passage, shall serve for the same, or else so soon after the end of the said forty days as the wind, weather, and passage, shall so serve.

No Jesuits or priests shall come into or remain in this realm. "III. And be it further enacted by the authority aforesaid, that it shall not be lawful to be for any Jesuit, seminary priest, or other such priest, deacon, or religious or ecclesiastical person whatsoever, being born within this realm or any other her highness' dominions, and heretofore since the said feast of the Nativity of St. John Baptist, in the first year of her majesty's reign, made, ordained, or professed, or hereafter to be made, ordained, or professed, by any authority or jurisdiction derived, challenged, or pretended, from the see of Rome, by or of what name, title, or degree soever the same shall be called or known, to come into, be, or remain, in any part of this realm, or any other her highness' dominions, after the end of the same forty days, other than in such special cases, and upon such special occasions only, and for such time only, as is expressed in

(1) *Vide* Stat. 3 Car. 1, c. 2. Stat. 31 Geo. 3, c. 32. Stat. 43 Geo. 3, c. 30. Stat. 6 Geo. 4, c. 50. Stat. 10 Geo. 4, c. 7.

This statute was enacted because it was the invariable practice of the Roman catholic

priests to teach the people, that the queen was no queen, and that whatever had been done by her since the Bull of Pope Pius, was null and void.

this act; and if he do, that then every such offence shall be taken and adjudged to be high treason; and every person so offending shall for his offence be adjudged a traitor, and shall suffer, lose, and forfeit, as in case of high treason. STAT. 27 ELIZ. c. 2.

“IV. And every person which after the end of the same forty days, and after such time of departure as is before limited and appointed, shall wittingly and willingly receive, relieve, comfort, aid, or maintain, any such Jesuit, seminary priest, or other priest, deacon, or religious or ecclesiastical person, as is aforesaid, being at liberty or out of hold, knowing him to be a Jesuit, seminary priest, or other such priest, deacon, or religious or ecclesiastical person, as is aforesaid, shall also for such offence be adjudged a felon, without benefit of clergy, and suffer death, lose and forfeit, as in case of one attainted of felony. Receiving or relieving a Jesuit or priest shall be felony.

“V. And be it further enacted by the authority aforesaid, if any of her majesty's subjects, (not being a Jesuit, a seminary priest, or other such priest, deacon, or religious or ecclesiastical person, as is before mentioned,) now being, or which hereafter shall be of, or brought up in, any college of Jesuits, or seminary already erected and ordained, or hereafter to be erected or ordained, in the parts beyond the seas, or out of this realm in any foreign parts, shall not within six months next after proclamation in that behalf to be made in the city of London, under the great seal of England, return into this realm, and thereupon within two days next after such return, before the bishop of the diocese, or two justices of peace of the county where he shall arrive, submit himself to her majesty and her laws, and take the oath set forth by act in the first year of her reign; that then every such person which shall otherwise return, come into, or be in this realm, or any other her highness' dominions, for such offence of returning or being in this realm, or any other her highness' dominions, without submission, as aforesaid, shall also be adjudged a traitor, and suffer, lose, and forfeit, as in case of high treason. They who be in seminaries shall, after proclamation, return and take the oath.

“VI. And be it further enacted by the authority aforesaid, if any person under her majesty's subjection or obedience shall at any time after the end of the said forty days, by way of exchange, or by any other shift, way, or means, whatsoever, wittingly and willingly, either directly or indirectly, convey, deliver, or send, or cause or procure to be conveyed or delivered, to be sent over the seas, or out of this realm, or out of any other her majesty's dominions or territories, into any foreign parts, or shall wittingly or willingly yield, give, or contribute, any money or other relief to or for any Jesuit, seminary priest, or such other priest, deacon, or religious or ecclesiastical person, as is aforesaid; or to or for the maintenance or relief of any college of Jesuits, or seminary already erected or ordained, or hereafter to be erected or ordained, in any the parts beyond the seas, or out of this realm in any foreign parts, or of any person then being of or in any the same colleges or seminaries, and not returned into this realm with submission, as in this act is expressed, and continuing in the same realm: that then every such person so offending, for the same offence shall incur the danger and penalty of a Premunire, mentioned in the Statute of Premunire made in the sixteenth year of the reign of King Richard the Second. Sending relief to any Jesuit, priest, or other person abiding in a seminary.

“VII. And be it further enacted by the authority aforesaid, that it shall not be lawful for any person of or under her highness' obedience, at any time after the said forty days, during her majesty's life, (which God long preserve,) to send his or her child, or other person, being under his or her government, into any the parts beyond the seas out of her highness' obedience, without the special licence of her majesty, or of four of her highness' privy council, under their hands in that behalf first had or obtained, (except merchants, for such only as they or any of them shall send over the seas only for or about his, her, or their trade or merchandize, or to serve as mariners, and not otherwise,) upon pain to forfeit and lose for every such their offence, the sum of one hundred pounds. 16 Rich. 2, c. 5.

“VIII. And be it also enacted by the authority aforesaid, that every offence to be committed or done against the tenour of this act shall and may be inquired of, heard, and determined, as well in the court commonly called the King's Bench, in the county where the same court shall for the time be, as also in any other None shall send his child or other beyond the seas without licence. Expired 3 Jac. 1, c. 5.

Where the offences committed against this act shall be inquired of and determined.

STAT. 27 ELIZ. county within this realm, or any other her highness' dominions where the offence is or shall be committed, or where the offender shall be apprehended and taken.

Transporting
of Jesuits,
priests, &c.

"IX. Provided also, and be it enacted by the authority aforesaid, that it shall and may be lawful for and to every owner and master of any ship, bark, or boat, at any time within the said forty days, or other time before limited for their departure, to transport into any the parts beyond the seas any such Jesuit, seminary priest, or other priest aforesaid, so as the same Jesuit, seminary priest, or other priest aforesaid so to be transported, do deliver unto the mayor or other chief officer of the town, port, or place, where he shall be taken in to be transported, his name, and in what place he received such order, and how long he hath remained in this realm, or in any other her highness' dominions, being under her obedience.

A Jesuit or
priest sub-
mitting him-
self, and taking
the oath, and
obeying th
laws.

"X. Provided also, that this act, or any thing therein contained, shall not in any wise extend to any such Jesuit, seminary priest, or other such priest, deacon, or religious or ecclesiastical person, as is before-mentioned, as shall at any time within the said forty days, or within three days after that he shall hereafter come into this realm, or any other her highness' dominions, submit himself to some archbishop or bishop of this realm, or to some justice of peace within the county where he shall arrive or land, and do thereupon truly and sincerely, before the same archbishop, bishop, or such justice of peace, take the said oath set forth in *anno primo*, and by writing under his hand confess and acknowledge, and from thenceforth continue, his due obedience unto her highness' laws, statutes, and ordinances, made and provided, or to be made or provided in causes of religion.

1 Eliz. c. 1.

"XI. Provided always, if it happen at any time hereafter any peer of this realm to be indicted of any offence made treason, felony, or *premunire*, by this act, that he shall have his trial by his peers, as in other cases of treason, felony, or *premunire*, is accustomed.

"XII. Provided nevertheless, and it is declared by authority aforesaid, that if any such Jesuit, seminary priest, or other priest abovesaid, shall fortune to be so weak or infirm of body, that he or they may not pass out of this realm by the time herein limited without imminent danger of life, and this understood as well by the corporal oath of the party as by other good means, unto the bishop of the diocese and two justices of peace of the same county where such person or persons do dwell or abide; that then, and upon good and sufficient bond of the person or persons, with sureties, of the sum of two hundred pounds at the least, with condition that he or they shall be of good behaviour towards our sovereign lady the queen, and all her liege people, then he or they so licensed and doing as is aforesaid, shall and may remain and be still within this realm, without any loss or danger to fall on him or them by this act, for so long time as by the same bishop and justices shall be limited and appointed, so as the same time of abode exceed not the space of six months at the most: and that no person or persons shall sustain any loss, or incur any danger by this act, for the receiving or maintaining of any such person or persons so licensed as is aforesaid, for and during such time only as such person or persons shall be so licensed to tarry within this realm; any thing contained in this act to the contrary notwithstanding.

One knowing a
Jesuit or priest
to remain in
the realm, and
not discovering
it to a justice
of peace.

Skinner, 369.

"XIII. And be it also further enacted by authority aforesaid, that every person or persons, being subjects of this realm, which after the said forty days shall know and understand that any such Jesuit, seminary priest, or other priest abovesaid, shall abide, stay, tarry, or be within this realm or other the queen's dominions and countries, contrary to the true meaning of this act, and shall not discover the same unto some justice of peace or other higher officer, within twelve days next after his said knowledge, but willingly conceal his knowledge therein, that every such offender shall make fine, and be imprisoned at the queen's pleasure; and that if such justice of peace, or other such officer to whom such matter shall be so discovered, do not within eight and twenty days then next following give information thereof to some of the queen's privy council, or to the president or vice-president of the queen's council established in the north, or in the marches of Wales, for the time being; that then he or they so offending shall for every such offence forfeit the sum of two hundred marks.

"XIV. And be it likewise enacted by the authority aforesaid, that such of the privy council, president, or vice-president, to whom such information shall be made, shall thereupon deliver a note in writing, subscribed with his own hand, to the party by whom he shall receive such information, testifying that such information was made unto him. STAT. 27 ELIZ. c. 2.

"XV. And be it also enacted, that all such oaths, bonds, and submissions, as shall be made by force of this act, as aforesaid, shall be certified into the Chancery by such parties before whom the same shall be made, within three months next after such submission, upon pain to forfeit and lose for every such offence one hundred pounds of lawful English money; the said forfeiture to be to the queen, her heirs and successors. All oaths, bonds, and submissions, certified into the Chancery.

"XVI. And that if any person so submitting himself, as aforesaid, do at any time within the space of ten years after such submission made, come within ten miles of such place where her majesty shall be, without special licence from her majesty in that behalf to be obtained in writing under her hand; that then and from thenceforth such person shall take no benefit of his said submission, but that the same submission shall be void as if the same had never been." None submitting himself shall come within ten miles of the queen.

XXXIX. STAT. 27 ELIZABETHÆ, c. 3 (1). A.D. 1585.

STAT. 27 ELIZ. c. 3.

"An Act for the Explanation of an Act made in the thirteenth Year of the Queen's Majesty's Reign, intituled, An Act to make the Lands, Tenements, Goods, and Chattels of Tellers, Receivers, &c., liable to the Payment of their Debts."

[Estates of collectors of first-fruits and tenths rendered answerable for moneys received and unaccounted for.]

XL. STAT. 27 ELIZABETHÆ, c. 11. A.D. 1585.

STAT. 27 ELIZ. c. 11.

" . . . A Repeal of so much of the Statute of 5 Eliz. c. 5, as concerneth the eating of Fish, and restraineth the eating of Flesh, upon Wednesday. Sea Fish may be sold any Day in the Week saving Sunday. Victuallers shall utter no Flesh in Lent, nor upon Fridays or Saturdays. . . . "

XLI. STAT. 29 ELIZABETHÆ, c. 6 (2). A.D. 1587.

STAT. 29 ELIZ. c. 6.

"An Act for the more speedy and due Execution of certain Branches of the Statute made in the twenty-third Year of the Queen's Majesty's Reign, intituled, An Act to retain the Queen's Majesty's Subjects in their due Obedience."

XLII. STAT. 31 ELIZABETHÆ, c. 6 (3). A.D. 1589.

STAT. 31 ELIZ. c. 6.

"An Act against Abuses in Election of Scholars, and Presentation to Benefices."

"Whereas by the intent of the founders of colleges, churches collegiate, churches cathedral, schools, hospitals, halls, and other like societies within this realm, and by the statutes and good orders of the same, the elections, presentations, and nominations of fellows, scholars, officers, and other persons, to have room or place in the same, are to be had and made of the fittest and most meet persons, being capable of the same elections, presentations, and nominations, freely, without any reward, gift, or thing given or taken for the same: And for true performance whereof, some electors, presentors, and nominators in the same, have or should take a corporal oath to make their elections, presentations, and nominations accordingly; yet notwithstanding it is seen and found by experience, that the said elections, presentations, and nominations be many times wrought and brought to Elections, presentations, &c. in colleges, &c. wrought contrary to the intent of the founders. Cro. Jac. 533. 3 Inst. 153. 1 Roll. 157, 236. 2 Roll. 83, 465.

(1) Repealed by Stat. 6 Geo. 4, c. 105, 12 Ann. c. 12. Stat. 7 & 8 Geo. 4, c. 25. s. 13. Stat. 9 Geo. 4, c. 94. Stat. 3 & 4 Vict. c. 113. Stephens on Clerical Law, tit. SIMONY.
 (2) Vide Stat. 31 Geo. 3, c. 32.
 (3) Vide Stat. 1 Gul. 3, c. 16. Stat.

STAT. 31 ELIZ.
c. 6.

pass with money, gifts, and rewards, whereby the fittest person to be elected, presented, or nominated, wanting money or friends, are seldom or not at all preferred, contrary to the good meaning of the said founders, and the said good statutes and ordinances of the said colleges, churches, schools, halls, hospitals, and societies, and to the great prejudice of learning, and the commonwealth and estate of the realm:

The forfeiture
of him who
taketh reward
for his voice in
electing a fel-

“II. For remedy whereof be it enacted by the queen’s most excellent majesty, the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, that if any person or persons, bodies politick or corporate, which have *election* (1), presentation, or nomination, or voice,

(1) *Election*.—The methods of proceeding in elections, depend in a great measure upon the local statutes and customs of each cathedral and collegiate body, and, therefore, cannot be brought under the rules of the canon law. Respecting the time for election, this the *canon law* determines, that it shall not exceed the space of three months from the vacancy; and if it be deferred longer, (without impediment,) the electors shall, for that turn, lose their right of election, and the same shall devolve upon those, who have the next right, who also shall fill up the vacancy within other three months, on pain of canonical censures. And after the election, they shall notify the same to the person elected, so soon as they reasonably can; who shall assent thereunto within the space of one month, and within three months afterwards, shall procure confirmation thereof, otherwise the election, (if there be no lawful impediment which will excuse the delay,) shall be void. But the election, or any citation, or process relating thereto, ought not to be before the interment of the deceased.

Concerning the manner of proceeding to the election, it is ordained, that when canons or prebendaries are wanted, or benefices to be disposed of, the canons absent are to be cited, if conveniently it may be, unless there be a custom to the contrary; otherwise, what is done in their absence shall be of no effect.

And no person shall constitute a proxy in the business of election, unless he be absent in a place from whence he ought to be cited, (and not in a foreign country, or the like,) and hindered by just impediment from attending, of which he shall cause proof to be made upon oath, if required. In such case, if he will, he may constitute one of the chapter or collegiate body, to be his proxy.

But if none of the chapter will be his proxy, he cannot depute any other without consent of the chapter, nor give his vote by letter, which ought not to be given before the meeting for the election, but only at that time.

And if one of the chapter be constituted proxy generally, if he nominate one person on his own account, and another in the name of his constituent, it shall pass for nothing; but if he has a special proxy, to choose such a person by name, then he may lawfully consent to the election of one in his own name, and to the election of another in the name of his constituent.

When the election is to be made, and all are present who ought, and will, and can

conveniently attend; three of the society shall take the votes of every one, secretly and severally, and put the same in writing, and then immediately publish the same amongst them all; and on casting up the votes, he shall be elected, who has the majority of legal votes.

And they cannot vary after the votes are published; for then they ought to proceed to cast up the votes, and declare the election.

By the majority, is meant the whole number of electors; therefore, if there are seven electors, and two of them choose one person, and two another, and three another, he who has the three votes shall not be duly elected, not being chosen by a majority of the electors.

By the majority of legal votes, (the *major et sanior pars*,) are excluded those who are admitted upon protestation, that their votes shall not be good, if it shall appear, that they have not a legal right to vote, and it shall afterwards be made appear upon appeal or otherwise, that they have no legal right. Persons may be disqualified several ways: as by custom; or by their own crime, where they have committed any offence which renders them incapable. So persons under suspension, or under the greater excommunication, can neither be electors, nor be themselves elected. But if a member be in possession, although not of right, he may be an elector, and such election is valid, provided he be in quiet possession, because he believes that he has right. But if, from the first, before the election is made, it shall be denied, that he has such right, and he is admitted under protestation, that his voice shall be valid, if, indeed, it ought to be valid, and that it shall not be valid, unless it shall appear that he has such right; in such case his possession shall not avail.

When the votes are equal, one who is an elector being chosen, shall have the preference before one who is not an elector: as, for instance, if there are seven voters, and three of them choose one of the seven, and the other three choose another who is not of the seven; he of the seven who is chosen, shall have the preference, provided he, himself, consent and agree to his election, and there be no canonical impediment.

If the lesser number of the electors proceed precipitately to make election before the rest, who ought to be present, have assembled, such election will be void, although the major part of the whole number should assent to it afterwards. But if, after such undue elec-

or assent in the choice, election, presentation, or nomination of any fellow, scholar, or any other person, to have room or place in any of the said churches, colleges, schools, hospitals, halls, or societies, shall at any time after forty days next after the end of this present session of parliament, have, receive, or take any money, fee, reward, or any other profit, directly or indirectly, or shall take any promise, agreement, covenant, bond, or other assurance to receive or have any money, fee, reward, or any other profit, directly or indirectly, either to him or themselves, or to any other of their or any of their friends, for his or their voice or voices, assent or assents, or consents, in electing, choosing, presenting, or nominating any officer, fellow, scholar, or other person, to have any room or place in any of the said churches, colleges, schools, halls, hospitals, or societies; that then and from thenceforth the place, room, or office which such person so offending shall then have in any the said churches, colleges, schools, halls, hospitals, or societies, shall be void: and that then, as well the queen's majesty, her heirs and successors, and every other person and persons, their heirs and successors, to whom the presentation, donation, gift, election, or disposition, shall of right belong or appertain of any such of the said rooms or places of the said person offending as aforesaid, shall or may at their pleasure elect, present, nominate, place, or appoint any other person or persons in the room, office, or place of such person or persons so offending, as if the said person or persons so offending then were naturally dead.

“III. And be it further enacted by the authority aforesaid, that if any fellow, officer, or scholar, of any the said churches, colleges, schools, halls, hospitals, or societies, or other persons having room or place in any of the same, shall at any time hereafter, directly or indirectly take or receive, or by any way, device, or means, contract, or agree to have or receive any money, reward, or profit whatsoever, for the leaving or resigning up of the same his room or place, for any other to be placed in the same, that then every person so taking or contracting, or agreeing to take or have any thing for the same, shall forfeit and lose double the sum of money or value of the thing so received and taken, or agreed to be received and taken; and every person by whom or for whom any money, gift, or reward as aforesaid shall be given or agreed to be paid, shall be incapable of that place or room for that time or turn; and shall not be, nor had nor taken to be, a lawful

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low, scholar,
&c. into a
college, &c.
2 Bulst. 182.
3 Bulst. 88, 90.
Moor, 877,
pl. 1231.
19 Vin. 455,
&c.
2 Haw. P. C.
389, 396.
Hob. 75, 167.
1 Cro. 37.
March, 84.

The penalty
for giving or
taking of money
for resigning a
place in a
college,
society, &c.
Hob. 165.

tion be made, and some of the electors have departed, they who remain proceed to another election, such election will be also void.

A pre-election into a place not vacant, is void: and so it was declared in *Owen (Dr.) v. Stainhow (Dr.)*, Jon. (Sir T.), 199; Dr. Owen was elected prebendary in the church of St. David's, where such elections had been usual, when all the prebends were full; but upon a vacancy, Dr. Stainhow was admitted, and the court would not grant a *mandamus* to admit Dr. Owen, because, (as is there said,) it was a ridiculous custom to elect where no prebend was vacant, because, there cannot be an election but into a void place.

If there be a pre-election; upon a death, the person may afterwards be admitted; but such pre-election binds not the body, and they may elect another when the vacancy happens, especially, where the electors are the patrons, and are also the persons to admit. The caution given in this case by the canon law, is, “*Caveas tamen, qualiter fiat electio: si dicatur, eligimus te ad proximam vacaturam, nulla est electio; si verò dicatur, eligimus te in fratrem et socium, et promittimus tibi conferre beneficium, cum primum vacaverit, tenet electio talis; cum super assignando eidem quotidianas distributiones, alias compellerentur ad hoc.*” Extra. l. 3, c. 5, t. 19, v. *Approbantes*.

Where the dean, or other chief governor of any cathedral or collegiate church, has a certain portion of the possessions alone limited to his office; and every prebendary, vicar, petty canon, and other minister spiritual, has other possessions alone and distinctly limited to his respective office; they shall be rated for their first-fruits separately, and not jointly. Stat. 26 Hen. 8, c. 3, s. 25 (*antè* 186).

The cathedral church is the parish church of the whole diocese; (which diocese was, therefore, commonly called *parochia*, in ancient times, till the application of this name to the lesser branches into which it was divided, made it, for distinction sake, to be called only by the name of diocese;) and it has been affirmed, with great probability, that if one resort to the cathedral church to hear divine service, it is a resorting to the parish church, within the natural sense and meaning of the statute. Gibson's Codex, 171.

Upon which account, it is ordained by a canon of Simon Mepham, archbishop of Canterbury, that in certain cases, they who cannot be cited personally, nor in their dwelling house, may be cited in their parish church; and if they have no parish church, or that doth not appear, then they shall be cited in the cathedral. Const. Meph. tit. *De Judicis*

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fellow, scholar, or officer of any of the churches, colleges, halls, hospitals, schools, or societies, or to have such room or place there, but that they to whom it shall appertain at any time thereafter, shall and may elect, choose, present, and nominate any other person fit to be elected, presented, and nominated into the said room or fellowship, as if the said person by or for whom any such money, gift, or reward shall be given or agreed to be paid, were dead, or had resigned and left the same. And for more sincere election, choice, presentation, and nomination of fellows, scholars, officers, and other persons, to have room or place hereafter in any of the said churches, colleges, halls, schools, hospitals, and other the like societies;

At every election this statute, and the statutes of the house, shall be read.

Who shall have the forfeitures, and by what means.

"IV. Be it further enacted by the authority aforesaid, that at the time of every such election, presentation, and nomination hereafter to be had, as well this present act as the orders and statutes of the same places concerning such election, presentation, or nomination to be had, shall then and there be publicly read, upon pain that every person in whom default thereof shall be shall forfeit and lose the sum of forty pounds; all which forfeitures shall and may be had and recovered in any her majesty's courts of record by any person or persons, bodies politic or corporate, that will sue for the same, by bill, plaint, or action of debt, in which no essoin, protection, or wager of law shall be allowed: the one moiety whereof shall be to him or them that will sue for the same; the other moiety to the use of the said church, college, hall, hospital, school, or society where such offence shall be committed, and for the avoiding of simony (1) (2), and corruption in presentations,

(1) *And for the avoiding of simony*:—These and the following words, which in all the editions of the statutes are printed as part of the fourth section, are introductory matter to the fifth. The division into sections does not appear in the original record, and is merely the act of the printer.

(2) *Simony*:—It was said in *Winchcombe v. Pulleston*, (Noy, 25,) that "in Stat. 31 Eliz. c. 6, there is no word of simony; for by that means then the common law would have been judge, what should have been simony, and what not." And notwithstanding what is there reported by Noy, the word *simony* is actually found in this statute; his authority is alleged for the consequence of its being found, viz. that it wholly belongs to the temporal courts, to determine upon this act, what simony is, and what contracts will amount to simony. "Whereas, it is more than probable, that when he affirmed there was no word of simony in this statute, and drew that consequence from it; his meaning was, that there was nothing of it, in the enacting part, and that if there had, then the common law would have been judge what was simony, and what not. But from the mention of it in the preamble, no more can be fairly drawn, than that the general design was to discourage simony, by laying new penalties upon such branches of it, as are particularly specified in the enacting part; and not at all to limit the nature and extent of simony; nor yet to restrain or disturb the judges of the spiritual courts, in their prosecutions of it according to the laws of the church, any further than the prohibiting of them, in case they proceeded contrary to this statute, upon any of the heads contained in it. *Penn's case*, 2 Brownl. 7. Accordingly, as there is in this very statute, (s. 13,) a special saving to the ecclesiastical jurisdiction, and, in Stat. 5 Eliz. c. 23, the cognizance of simony is plainly acknowledged to belong to the ecclesiastical court; so the most early judg-

ments, that were given upon this statute in the temporal courts, suppose and assert the same thing. In *Riesby v. Wentworth*, (Cro. Eliz. 642,) prohibition having been obtained upon this statute in a suit for tithes, on suggestion of simony in the parson, and, by consequence, of no right to the tithes, as having never been incumbent; the court agreed, that 'simony might more aptly be tried in the spiritual court; and consultation was awarded. In *Baker v. Rogers*, (Cro. Eliz. 788,) the court declared as follows: 'It appertains to the spiritual court to determine simony, and not to this court to meddle therewith.' 'And although it was said, that in the spiritual court, they ought not to have intermeddled, to divest the freehold, which is in the incumbent after the induction; true it is, they should not meddle, to alter the freehold; but they meddled only with his manner of obtaining his presentment, which, by consequence, divested the freehold from him, by the dissolution of his estate, when his admission and institution is avoided.' Or rather, the act of parliament having avoided the admission and institution *ab initio*, he never had the freehold in him." Gibson's Codex, 798.

These things being duly considered, seem fully to warrant the observation made upon this statute by Bishop *Stillingfleet*: (1 Eccles. Ca. 299:) "That it doth not abrogate the ecclesiastical laws as to simony; it only enacts some particular penalties on some more remarkable simoniacal acts, as to benefices and orders; but never once goes about to repeal any ecclesiastical laws, about simony, or to determine the nature and bounds of it." Bishop *Wake* states: (Visitation Charge, 40:) "This act, &c., is not privative of the jurisdiction of the church, or its constitutions, but accumulative; it leaves the church all the authority it had before, &c. Only, whereas till now, these crimes were inquirable and punishable by

collations, and donations, of and to benefices, dignities, prebends, and other livings and promotions ecclesiastical, and in admissions, institutions and inductions to the same :

“V. Be it further enacted by the authority aforesaid, that if any *person or persons* (1), bodies politick and corporate, shall or do at any time after the end of forty days next after the end of this session of parliament, for any sum of money, reward, gift, profit, or benefit, *directly or indirectly* (2), or for or by reason of any

the ecclesiastical judge alone, they may now, in some cases specified in this statute, be brought before the civil magistrate also.”

(1) *Person or persons*:—If a person having no right, present by usurpation, and do it by reason of any corrupt contract, agreement, &c., that presentation, and the induction thereupon, are hereby void; for this statute extends to all patrons, as well by wrong as by right. In like manner, if when a church is void, the void turn is purchased, although the grant of a void turn, as being a thing in action, is of itself void, and the purchaser's presentee comes in *quasi per usurpationem*, yet because it is by means of a simoniacal contract, it is as much simony, as if the grant had not been void. *Baker v. Rogers*, Cro. Eliz. 789.

It should be observed, that this clause is general, “if any person or persons,” &c., and makes no allowance in the case of father and son, more than in the case of other persons; and that therefore the notion that a purchase of the next avoidance when the incumbent is dying, and the son's privity to that purchase, is less simony in the case of a son, than it would be in the case of any other person, is erroneous; as to what is alleged, in *Smith v. Shelbourn*, (Cro. Eliz. 685,) that the father is bound by nature to provide for his son; “it is to be hoped, that no more is meant by it, than, in a lawful and honest way; and if that natural obligation will sanctify a simoniacal bargain, while the church is full, it may as well make the like bargain innocent after the church is void, and so take away all possibility of simony, in the case of providing for a son.” Gibson's Codex, 798.

(2) *Directly or indirectly*:—Although the most direct simony, is, when the church is become void, and the void turn, (*Bawderok v. Mackaller*, Cro. Car. 331; *Todderidge v. Mackalley*, Jon. (Sir W.), 341,) or the procuring of it, is contracted for; yet may there be many kinds of unlawful contracts within this statute, while the church is full of an incumbent. As, i. If the next presentation be granted, upon a bond given to pay such a sum of money to the grantor, when the church shall become void. *Anon.* March, 158. *Winchcomb v. Pulleston*, 1 Brownl. 164. Hob. 165. *Penn's case*, 2 Brownl. 7. Noy, 25.

ii. If money be given to one, on condition that he procure a particular person to be presented, when the church shall become void; and that person be presented.

iii. If the next presentation be purchased or granted, with condition to present a particular person by name. Against which, as against all promises of benefices, the canon

law, from the third Lateran council, gives this good reason: “Ne desiderare quis mortem proximi videatur, in cujus locum et beneficium se crediderit successorum.” Extra. l. 3, t. 8, c. 13. And *Hobart* went further, and declared, “that if in the grant of the prochein avoidance, it appears, that it was to the intent to present his son or his kinsman, and it was done accordingly, that is simony.” But this was otherwise adjudged in *Smith v. Shelbourn*, (Cro. Eliz. 685,) even though the son was privy to it. *Anon.* 2 Vent. 39.

To what extent the ancient canon law discouraged all tendencies to promises and engagements in favour of particular persons, will appear from the rules which follow: “Quia clerici quidam advocatis ecclesiarum comparant, vel quocunque modo possunt, acquirunt, ut postmodum eorum filii, vel nepotes ad easdem ecclesias presententur; præcipimus, ut id arctius inhibere procuremus; eosdem advocacionibus taliter acquisitis, appellatione postposita spoliando.” Extra. l. 3, t. 38, c. 5.

“Accepimus quod quædam ecclesiæ clericis sint tali tenore concessæ, quod post eorum obitum, alii nominatim succedant. Verum quoniam hoc iniquum est et sacris canonibus inimicum, et ideo non debet aliquatenus tolerari; mandamus, quatenus hujusmodi successiones tam detestabiles, et iniquas, appellatione cessante prohibeas, et omnino frivolas et inanes esse decernas.” Extra. l. 1, t. 35, c. 6.

“Detestanda iniquorum perversitas abstinere nesciens à vetitis, nec gaudere debito modo concessis, dignè plerumque officium excitat præidentis ad ea, quæ justa fuerant consideratione concessa, (cùm in abusum ea vergere circumspicit), discretionè prævia revocanda.” 6 Decret. l. 3, t. 7, c. 2.

“Sanè licet olim fuerit canonica constitutione decretum, quòd hi, qui promittunt aliquibus de beneficiis ecclesiasticis, cùm poterunt, vel cùm facultas se obtulerit, providere, promissiones suas (facultate se offerente) debeant adimplere: quia tamen (sicut experientia docuit) per promissiones hujusmodi, quæ per importunitatem nimiam (per quam non concedenda multoties conceduntur) et per ambitionem improbam ut plurimum extorquentur, aperitur via sub tali palliatione verborum ad promittenda damna-biliter contra Lateranense concilium beneficia vacatura, mortis alienæ votum ingeritur, et ecclesiis, ac prælatis, et personis ecclesiasticis gravamina plurima inferuntur: nos malis hujusmodi, et animarum periculis occurrere cupientes, promissiones easdem, et alias quascumque sub quovis modo, aut forma verborum de cætero faciendas, per quas di-

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The penalty for presenting to a benefice, or for being presented for reward.
Co. Ent. 516.

STAT. 31 ELIZ. c. 6. rectè, vel indirectè aperiri via valeat ad beneficia vacatura, auctoritate Apostolica penitus reprobamus, et omninò viribus vacuumus: decernentes per eas, vel ipsarum aliquam, ad providendum alicui nullum deinceps quomodolibet obligari."

The rule of the *Reformatio Legum*, (f. 29 (b),) is: "Non patimur ut patroni certam beneficiorum spem cuiquam, ullà scriptorum, aut pignorum, aut pactorum cautione, faciant, priusquam vacua sint. Nam hujusmodi conventiones magnam secum vim incommodorum afferunt. Itaque qui talem ullam sacerdotiorum minimè vacuorum spem faciunt, jus collocaionis illius temporis amittunt; et qui ad nondum vacua sic adspiraverint, ne ad vacua quidem post assumptum, et etiam ab omnibus aliis submovebuntur."

iv. If one promise to a clerk, that in consideration he will marry his daughter, he will present him to a particular living when void, or to the next living, or to the next good living, that shall fall void in his gift, and he doth present him; this is a simoniacal contract. And *Yelverton* said, "that a presentation to the intent to marry the daughter of the patron is simony;" ("quod *Richardson* fortiment *negavit*,") *Steven's case*, Lit. 177.

v. If a purchase be made of the next avoidance, when the incumbent is sick, and like to die; in that case, it was said by *Hutton*, in *Sheldon v. Bret*, (Winch, 63,) "We in chancery have adjudged, that the grant of the next avoidance for money, when the parson was sick in his bed, ready to die, is simony; for the statute is, if the contract be made directly or indirectly, by any way or means." Which circumstance of the incumbent's sickness, is also mentioned in *Smith v. Shelbourn*; (Cro. Eliz. 685;) but there, the point under consideration was, the son's privy to the bargain, and the incumbent's illness was not brought into debate. But in another case, where, pending a *quare impedit*, the perpetual advowson was sold, and it was found to be, *eà intentione*, that a particular person should be presented after the usurper was removed, and he was presented; this was declared simony. *Anon.* 2 Vent. 39. *Walker v. Hammensly*, 3 Lev. 115. 3 Salk. 323. For that covenant was properly made during the vacancy, inasmuch as the presentation being avoided, the church was void from the death of the last incumbent; and if the church should be said to be full, upon an usurpation, this would be a means to elude the statute; for then the patron need only get one to usurp, and, after that he may sell the next avoidance, and then bring a *quare impedit*, and remove the usurpation, and so the grantee comes in. *Walker v. Hamersly*, Skin. 90.

But the sale of the next presentation of a living, the church being full, is valid, except where a clergyman is the purchaser. It was supposed, in the cases above cited, that if the incumbent be in a *dying* state, the sale was simoniacal; (*Smith v. Shelbourn*, Cro. Eliz. 685; *Winchcombe v. Winchester* (*Bishop of*), Hob. 165; *Moore* (Sir F.) 916; 19 Vin. Abr. *Simony* (B), 458;) but the decision of the house of lords, in *Fox v. Chester* (Bi-

shop of), (6 Bing. 1,) has established that such sale is valid while the incumbent is alive and the church full: by which the decision of the court of King's Bench, in opposition thereto, (*Ibid.* 2 B. & C. 635,) was reversed. Vide etiam *Barret v. Glubb*, 2 Black. (Sir W.), 1052.

It should however be observed, that a grant of an advowson after the church is actually vacant, is void; but no lapse incurs till after induction to a second benefice. *Salisbury* (*Bishop of*) v. *Wolforstan*, 3 Burr. 1504. 2 Wils. 174.

But the sale of the advowson of a church which is full, is not simoniacal by reason of the incumbency being at the time of the sale voidable at the election of the patron; (*Alston* (*Clerk*) v. *Atlay*, 7 A. & E. 289;) and a conveyance under such sale will pass the right of immediate presentation. *Ibid.*

If a church be litigious, and one party give money or other consideration to the other, to surcease; this seems to be a simoniacal contract. Concerning which *J. de Athon*, in his Commentary upon the Legatin Constitutions, (Othob. de his qui Pact. v. *Simonia*, 135,) observes: "Quæro, posito quod vero patrono præsentante T. clericum, alius non patronûs, potens tyrannus, se objiciat, alium præsentando; si verus patronus componat cum tali potente, ut cesset ab inquietatione suâ injuriosâ, aliquam pecuniam sibi conferendo, an hoc inducat speciem simoniæ in ipso clerico justè præsentato?" The solution is, "Credo contrâ; nam hic redemptio vexationis injuriosæ facta per patronum verum, principaliter fiebat pro suo jure patronatûs conservando, in quo ex parte suâ non vertitur simoniæ periculum: secus forte, si hujusmodi redemptio vexationis fieret principaliter ut staret sua præsentatio de certâ personâ; nam tunc videretur redemptio facta ratione personæ præsentatæ, potius quàm pro servando sui patronatûs jure. Item, Simoniam in præsentato committi non reperio, nisi quando nomine seu vice ipsius præsentati sit datio seu promissio, (ut patet ubique in materia simoniæ,) quod non est reperire in casu questionis nostræ?" "Here, it seems to be clear, that if the money is given in this case by the presentee, or on his account, it is simony; and where that was the point, in *Wilson v. Bradshaw*, (2 Roll. 463,) (who were both suing for institution to the bishop, and Bradshaw promised money to Wilson to surcease, and he did surcease, and brought his action for the money;) *Jones* moved, that it might be considered, whether the contract was not simoniacal: *i. e.* whether it was not the same thing to give 10*l.* to another not to prosecute his admission, as it would be to give 10*l.* to obtain his own presentation. The point was not debated, because the matter turned upon a form in pleading; only *Doderidge* said that it could not be simony, because the contract was not either with the patron for presentation, or with the ordinary for institution." Gibson's Codex, 799.

But the canon law seems to make a difference between a clerk presented only, and a clerk who is also instituted; that it is more allowable for the second *redimere vexa-*

tionem, as having *jus in re*, than for the first who hath only *jus ad rem*. Othob. ut *suprà*. And therefore when the Archdeacon of York disturbed one who was in possession of divers dignities and benefices, and the possessor "promisit, ei certam quantitatem pecuniæ se daturum, ut ab ipsius desisteret læsione;" which money the archdeacon took, and yet, "ab ejus molestiâ non quievit:" the decision of the Decretal Epistle thereupon was, "Si res ita se habet, archidiaconum restituere quod accepit, (si eum contra promissionem suam venisse constiterit,) compellatis." Extra. l. 5, t. 3, c. 28. Upon which, the Gloss. saith, (Gloss. v. *Restituere*,) "Nota, ex eo quod præcipitur ei restituere quod accepit, ei qui dedit; innuitur, non esse turpitudinem ex parte dantis, jus suum redimere volentis:" and afterwards, in a like case, "Qui dat, nullum jus acquirit; sed dat, ut jus acquisitum retineat vel redimat; quod justum est." Ibid.

It may be further remarked upon the construction of this statute, "that although the clerk, or patron, or both, do appear not to have been party, or even privy to the contract, this shall not remove the simony. Thus, 1. As to the clerk; my Lord Coke, (12 Co. 73; *Hutchinson's (Dr.) case*, Ibid. 100,) declares it, as the unanimous opinion of the justices and barons at one time, and of the whole court at another, that although the presentee be not party to the contract, nor privy to it, his presentation, admission, and induction, are void. And the like judgment was given in *Rex v. Norwich (Bishop of)*, (3 Lev. 337,) where the presentee pleaded, that he had no notice of the contract; and the court said, that the notice was not material, but only the corrupt agreement. 2. As to the patron; it was declared in *Rex v. Norwich (Bishop of)*, (Cro. Jac. 385,) that a simoniacal contract with the friend or wife of the patron, (though the patron know it not,) is within this statute. 3. As to clerk and patron; in *Calver's case*, (cit. Cro. Car. 331,) where the contract was between the father of the incumbent and the wife of the patron, and it was found by special verdict, that neither patron nor incumbent knew anything of it: yet it was held to be a simoniacal contract within the statute. And the same thing hath also been declared in *Rex v. Trussel*, 1 Sid. 329." Gibson's *Godex*, 799. *Sed vide* as to Advowsons in fee, *Barret v. Glubb*, 2 Black. (Sir W.), 1052. *Grey v. Hesketh*, Amb. 268.

An agreement for carrying a former simoniacal contract into effect is not necessarily also simoniacal and void. Thus, in *Greenwood v. London (Bishop of)*, (1 Marsh. 292; 5 Taunt. 727,) it appeared that A. the incumbent of a living, and owner of the advowson, agreed with B. for the sale of the advowson, and for the immediate resignation of the living, and accordingly tendered his resignation to the bishop, who refused to accept it. Another agreement was then entered into between the same parties, for the sale of the advowson only, without any contract for the resignation, and at the same time, by a separate agreement, A. granted a lease of the tithes and profits to B. for nine-

ty-nine years, if A. should so long live; under which lease B. received the profits till A.'s death; on A.'s death, the crown presented for that turn only, by reason of simony. The incumbent presented by the crown dies, whereupon B. claimed the right to present. It was objected by A.'s heir, that the second contract for the sale of the advowson, and the lease of the tithes of the same date, being for the purpose of carrying the former simoniacal contract into effect, was also simoniacal and void. But it was held, that whether the second agreement was simoniacal or not, the illegality, if any, extended to the next presentation only; and that, therefore, the crown having presented for one turn, B. had a good title to the advowson, and had a right to present on the present vacancy.

A chapel in the township of P. was endowed in 1428, by a deed executed by the then impropiator of the rectory, the then vicar, and the inhabitants of the township, and confirmed by the diocesan; whereby, in consideration of a yearly payment to the vicar, it was provided, that the curate of the chapel should receive all the tithes due to the vicar from the said inhabitants, and should be appointed by them; under which deed they continued to exercise the power of appointment and presentation. In 1797, an act passed for inclosing open lands in the township, in which it was recited, as a matter of doubt, whether the curate was entitled to the small tithes, or to a modus in lieu of tithes, the decision of which was left untouched by the act. In 1801, upon a vacancy, the inhabitants appointed and presented a curate, upon an agreement signed by him and the principal inhabitants, wherein they stated, that he was appointed to the curacy, &c. and to the money payment of 40*l.* 8*s.* 2*d.* annually, payable out of the lands and hereditaments in P. in right of the said curacy, together with the surplice fees, and all other profits, privileges, and appurtenances to the same belonging, and of right payable: that the inhabitants, considering that sum not sufficient for the proper support of the curate, had voluntarily agreed with him to pay a further annual sum of 29*l.* 11*s.* 10*d.* with a proviso, that "it should not in any respect alter the money payment of 40*l.* 8*s.* 2*d.* wherewith the said lands were and had been, time immemorial, charged in right of the said church:"—It was held, that this agreement, entered into for the purpose of restraining the then curate from asserting his claim to the small tithes by due course of law, and furnishing evidence against his successors, was simoniacal, and the presentation made thereon void. And the right of presentation having thereupon devolved upon the crown, by Stat. 31 Eliz. c. 6, s. 5, whose presentee had been licensed by the ordinary, a *mandamus* to the ordinary to license another curate subsequently appointed and presented by the inhabitants, who had given notice of having withdrawn their former nomination and presentation, and cancelled the agreement, was denied; and the rule was discharged with costs. *Rex v. Oxford (Bishop of)*, 7 East, 600.

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STAT. 31 ELIZ. *promise* (1), agreement, grant, *bond* (2), covenant, or other assurances, of or for any sum of money, reward, gift, profit, or benefit whatsoever, directly or indirectly,

(1) *Promise*.—This is in accordance with the rule of the canon law: “De hoc autem, quòd episcopus exonien’. Archidiacono beneficium, et cuidam clerico ante electionem suam prioratum dicitur promississe, ut uterque consentiret eidem: tuæ prudentiæ respondemus, quòd si manifestum est eundem archidiaconum, et clericum, ob causam illam, promissa recepissem, aut exinde confessi fuerint in iure, vel legitime convicti, ab altaris ministerio sunt perpetuo deponendi.” Extra, l. 5, t. 3, c. 11.

(2) *Bond*.—Before the statute, a general bond of resignation upon request given previous to presentation, was good; and if unattended by any illegality, which, if it existed, must be plainly alleged and fully proved, was not sufficient ground for the ordinary to refuse admission. *London (Bishop of) v. Fytche, (in error),* 2 Bro. P. C. 211. 1 East, 487. Et vide *Rowlatt v. Rowlatt*, 1 J. & W. 280.

“The bond and assurance here mentioned, being for money, reward, gift, profit, or benefit; and the temporal courts having chosen, in this particular, to adhere rigidly to the letter of the act; a way was found very early, to avoid the force, and defeat the intention of it, with impunity; viz. by general bonds of resignation; whereby the presentee obliged himself to resign and void the benefice, in three or six months after warning given, or else, indefinitely, whenever the patron should require it. Which bonds, (to speak only upon the foot of this statute,) do assuredly convey a benefit from the incumbent, to the patron; from the incumbent, as they render his title precarious, and the benefice less valuable; and he really gives so much to obtain the living, as it is of less value to him, than if he enjoyed it without any such bond. To the patron, as he may render the next avoidance more beneficial, by having it understood, that it is in his own power to make a voidance at pleasure. Not to mention, that the patron, in demanding a bond, demands more than by the rights of patronage he can justly claim; (viz. a power over the incumbent after institution, which of right belongs to the bishop alone;) and that the presentee, by giving a bond, obliges himself to do a thing that it is not in his power to do, viz. to make void the benefice by resignation; which can only be effected by the acceptance of the ordinary.” Gibson’s Codex, 800.

Where a bond recited that the patron of a rectory had by an instrument of the same date presented an incumbent, and that he had agreed to resign upon request of the patron, or the owners of the advowson for the time being, for the purpose of enabling him or them to present one of the two younger brothers of the patron, when capable of holding: it was held, (reversing the judgments of the courts of King’s Bench and Exchequer Chamber,) that such a bond was simoniacal and void, on the ground that such an agreement was a benefit to the pa-

tron, and contrary to the Stat. 31 Eliz. c. 6, and (*semble*) the common law: it was, likewise, held, that from the recitals of such a bond, it must be intended that such presentation was made in consideration of the agreement to resign, and that it is not necessary to allege that fact in pleading. *Fletcher v. Soudes (Lord), (in error),* 1 Bligh N. S. 144. 3 Bing. 598. Overruling *S. C.* 5 B. & A. 835.

Chief Justice *Abbott*: “The question, my lords, which has been proposed to the judges is, whether sufficient matter appears upon the record to show, that, either by statute or common law, the bond upon which the action of debt was brought in this case, and stated upon the record to bear equal date with the writing of presentation therein mentioned, is void or illegal?”

“My lords, the question appears to me, to consist of two parts; first, whether enough appears on the record to show, that the bond was given as the price or consideration of the presentation to the benefice? Secondly, supposing this to appear, then, whether the bond is void by the statute or the common law?”

“As to the first part of the question, I am of opinion, that enough does appear upon the face of the record, to show that the bond was given as the price or consideration of the presentation to the benefice. If the fact be manifest upon the face of the instrument, it is not necessary to aver it in order to bring it to the notice of the court, or within the meaning of a statute; and that the fact does so appear, it is only necessary to advert to the language of the condition.

“In this case, my lords, the statute mentions the act alone, without any epithet or qualification. The section commences with this preamble: ‘for the avoiding of simony and corruption in presentations, collations, and donations of and to benefices, dignities, prebends, and other livings and promotions ecclesiastical, and in admissions, institutions, and inductions to the same, be it enacted, that if any person shall or do at any time,’ after such a period, ‘for any sum of money, reward, gift, profit, or benefit, directly or indirectly, or for or by reason of any promise, agreement, &c., of or for any sum of money, reward, gift, profit, or benefit whatsoever, directly or indirectly present or collate any person, &c., to any benefice, that then such presentation shall be utterly void.’ It is to that section to which I would beg to call your lordships’ attention; from which it appears, that the mere taking of any gift, profit, or benefit, is, in itself, an avoidance of the presentation. It is necessary, with respect to any question that may arise upon the statute of Elizabeth, or any question that may arise upon the common law, to see what the fact is, the question being, whether it is apparent upon the face of the instrument, that the bond is given as the price of the presentation. It seems to me impossible, for any person to read the con-

dition of this bond, as it appears upon the record, without taking it, that it was given as the price of the presentation, and that the presentation was given as the consideration of the bond.

"It begins with reciting, that Lewis Richard Lord Sondes is the patron of the rectory, which rectory had become vacant by the death of the late incumbent. The next recital is, 'That my Lord Sondes, by writing under his hand and seal, bearing equal date with the above written obligation, presented the above bounden Brice William Fletcher to supply the vacancy;' from which it appears, that the presentation and bond are connected together; and then it goes on, 'And, whereas, the said Brice William Fletcher, has agreed to resign the said rectory into the hands of the proper ordinary, upon such request or notice as hereinafter mentioned, so as that the said rectory may thereby again become vacant.' Can any person read this, and not conclude, that the presentation and the bond were concurrent acts,—that they were founded upon a prior agreement to resign? This was evidently the opinion of Lord Mansfield in *London (the Bishop of) v. Ffytche*, 1 East, 487. 2 Bro. P. C. 211. That being so, my lords, for the reasons which I have just given to your lordships, I am of opinion, that there is enough upon the face of the record to show, that this bond was given as the price of the presentation.

"Then, my lords, the second inquiry which arises is, whether such a bond, given as the price or consideration of the presentation, is void in law. Upon this question, I conceive the true inquiry to be, only, whether this bond is within the rule and principle of the decision, in the case before mentioned, of *London (the Bishop of) v. Ffytche*, Ibid. I consider, my lords, that case to have established a rule and principle, binding upon all jurisdictions, except that of your lordships' house. It is true that the question there arose directly upon the presentation, and not upon the bond; but it is treated throughout as being one and the same; and as the presentation and the bond are the price and consideration of each other, it seems impossible to say, that the one can be good and valid, and the other bad and void.

"That case, my lords, arose upon a presentation accompanied by a bond to resign upon the request of the patron; a general resignation bond, as it has been called. The present case arises upon a presentation accompanied by a bond to resign upon request, whereby, and so as that the patron may be enabled to present one of his two brothers, in the condition named, when such of them as is to be presented, shall be capable of taking an ecclesiastical benefice; the agreement having been, that the presentee should so resign, to the intent that the patron may present one of those two persons. This, therefore, my lords, is one of those that have been called special resignation bonds.

"The declared object of the resignation is, the presentation of one of the two persons named; but as the resignation of the incum-

bent must precede the presentation of another clerk, I am at a loss to know, how the presentation of the particular clerk is to be secured or enforced, or the incumbent restored to the benefice, if the patron, after having declared his intention to present one of the nominees, shall afterwards think fit to present another person. This would, undoubtedly, be a most dishonourable act, and, I beg to be understood, as not even surmising that the noble lord, who is a party to this suit, would act in this manner. But in deciding upon a question of law, your lordships cannot look at the rank and character of particular persons. It has been said at the bar, that a court of equity may prevent an ill use from being made of such a bond. I do not presume to say that this may not be done, if the intention to make an ill use be known and ascertained before resignation; my difficulty is, to see how this can be known and ascertained, unless a patron should be weak enough to avow it; and this cannot be presumed of a person who could act in the way I have supposed; and if, after resignation, the patron should present another person, how could the ordinary refuse institution? Suppose the presentee to die in the interval between resignation and the new presentation, or that he should obtain a better benefice not tenable with this, and on that or on any other account refuse institution, how is the incumbent to be restored, though the object of his agreement and of his resignation have failed? If these difficulties cannot be overcome, then the bond in question will enforce a resignation, whenever one of two persons named, shall be capable of taking a benefice, leaving the patron at liberty, in many, if not in all cases, to present whom he will.

"But supposing, my lords, these difficulties can be overcome, or be thought not really to exist, and the bond be considered only as enabling the patron to present one of his two brothers, still I am of opinion, upon the authority of the decision so often mentioned, that this bond is void in law. That decision may be considered as founded principally upon one or other of two reasons, or, perhaps, upon both; the reasons being, either that the bond there mentioned was within the statute of Elizabeth, and so void by that statute, or that the effect of the bond was to convert into an estate at will, an office which the law considers to be a freehold, and will not allow to be less than a freehold, and so the bond is void at common law.

"I consider, my lords, the bond now in question to fall within each of those reasons, and to differ from the general bond in degree only, and not in principle or kind. If it be a benefit to a patron to be able to call for a resignation whenever he may choose to present any other person, it must, in my opinion, be a benefit, though perhaps a less benefit, to be able to command a resignation in order to present a relation or friend. And if there be any benefit, the degree of benefit must be immaterial, and the case will be within the statute. If the law will not allow a benefice to be held absolutely at the will of the patron, and voidable whenever he may

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STAT. 31 ELIZ. c. 6. choose to present any other person, in my opinion, the law cannot allow a benefice to be so held as to be avoidable, when a relation or friend of the patron may be capable of taking it, and the patron may think fit to present him; for in each case the estate or interest of the incumbent will be less than a freehold; whereas a benefice is spoken of as a freehold in all our books, whatever it may have been in its origin, or first constitution, which are now lost in the obscurity of antiquity.

"But further, my lords, it is not only required that a benefice shall be freely given and freely taken, but if resigned, it must also be freely and voluntarily resigned. *Non metu coactus sed in spontaneâ voluntate*. And how can a resignation be voluntary which is made in order to avoid the penalty of a bond, whether the patron has a right to impose the penalty at his pleasure, or only for a particular purpose? And ought the law to sanction an instrument which places a clergyman in a situation, either to subject himself to a demand which he may be unable to pay, or to make a solemn declaration contrary to his conscience and to truth? In my opinion, the law ought not to permit this.

"Again, my lords, the bond in question enables the patron to command a resignation in favour of one of his two brothers. If such a bond should be held valid, where is the line to be drawn, or what limit is to be fixed? If it be good in favour of brothers, why may it not also be good in favour of cousins, or more remote kindred, or of friends? If it be allowed in favour of two persons, why may it not be allowed in favour of more than two, of twelve, of twenty, or even a greater number? I am unable to discover any rule or principle upon which it may be said, Thus far shalt thou go, but no farther; and I infer, therefore, that *no* step must be taken towards the accomplishment of an object, which may reserve any benefit of this nature to the patron, or make the interest of the incumbent less than that freehold or estate for life, to be forfeited only for misconduct or by a regular judicial proceeding, which the law supposes him to possess, and requires that he shall be permitted to enjoy.

"For these reasons, my lords, I am of opinion that enough appears upon the face of this bond, to show that it is void and illegal."

Resignation bonds have found much favour and countenance in the temporal courts. *Peele v. Carlisle (Earl of)*, Str. 227. *Peele v. Capel*, Ibid. 534. *Durston v. Sandys*, 1 Vern. 411. *Grey v. Hesketh*, Ambl. 268. "For although they have been declared simoniacal, if a direct profit or reward be expressed as the condition of the bond; (*Johns v. Lawrence*, Cro. Jac. 248;) for instance, the making such a lease, the granting such a portion of tithes, the giving leave to inclose, &c.; (articles, which it is not likely any simoniacal patron will express in his bond;) yet there are other conditions which they have declared good and allowable: for instance, the taking a second benefice, the being non-resident for so many

days or months, and the arrival of a son at the canonical age of institution, &c. The first two of which, (however seemingly pious,) carry in them a distrust of the very person, by the presenting of whom to the bishop as fit, they are (as patrons) to discharge their trust, and are also an assuming to themselves an authority, which of right belongs to the bishop. Against whose taking such bonds, (which yet is a more favourable case than the patron's taking them,) a special petition was made by the clergy in convocation to the archbishop and bishops, ann. 1541. "Item petiit [prolocutor] quòd præsentati ad ecclesiastica beneficia non arcentur per diocesanos scripto aliquo obligatorio, aut pœna temporali, obligari ad residentiam." And as this implies the growing of such a practice at that time, so the Register of Archbishop Warham, (Reg. Warh. 321, 328,) proves it; for there we find express mention of three several bonds for residence, given to the archbishop, before institution. As to the last condition, in favour of a child, this, (however full of paternal affection,) cannot be said to convey no benefit to the patron; but may well be said to ensnare the conscience of the clerk, who is afterwards to take an express and absolute oath, that he has made no simoniacal promise or contract; not only of money, reward, gift, profit, or benefit, (as the terms of this statute are,) but of any other kind, though not expressed in this statute, according to the plain meaning and intent even of the statute, and according to the express words of the oath, and the constant tenour of all former canons and constitutions of the church.

"But the greatest grievance of all, are such bonds of resignation as are absolute and indefinite; where the condition is, that the clerk shall resign, upon the request of the patron, or, upon three months' notice, or the like; which sort of condition, (however mischievous to the church, as it is a visible inlet to the worst simony, that the most corrupt patron can commit,) hath been declared to be good in law; particularly in *Johns v. Lawrence*, (Cro. Jac. 248,) and in *Babington v. Wood*, (Cro. Car. 180.) And though *Noy* speaks of a declaration in the court of Common Pleas, (that if the patron present one to the advowson, having taken an obligation of the presentee, that he shall resign when the obligee will, after three months' warning, this was simony within Stat. 31 Eliz. c. 6,) yet the judgments have been according to the two forementioned precedents; because there was no averment, that they were for simoniacal purposes, and they might be upon such reasons, and for such ends, as the temporal courts allow. But (to argue upon their own principles) since there are certain conditions that they do allow, (as in the case of a minor, and such restraints as go no further than to oblige the clerk to do his duty,) is not the presumption very strong, that the condition would have been expressed, if it had been such as the law warrants; and that nothing could have induced the patron to couch it in general terms, but that it was such a

present or collate (1) any person to any benefice with cure of souls, dignity, prebend, or living ecclesiastical, or give or bestow the same, for or in respect of any such corrupt cause or consideration; that then every such presentation, collation, gift, and bestowing, and every admission, institution, investiture, and induction thereupon, shall be *utterly void* (2), frustrate, and of none effect in law. And that it shall and may be lawful to and for *the queen's majesty* (3), her heirs and successors, to present, collate unto, or give or bestow every such benefice, dignity, prebend, and living ecclesiastical, *for that one time* (4) or term only; *and that all and*

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condition, as was not fit to be particularly expressed?" Gibson's Codex, 800.

It may be observed, that in *Grahme v. Grahme*, (1 Vern. 131,) upon a motion in the court of Chancery to stay proceedings in an action on a bond given by an incumbent to his patron, that he (the incumbent) should resign on request; the lord keeper said, "he was not satisfied that such a bond was good in law." To which he added, that "the precedents that were in the case were not directly to the point, whether such bonds were simoniacal or not;" he therefore directed "that the plaintiff should declare on this bond, and the defendant plead simony, and after that, and judgment at law, come back to the court."

It is stated in Gibson's Codex, (800,) upon the authority of "Watson's Clergyman's Law, 65," that, if, under such circumstances, "the patron shall offer to take the benefit of such general clause, for indirect and illegal purposes, (as to gain a lease of glebe, or tithes, or the like,) the clerk may be relieved in Chancery, and shall obtain a decree, neither to pay the penalty of the bond, nor resign; unless the patron can make it appear, that he is ignorant and immoral, or some way unqualified for the benefice; and that, if the condition be, to resign when A. his son becomes qualified, and A. dies, or is never qualified, he shall not be obliged to resign for any other son; or if it be, to resign upon request, (which must be personal,) the clerk may save himself, by getting out of the way, and hindering the patron from making the request." Vide etiam *Sydoune v. Holme*, Cro. Car. 425.

(1) *Present or collate*:—In *Bawderok v. Mackaller*, (Ibid. 331,) it was moved in the court of King's Bench, whether donatives were properly within this statute; and the court stated, that corrupt donation, being an equal mischief with corrupt presentation or collation, was equally within the remedy of the statute. And the same was declared, even of the donatives of the king's donation; because, although it cannot be intended, that the king presented for simony, and this statute provides, that the patron losing the presentation thereby, the king shall have it; yet inasmuch as simony may be by compact between strangers, without the privity of the incumbent or patron, and yet be within the purview of the statute, and because that may happen in the donatives of the king; therefore, these also are within the statute.

(2) *Utterly void*:—Without deprivation, or sentence declaratory in the ecclesiastical court, as was adjudged in *Hichcocke v. Hichcocke* (March, 87; *Stevens' case*, Lit. 177; *Winchcombe v. Winchester* (Bishop of), Hob. 167): thus, parishioners might have de-

nied their tithes, and have alleged in the spiritual court, that the parson came in by simony; it seems, however, that there would have been no remedy for the tithes, which a simoniacal incumbent had actually received. But although the presentation, institution, and induction, be void as to the king, and all others who have interest; yet they are not void to an usurper, because he has no interest. Ibid.

Where a parishioner had compounded with the parson one year for his tithes, and had not determined the composition, it was held, that he could not set up as a defence to an action for the next year's composition money, that the plaintiff was *simoniacus*. *Brooksby (Clerk) v. Watts*, 6 Taunt. 333. 2 Marsh. 38.

The enactments of the canon law upon this subject may be ascertained from the following rules: "Presbyter si per pecuniam ecclesiam obtinuerit, non solum ecclesiâ privetur, sed etiam sacerdotii honore spoliatur: quia altare, et decimas, et spiritum sanctum emere, vel vendere, simoniacam hæresin esse nullus fidelium ignorat." Caus. 1, q. 1, c. 3.

"Si quis præbendas, vel prioratum, seu decanatum aut honorem, vel promotionem aliquam ecclesiasticam, seu quodlibet sacramentum ecclesiasticum, utpotè chrisma, vel oleum sanctum, et consecrationes altarium, vel ecclesiarum, interveniente execrabili ardore avaritiæ per pecuniam comparaverit, honore malè acquisito careat, et emptor, atque venditor, et interventor notâ infamiæ percillantur; et nec pro pastu, nec sub obtentu alicujus consuetudinis ante, vel post à quoquam aliquod exigatur, vel ipse dare præsumat, quoniam simoniacum est. Sed liberè, et absque diminutione aliqua, collata sibi dignitate, atque beneficio perfruatur." Caus. 1, q. 3, c. 15.

(3) *The queen's majesty*:—The crown can present upon simony, notwithstanding the death of the simoniacal incumbent, while the church remains void, and no other is in possession at the presentation of the true patron. But if any person have at first presented simoniacally by usurpation, the rightful patron, and not the queen, can present, for otherwise every rightful patron might lose his presentation. *Winchcombe v. Winchester* (Bishop of), Moore (Sir F.), 878. 1 Brownl. 164. Noy, 25. Stat. 1 G. & M. c. 16. 1 Inst. 180(a).

Induction upon a simoniacal presentation is void against the presentee of the crown, and who, upon being inducted, may maintain ejectment against the person simoniacally presented. *Doe d. Watson (Clerk) v. Fletcher (Clerk)*, 8 B. & C. 25.

(4) *For that one time*:—In this particular, the penalty of simony, with regard to the

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every (1) person or persons, bodies politick and corporate, that from thenceforth shall give or take any such sum of money, reward, gift, or benefit, directly or indirectly, or that shall *take or make any such promise* (2), grant, bond, covenant, or other assurance, shall forfeit and lose the *double value* (3) of one year's profit of every such benefice, dignity, prebend, and living ecclesiastical; and the person so corruptly taking, procuring, *seeking* (4), or accepting any such benefice, dignity, prebend, or living, shall thereupon and from thenceforth be adjudged a *disabled person in law* (5), to have or enjoy the same benefice, dignity, prebend, or living ecclesiastical.

The penalty for presenting or collating, or for being presented to a benefice with cure for reward. 2 Roll. 465. Cro. Eliz. 642. Cro. Jac. 385. Cro. Car. 330.

"VI. And be it further enacted, that if any person shall at any time after forty days next after the end of this session of parliament, for any sum of money, reward, gift, profit, or commodity whatsoever, directly or indirectly, (other than for usual and lawful fees,) or for or by reason of any promise, agreement, grant, covenant, bond, or other assurance, of or for any sum of money, reward, gift, profit, or benefit whatsoever, directly or indirectly, admit, institute, instal, induct, invest, or place any person in or to any benefice with cure of souls, dignity, prebend, or other living ecclesiastical; that then every such person so offending shall forfeit and lose the double value of one year's profit of every such benefice, dignity, prebend, and living ecclesiastical; and that thereupon immediately from and after the investing, installation, or induction thereof had, the same benefice, dignity, prebend, and livings ecclesiastical, shall be eftsoons merely void: and that the patron or person to whom the advowson, gift, presentation, or collation shall by law appertain, shall and may by virtue of this act present or collate unto, give, and dispose of the same benefice, dignity, prebend, or living ecclesiastical, in such sort, to all intents and purposes, as if the party so admitted, instituted, installed, invested, inducted, or placed, had been or were naturally dead.

No title to confer by lapse,

"VII. Provided always, that no title to confer or present by lapse shall accrue

patron, is somewhat mitigated: the former canons, both at home and abroad, (when they allude to this loss of patronage,) making it perpetual; at least as to the life of the simoniacal patron. Because patronage in England is accounted a temporal matter, and corrupt patrons were not to be reached by the ecclesiastical laws, (which could only touch the incumbent,) therefore, for the more effectual discouragement of simony, by affecting the patron also, this statute was made.

(1) *And that all and every*:—That which succeeds, relates only to those patrons, and clerks, who are party or privy to the simony: and, in the main, this, (as well as what precedes,) is taken from the injunctions of Edward the Sixth and Queen Elizabeth, (Coll. Can. p. 12, 75,) of which the following is an extract: "To avoid the detestable sin of simony, and because buying and selling of benefices is execrable before God; therefore, all such persons as buy any benefices, or come to them by fraud or deceit, shall be deprived of such benefices, and be made unable, at any time after, to receive any other spiritual promotion. And such as do sell them, or by any other colour do bestow them for their own gain and profit, shall lose the right and title of patronage and presentment for that time; and the gift thereof for that vacation, shall appertain to the king's majesty."

(2) *Take or make any such promise*:—So that, seemingly, the penalty will be incurred by such promise, &c. though the patron should afterwards present the clerk gratis.

(3) *Double value*:—According to the

very or true value as the same may be letten, and not according to the king's books.

(4) *Seeking*:—It was said by *Tanfield* (Chief Baron), in *Kitchin v. Calvert*, (La. 103,) that if a clerk seeketh to obtain a presentation by money, although afterwards the patron present him gratis, yet this simoniacal attempt hath disabled him to take that benefice.

(5) *A disabled person in law*:—Many of the ancient canons of the church, make deposition the punishment of simony, whether in bishops or presbyters; others make it deprivation. But the civil and canon law observe a difference, in point of penalty, between *simoniacus*, and *simoniace promotus*. If the clerk be *simoniacus*, (i. e. privy, or party, to the simony,) he is to be deprived of that, and for ever disabled to accept any other; but, if he be only *simoniace promotus*, (by simony between two strangers, whereunto he was not privy,) he is deprivable by reason of the corruption, but not disabled to take any other. *Snow v. Philips*, 1 Keb. 781. *Watson's Clergyman's Law*, 42.

In like manner, (according to this statute, which speaks only of the same benefice,) if the presentee was not privy to the simony, though the church is become void by the simony, yet he is not disabled from being presented again. But a presentee who was privy to the simony, is a person disabled to enjoy the same benefice during life; nor can the king or any other dispense with the disability. *Rex v. Norwich (Bishop of)*, Cro. Jac. 386. Hob. 75.

upon any voidance mentioned in this act, but after six months next after notice given of such voidance, by the ordinary to the patron.

“VIII. And be it further enacted by the authority aforesaid, that if any incumbent of any benefice with cure of souls, after the end of the said forty days, do or shall corruptly resign or exchange the same, or *corruptly* take for or in respect of the *resigning or exchanging* (1) of the same, directly or indirectly, *any*

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but after six
months' notice.

The penalty
for corrupt

(1) *Corruptly resigning or exchanging* :—The words of resignation have always been, *purè, sponte, absolutè, and simpliciter*, (Reg. f. 306 (b).) to exclude all indirect bargains, not only for money, but for other considerations. And therefore, in *Gayton's case*, (Ow. 12.) where the resignation was to the use of two persons therein named, and further limited with this condition, that if one of the two was not admitted to the benefice resigned within six months, the resignation should be void and of none effect; such resignation, by reason of the condition, was declared to be absolutely void.

But where the resignation is made *causâ permutationis* only, there it admits of this condition, “if the exchange shall take full effect, and not otherwise;” as appears in the following form of resignation in the Register 306 (b):

“In Dei nomine, Amen. Ego H. de W. rector ecclesiæ de N. London, diocesis volens ipsam ecclesiam meam cum ecclesiâ de P. diocesis diocesis cuius rector existit dominus de W. certis iustis et legitimis de causis sine dolo et fraude canonicè permutare, ipsam ecclesiam meam ex causa permutationis huiusmodi, et non alio modo, in sacras manus venerabilis in Christo patris domini T. Dei gratia Lincoln. Episcopi resigno, supplicans humiliter et devotè, ut H. de huiusmodi causa permutationis ipsam resignationem sic factam et non aliter velitis admittere, et negocium permutationis huiusmodi quatenus ad vos attinet fideliter expedire. Et protestor expressè in hiis scriptis, quòd si dicta permutatio debitum non sortiatur effectum, huiusmodi mea resignatio prædicta pro nulla penitus habeatur.”

So that, “after two persons have procured licence from the ordinary to treat of an exchange, (of which sort, many are to be found upon our books,) and have treated, and agreed, and signified their agreement by instrument in writing to the ordinary, and then resign, and are cross-presented by the patrons, and one is both instituted and inducted, and the other is only instituted, and dies or refuses to finish; in this case, though they have proceeded so far, the resignation and all that followed upon it, shall be void, and both (if both are living) may return to their former benefices upon the foot of former possession; or, if one dies before he is inducted, and after the induction of the other, this induction, and all that went before, shall be void, because the exchange was not fully executed during the lives of the parties.” Gibson's Codex, 821. *Le Seignior Cromwel's case*, 2 Co. 74 (b). *Colt & Glover v. Coventry & Lichfield (Bishop of)*, Hob. 152.

But no other collateral condition can be annexed to a resignation in order to ex-

change, more than what is expressed in the foregoing form, and in the cases founded thereupon.

What is said under this head concerning a conditional resignation in case of exchange, is confirmed by the ancient canon law: “Cum universorum; et infra. Intelleximus G. canonico referente, quòd cum ipse, et L. clericus, de permutatione præbendarum suarum inter se tractare cõpissent, quam utilitati utriusque imminere credebant, tandem idem L. præbendâ ejusdem G. cuidam consanguineo suo assignatâ, præbendam suam ei, sicut promiserat, noluit resignare; et infra. Cum igitur deceptis, et non decipientibus jura subveniant, licet ipsi per se de jure non possent ecclesiastica beneficia permutare, ut tamen simplicitati venia tribuatur, mandamus, quatenus si constiterit prætaxatum G. taliter fuisse deceptum, amoto à præbenda sua consanguineo ipsius L. vel quolibet alio illicito detentore, eam restitui faciatis eidem.” Extra. l. 3, t. 19, c. 8.

“Ne concessione juris utentibus, præsertim circa spiritualia, illudatur; si qua beneficia ex causa permutationis ab aliquibus resignata, aliis quàm ipsis permutare volentibus conferantur, nullius hoc esse volumus firmitatis.” Clem. l. 3, t. 5, c. 1.

A bond given to an incumbent, securing to him an annuity of equal value with the profits of the benefice upon his resignation, in order that another may be presented, who might give a general bond of resignation, so that the patron's son, when of proper age, might be presented, has been held to be a bond within Stat. 31 Eliz. c. 6, s. 8, and void. *Young v. Jones*, 3 Doug. 97.

If a bond be given by an incumbent to the patron, on presentation, to reside on the living, or to resign if he do not return to it after notice, and also not to commit waste, &c., on the parsonage house, it will be good. But under such circumstances, a licence to the incumbent to absent himself from the living may be revoked. *Bagshaw v. Bossley (Clerk)*, 4 T. R. 78.

From *Partridge v. Whiston (Clerk)*, 4 T. R. 359, it is doubtful, whether a bond of resignation with condition to reside, and to resign, for the patron's son to be presented, and to keep the premises on the living in repair, be not good in law.

A bond given by a schoolmaster of an ancient public school, who had a freehold in his office, to resign at the request of his patron, is good at law; but equity will restrain any improper use of it by the patron. *Leigh v. Lewis*, 1 East, 391. *S. C. (in error)*, 3 B. & P. 231.

Where a bond was conditioned for the resignation of a living, which the defendant, when requested, refused to resign; it was held, that he being a wrong doer, the jury were not bound, in assessing the damages, to

STAT. 31 ELIZ.
c. 6.

resigning or
exchanging of
a benefice with
cure of souls.

Penalties in-
flicted by the
ecclesiastical
law be not
taken away by
this statute.

The penalty for
giving or taking
of rewards to
make ministers
or to give li-
cences to preach.

Who shall have
the forfeitures,
and by what
means.

pension (1), sum of money, or benefit whatsoever; that then as well the giver as the taker of any such pension, sum of money, or other benefit corruptly, shall lose double the value of the sum so given, taken, or had; the one moiety as well thereof, as of the forfeiture of double value of one year's profit before mentioned, to be to the queen's majesty, her heirs and successors, and the other moiety to him or them that will sue for the same, by action of debt, bill, or information, in any of her majesty's courts of record, in which no essoin, protection, or wager of law or privilege, shall be admitted or allowed.

"IX. Provided always, that this act, or any thing herein contained, shall not in any wise extend to take away or restrain any punishment, pain or penalty limited, prescribed, or instituted by the laws ecclesiastical, for any the offences before in this act mentioned, but that the same shall *remain in force* (2), and may be put in due execution, as it might be before the making of this act; this act, or any thing therein contained, to the contrary thereof in any wise notwithstanding.

"X. Provided further, and be it enacted by the authority aforesaid, that if any person or persons whatsoever shall or do at any time after the end of this session of parliament, receive or take any money, fee, reward, or any other profit, directly or indirectly, or shall take any promise, agreement, covenant, bond, or other assurance, to receive or have any money, fee, reward, or any other profit, directly or indirectly, either to him or themselves, or to any other of their or any of their friends, (all ordinary and lawful fees only excepted,) for or to procure the ordaining or making of any minister or ministers, or giving of any orders, or licence or licences to preach; that then every person and persons so offending shall for every such offence forfeit and lose the sum of forty pounds of lawful money of England; and the party so corruptly ordained or made minister, or taking orders, shall forfeit and lose the sum of ten pounds; and if at any time within seven years next after such corrupt entering into the ministry, or receiving of orders, he shall accept or take any benefice, living, or promotion ecclesiastical, that then immediately from and after the induction, investing, or installation thereof or thereunto had, the same benefice, living, or promotion ecclesiastical shall be *eftsoons* merely void; and that the patron or person to whom the advowson, gift, presentation or collation shall by law appertain, shall and may, by virtue of this act, present or collate unto, give, and dispose of the same benefice, living, or promotion ecclesiastical, in such sort to all intents and purposes, as if the party so inducted, invested, or installed, had been or were naturally dead; any law, ordinance, qualification, or dispensation to the contrary notwithstanding: the one moiety of all which forfeitures shall be to our sovereign lady the queen, her heirs and successors, and the other moiety to him or them that will sue for the same, by action of debt, bill, plaint, or information, in any of her majesty's courts of record, in which no essoin, protection, privilege, or wager of law, shall be admitted or allowed."

confine themselves to the diminution of the value of the advowson to the plaintiff by the defendant's life interest, nor, in estimating the annual proceeds, to deduct the curate's stipend. *Fletcher v. Soules* (Lord), (*in error*.) 1 Bligh N. S. 144. 3 Bing. 598, overruling *S. C.* 5 B. & A. 835.

(1) *Any pension*:—Before this statute, the bishop, in cases of resignation, might have assigned a pension, during life, out of the benefice resigned, to the person resigning; of which numerous instances occur before this statute; and the *Reformatio Legum*, (62 (b).) supposes this to be law, in forbidding pensions to all persons upon resignation, "*nisi cujus vel propter morbum vel senectutem habenda sit ratio*;" and adds: "*Quæ cum occurrunt impedimenta, propius illorum locorum episcopus adeatur, et is tantam constituet pensionem, quantam*

æquam esse putabit;" accordingly in the Registers of Grindal, (Grind. 159 (b), 178 (a), 258 (a).) and Whitgift, (1 Whitg. 125 (a), 131 (a).) as well as in those that are more ancient, several licences to clergymen exist, *ad communicand' super pensione annua*, in order to resignation.

(2) *Remain in force*:—So far are the ancient ecclesiastical laws against simony, and the powers of the spiritual court in the execution of those laws, from being superseded by this act, that they are expressly confirmed by it. And all promises and contracts, of what kind soever, being forbidden, and consequently punishable, by the laws ecclesiastical; it follows, that it could not possibly be the intention of the legislators to make this statute the rule and measure of simony; but only to check and restrain it, in the most notorious branches.

XLIII. STAT. 35 ELIZABETHÆ, c. 1 (1). A.D. 1593.

*"An Act to retain the Queen's Majesty's Subjects in their due Obedience."*STAT. 35 ELIZ.
c. 1.

"For the preventing and avoiding of such great inconveniences and perils as might happen and grow by the wicked and dangerous practices of seditious sectaries and disloyal persons, be it enacted by the queen's most excellent majesty, and by the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, that if any person or persons above the age of sixteen years, which shall obstinately refuse to repair to some church, chapel, or usual place of common prayer, to hear divine service established by her majesty's laws and statutes in that behalf made, and shall forbear to do the same by the space of a month next after, without any lawful cause, shall at any time after forty days next after the end of this session of parliament, by printing, writing, or express words or speeches, advisedly or purposely practise or go about to move or persuade any of her majesty's subjects, or any other within her highness' realms or dominions, to deny, withstand, and impugn her majesty's power and authority in cases ecclesiastical, united and annexed to the imperial crown of this realm; or to that end or purpose shall advisedly and maliciously move or persuade any other person whatsoever to forbear or abstain from coming to church to hear divine service, or to receive the communion according to her majesty's laws and statutes aforesaid, or to come to or be present at any unlawful assemblies, conventicles, or meetings, under colour or pretence of any exercise of religion, contrary to her majesty's said laws and statutes: or if any person or persons which shall obstinately refuse to repair to some church, chapel, or usual place of common prayer, and shall forbear by the space of a month to hear divine service, as is aforesaid, shall after the said forty days, either of him or themselves, or by the motion, persuasion, enticement, or allurements of any other, willingly join in, or be present at any such assemblies, conventicles or meetings, under colour or pretence of any such exercise of religion, contrary to the laws and statutes of this realm, as is aforesaid; that then every such person so offending as aforesaid, and being thereof lawfully convicted, shall be committed to prison, there to remain without bail or mainprise, until they shall conform and yield themselves to come to some church, chapel, or usual place of common prayer, and hear divine service, according to her majesty's laws and statutes aforesaid, and to make such open submission and declaration of their said conformity, as hereafter in this act is declared and appointed.

Punishment of persons obstinately refusing to come to church, and persuading others to impugn the queen's authority in ecclesiastical causes.

23 Eliz. c. 1.
29 Eliz. c. 6.

1 Hale's P. C.
688.

Altered by
1 G. & M.
sess. 1, c. 18.

The penalty for being present at unlawful conventicles for religion.

"II. Provided always, and be it further enacted by the authority aforesaid, that if any such person or persons, which shall offend against this act as aforesaid, shall not within three months next after they shall be convicted of their said offence, conform themselves to the obedience of the laws and statutes of this realm, in coming to the church to hear divine service, and in making such public confession and submission, as hereafter in this act is appointed and expressed, being thereunto required by the bishop of the diocese, or any justice of the peace of the county where the same person shall happen to be, or by the minister or curate of the parish; that in every such case every such offender, being thereunto warned or required by any justice of the peace for the same county where such offender shall then be, shall upon his and their corporal oath before the justices of the peace in the open quarter-sessions of the same county, or at the assizes and gaol-delivery of the same county, before the justices of the same assizes and gaol-delivery, abjure this realm of England, and all other the queen's majesty's dominions for ever, unless her majesty shall license the party to return; and thereupon shall depart out of this realm at such haven or port, and within such time, as shall in that behalf be assigned and appointed by the said justices before whom such abjuration shall be made, unless the same offender be letted or stayed by such lawful and reasonable means or causes, as by the common laws of this realm are permitted

An offender not conforming himself shall abjure the realm.

STAT. 35 ELIZ.
c. 1.

and allowed in cases of abjuration for felony; and in such cases of let or stay, then within such reasonable and convenient time after, as the common law requireth in case of abjuration for felony as is aforesaid; and that the justices of peace before whom any such abjuration shall happen to be made, as is aforesaid, shall cause the same presently to be entered of record before them, and shall certify the same to the justices of assizes and gaol-delivery of the said county, at the next assizes or gaol-delivery to be holden in the same county.

The punish-
ment for re-
fusing to ab-
jure, not
departing, or
returning with-
out licence.

“III. And if any such offender, which by the tenour and intent of this act is to be abjured as is aforesaid, shall refuse to make such abjuration as is aforesaid, or after such abjuration made, shall not go to such haven, and within such time as is before appointed, and from thence depart out of this realm, according to this present act, or after such his departure shall return or come again into any her majesty’s realms or dominions, without her majesty’s special licence in that behalf first had and obtained: that then in every such case the person so offending shall be adjudged a felon, and shall suffer as in case of felony, without benefit of clergy.

An offender
shall be dis-
charged upon
his open sub-
mission.
Latch. 16.

“IV. And furthermore be it enacted by the authority of this present parliament, that if any person or persons that shall at any time hereafter offend against this act, shall before he or they be so warned or required to make abjuration according to the tenour of this act, repair to some parish church on some Sunday or other festival day, and then and there hear divine service, and at service-time, before the sermon or reading of the Gospel, make public and open submission and declaration of his and their conformity to her majesty’s laws and statutes, as hereafter in this act is declared and appointed; that then the same offender shall thereupon be clearly discharged of and from all and every the penalties and punishments inflicted or imposed by this act for any of the offences aforesaid. The same submission to be made as hereafter followeth; that is to say,

The form of
the submission.

“V. ‘I A. B. do humbly confess and acknowledge, that I have grievously offended God in condemning her majesty’s godly and lawful government and authority, by absenting myself from church, and from hearing divine service, contrary to the godly laws and statutes of this realm, and in using and frequenting disordered and unlawful conventicles and assemblies, under pretence and colour of exercise of religion; and I am heartily sorry for the same, and do acknowledge and testify in my conscience, that no other person hath or ought to have any power or authority over her majesty: and I do promise and protest, without any dissimulation, or any colour or means of any dispensation, that from henceforth I will from time to time obey and perform her majesty’s laws and statutes, in repairing to the church and hearing divine service, and do my utmost endeavour to maintain and defend the same.’

The minister
shall enter the
submission in
a book.

“VI. And that every minister or curate of every parish where such submission and declaration of conformity shall hereafter be so made by any such offender as aforesaid, shall presently enter the same into a book to be kept in every parish for that purpose, and within ten days next following shall certify the same in writing to the bishop of the same diocese.

The offender
submitting
falleth into a
relapse.

“VII. Provided nevertheless, that if any such offender, after such submission made as is aforesaid, shall afterwards fall into relapse, or eftsoons obstinately refuse to repair to some church, chapel, or usual place of common prayer, to hear divine service, and shall forbear the same as aforesaid, or shall come or be present at any such assemblies, conventicles, or meetings, under colour or pretence of any exercise of religion, contrary to her majesty’s laws and statutes; that then every such offender shall lose all such benefit as he or she might otherwise by virtue of this act have or enjoy by reason of their said submission, and shall thereupon stand and remain in such plight, condition, and degree, to all intents, as though such submission had never been made.

The forfeiture
for the keeping
a recusant in
one’s house
after notice.
Repealed by

“VIII. And for that every person having house and family is in duty bound to have special regard to the good government and ordering of the same; be it enacted by the authority aforesaid, that if any person or persons shall at any time hereafter relieve, maintain, retain, or keep in his or their house or otherwise, any person which shall obstinately refuse to come to some church, chapel, or usual

place of common prayer, to hear divine service, and shall forbear the same by the space of a month together, contrary to the laws and statutes of this realm; that then every person which shall so relieve, maintain, retain, or keep any such person offending as aforesaid, after notice thereof to him or them given by the ordinary of the diocese, any justice of assizes of the circuit, or any justice of peace of the county, or the minister, curate, or churchwardens of the parish where such person shall then be, or by any of them, shall forfeit to the queen's majesty for every person so relieved, maintained, retained, or kept, after such notice as aforesaid, ten pounds for every month that he or they shall so relieve, maintain, retain, or keep any such person so offending.

"IX. Provided nevertheless, that this act shall not in any wise extend to punish or impeach any person or persons for relieving, maintaining, or keeping his or their wife, father, mother, child, or children, wards, brother, or sister, or his wife's father or mother, not having any certain place of habitation of their own, or the husbands or wives of any of them; or for relieving, maintaining, or keeping any such person as shall be committed by authority to the custody of any by whom they shall be so relieved, maintained, or kept; any thing in this act contained to the contrary notwithstanding.

"X. And for the more speedy levying and recovering, for and by the queen's majesty, of all and singular the pains, duties, forfeitures, and payments which at any time hereafter shall accrue, grow, or be payable by virtue of this act, or of the statute made in the three and twentieth year of her majesty's reign concerning recusants; be it enacted by the authority aforesaid, that all and every the said pains, duties, forfeitures, and payments, shall and may be recovered and levied to her majesty's use, by action of debt, bill, plaint, information, or otherwise, in any of the courts commonly called the King's Bench, Common Pleas, or Exchequer, in such sort, and in all respects, as by the ordinary course of the common laws of this realm any other debt due by any such person in any other case should or may be recovered or levied, wherein no essoin, protection, or wager of law, shall be admitted or allowed.

"XI. Provided always, that the third part of the penalties to be had or received by virtue of this act shall be employed and bestowed to such good and charitable uses, and in such manner and form, as is limited and appointed in the statute made in the twenty-eighth year of her majesty's reign touching recusants.

"XII. Provided also, that no popish recusant, or *feme covert*, shall be compelled or bound to abjure by virtue of this act.

"XIII. Provided also, that every person shall abjure by force of this act, or refuse to abjure, being thereunto required as aforesaid, shall forfeit and lose to her majesty all his goods and chattels for ever; and shall further lose all his lands, tenements, and hereditaments for and during the life only of such offender, and no longer; and that the wife of any offender, by force of this act, shall not lose her dower; nor that any corruption of blood shall grow or be by reason of any offence mentioned in this act; but that the heir of every such offender, by force of this act, shall and may, after the death of every offender, have and enjoy the lands, tenements, and hereditaments of such offender, as if this act had not been made; and this act to continue no longer than to the end of the next session of parliament."

sants, c. 2; 1 Jac. 1, c. 4; 3 Jac. 1, cc. 4 & 5; 7 Jac. 1, c. 6; 25 Car. 2, c. 2; and see 16 Geo. 2, c. 30.

STAT. 35 ELIZ. c. 1.

3 Jac. 1, c. 4, s. 31, and other provisions relating hereto, s. 32.

What sort of recusants may be kept, &c. Repealed by 3 Jac. 1, c. 4, s. 31.

The queen's remedy to recover forfeitures, &c. 23 Eliz. c. 1. Cro. Jac. 481.

In what manner one part of the penalties shall be employed.

29 Eliz. c. 6.

Popish recusants.

Feme covert.

The forfeiture of him who abjureth or refuseth to abjure.

The wife shall lose no dower, nor the heir any land, for these offences.

Farther provisions concerning recusants. 16 Geo. 2, c. 30.

XLIV. STAT. 35 ELIZABETHÆ, c. 2(1). A.D. 1593.

"An Act for restraining Popish Recusants to some certain Places of Abode."

"For the better discovering and avoiding of such traitorous and most dangerous conspiracies and attempts, as are daily devised and practised against our most

STAT. 35 ELIZ. c. 2.

Penalty of a convicted

(1) Vide Stat. 1 Jac. 1, c. 4. Stat. 3 Jac. 1, c. 18. Stat. 31 Geo. 3, c. 32. Stat. 10 Geo. 4, c. 7. Stat. 1 & 2 Gul. 4, c. 9.

STAT. 35 ELIZ.
c. 2.

popish recusant removing above five miles from his house.

Where a recusant having no house shall make his abode.

3 Bulst. 87.

Carth. 291.

gracious sovereign lady the queen's majesty, and the happy estate of this common weal, by sundry wicked and seditious persons, who terming themselves Catholics, and being indeed spies and intelligencers, not only for her majesty's foreign enemies, but also for rebellious and traitorous subjects born within her highness' realms and dominions, and hiding their most detestable and devilish purposes under a false pretext of religion and conscience, do secretly wander and shift from place to place within this realm, to corrupt and seduce her majesty's subjects, and to stir them to sedition and rebellion:

"II. Be it ordained and enacted by our sovereign lady the queen's majesty, and the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, that every person above the age of sixteen years, born within any of the queen's majesty's realms and dominions, or made denizen, being a popish recusant, and before the end of this session of parliament convicted for not repairing to some church, chapel, or usual place of common prayer, to hear divine service there, but forbearing the same, contrary to the tenour of the laws and statutes heretofore made and provided in that behalf, and having any certain place of dwelling and abode within this realm, shall within forty days next after the end of this session of parliament, (if they be within this realm, and not restrained or stayed either by imprisonment, or by her majesty's commandment, or by order and direction of some six or more of the privy council, or by such sickness and infirmity of body, as they shall not be able to travel without imminent danger of life, and in such cases of absence out of the realm, restraint or stay, then within twenty days next after they shall return into the realm, and be enlarged of such imprisonment or restraint, and shall be able to travel,) repair to their place of dwelling where they usually heretofore made their common abode, and shall not at any time after pass or remove above five miles from thence.

Recusants that shall be convicted hereafter shall repair to their usual dwelling.

"III. And also that every person being above the age of sixteen years, born within any her majesty's realms or dominions, or made denizen, and having, or which hereafter shall have, any certain place of dwelling and abode within this realm, which being then a popish recusant, shall at any time hereafter be lawfully convicted for not repairing to some church, chapel, or usual place of common prayer to hear divine service there, but forbearing the same contrary to the said laws and statutes, and being within this realm at the time that they shall be convicted, shall within forty days next after the same conviction, (if they be not restrained or stayed by imprisonment or otherwise, as is aforesaid, and in such cases of restraint and stay, then within twenty days next after they shall be enlarged of such imprisonment or restraint, and shall be able to travel,) repair to their place of usual dwelling and abode, and shall not at any time after pass or remove above five miles from thence; upon pain that every person and persons that shall offend against the tenour and intent of this act in any thing before-mentioned, shall lose and forfeit all his and their goods and chattels, and shall also lose and forfeit to the queen's majesty all the lands, tenements, and hereditaments, and all the rents and annuities of every such person so doing or offending, during the life of the same offender.

The penalty of an offender.

What a recusant shall do that hath no place of abode.

"IV. And be it also enacted by the authority aforesaid, that every person above the age of sixteen years, born within any her majesty's realms or dominions, not having any certain place of dwelling and abode within this realm, and being a popish recusant, not usually repairing to some church, chapel, or usual place of common prayer, but forbearing the same contrary to the same laws and statutes in that behalf made, shall within forty days next after the end of this session of parliament, (if they be then within this realm, and not imprisoned, restrained, or stayed as aforesaid, and in such case of absence out of the realm, imprisonment, restraint, or stay, then within twenty days next after they shall return into the realm, and be enlarged of such imprisonment or restraint, and shall be able to travel,) repair to the place where such person was born, or where the father or mother of such person shall then be dwelling, and shall not at any time after remove or pass above five miles from thence: upon pain that every person and persons, which shall offend against the tenour and intent of this act in any thing

The forfeiture of a recusant

before mentioned, shall lose and forfeit all his and their goods and chattels, and shall also forfeit to the queen's majesty all the lands, tenements, and hereditaments, and all the rents and annuities of every such person so doing or offending, during the life of the same person.

“V. And be it further enacted by the authority aforesaid, that every such offender as is before mentioned, which hath or shall have any lands, tenements, or hereditaments, by copy of court-roll, or by any other customary tenure at the will of the lord, according to the custom of any manor, shall forfeit all and singular his and their said lands, tenements, and hereditaments so holden by copy of court-roll or customary tenure, as aforesaid, for and during the life of such offender, (if his or her estate so long continue,) to the lord or lords of whom the same be immediately holden, if the same lord or lords be not then a popish recusant, and convicted for not coming to church to hear divine service, but forbearing the same contrary to the laws and statutes aforesaid, nor seised or possessed upon trust to the use or behoof of any such recusant as aforesaid, and in such case the same forfeiture to be to the queen's majesty.

“VI. Provided always, and be it further enacted by the authority aforesaid, that all such persons, as by the intent and true meaning of this act are to make their repair to their place of dwelling and abode, or to the place where they were born, or where their father or mother shall be dwelling, and not to remove or pass above five miles from thence as is aforesaid, shall within twenty days next after their coming to any of the said places (as the case shall happen) notify their coming thither, and present themselves, and deliver their true names in writing, to the minister or curate of the same parish, and to the constable, headborough, or tithingman of the town, and thereupon the said minister or curate shall presently enter the same into a book to be kept in every parish for that purpose.

“VII. And afterwards the said minister or curate, and the said constable, headborough, or tithingman, shall certify the same in writing to the justices of the peace of the same county at the next general or quarter-sessions to be holden in the same county, and the said justices shall cause the same to be entered by the clerk of the peace in the rolls of the same sessions.

“VIII. And to the end that the realm be not pestered and overcharged with the multitude of such seditious and dangerous people as is aforesaid, who having little or no ability to answer or satisfy any competent penalty for their contempt and disobedience of the said laws and statutes, and being committed to prison for the same, do live for the most part in better case there, than they could if they were abroad at their own liberty: the lords spiritual and temporal, and the commons, in this present parliament assembled, do most humbly and instantly beseech the queen's majesty, that it may be further enacted, that if any such person or persons, being a popish recusant, (not being a *feme covert*, and not having lands, tenements, rents, or annuities, of an absolute estate of inheritance or freehold, of the clear yearly value of twenty marks, above all charges, to their own use and behoof, and not upon any secret trust or confidence for any other, or goods and chattels in their own right, and to their own proper use and behoof, and not upon any such secret trust and confidence for any other, above the value of forty pounds,) shall not, within the time before in this act in that behalf limited and appointed, repair to their place of usual dwelling and abode, if they have any, or else to the place where they were born, or where their father or mother shall be dwelling, according to the tenour and intent of this present act; and thereupon notify their coming, and present themselves, and deliver their true names in writing to the minister or curate of the parish, and to the constable, headborough, or tithingman of the town, within such time, and in such manner and form as is aforesaid; or at any time after such their repairing to any such place as is before appointed, shall pass or remove above five miles from the same; and shall not within three months next after such person shall be apprehended or taken for offending as is aforesaid, conform themselves to the obedience of the laws and statutes of this realm, in coming usually to the church to hear divine service, and in making such public confession and submission, as hereafter in this act is

STAT. 35 ELIZ.
c. 2.

removing
above five
miles from his
place of abode.
A recusant
copyholder
departing five
miles from his
place of abode.

Recusants shall
notify their
living, and
deliver their
names to the
curate.

Recusants'
names certified
to the justices.

The penalty of
a recusant of
small ability
not repairing
to the place
appointed, or
departing
thence.

STAT. 35 ELIZ.
c. 2.

Recusants
abjuring and
departing the
realm.

Entering
abjuration of
record, and
certifying the
same.

It shall be
felony for a
recusant not to
abjure, nor
going, or
returning,
without
licence.

A Jesuit or
priest refusing
to answer shall
be imprisoned.
1 Salk. 351.

Licence to
travel above
five miles.
Repealed by
3 Jac. 1, c. 5,
s. 6.

Persons urged
by process or
commandment.

appointed and expressed, being thereunto required by the bishop of the diocese, or any justice of the peace of the county where the same person shall happen to be, or by the minister or curate of the parish; that in every such case every such offender, being thereunto warned or required by any two justices of the peace, or coroner of the same county where such offenders shall then be, shall upon his or their corporal oath before any two justices of the peace, or coroner of the same county, abjure this realm of England, and all other the queen's majesty's dominions for ever; and thereupon shall depart out of this realm at such haven and port, and within such time, as shall in that behalf be assigned and appointed by the said justices of peace or coroner before whom such abjuration shall be made, unless the same offenders be letted or stayed by such lawful and reasonable means or causes, as by the common laws of this realm are permitted and allowed in cases of abjuration for felony; and in such cases of let or stay, then within such reasonable and convenient time after, as the common law requireth in case of abjuration for felony as is aforesaid.

"IX. And that every justice of peace or coroner, before whom any such abjuration shall happen to be made as is aforesaid, shall cause the same presently to be entered of record before them, and shall certify the same to the justices of assizes or gaol delivery of the said county, at the next assizes or gaol delivery to be holden in the same county.

"X. And if any such offender, which by the tenour and intent of this act is to be abjured as is aforesaid, shall refuse to make such abjuration as is aforesaid, or after such abjuration made shall not go to such haven, and within such time as is before appointed, and from thence depart out of this realm, according to this present act, or after such his departure shall return or come again into any her majesty's realms or dominions, without her majesty's special licence in that behalf first had and obtained; that then in every such case the person so offending shall be adjudged a felon, and shall suffer and lose as in case of felony without benefit of clergy.

"XI. And be it further enacted and ordained by the authority aforesaid, that if any person which shall be suspected to be a Jesuit, seminary, or massing priest, being examined by any person having lawful authority in that behalf to examine such person which shall be so suspected, shall refuse to answer directly and truly whether he be a Jesuit, or a seminary or massing priest, as is aforesaid, every such person so refusing to answer shall, for his disobedience and contempt in that behalf, *be committed to prison*(1) by such as shall examine him as is aforesaid, and thereupon shall remain and continue in prison without bail or mainprise, until he shall make direct and true answer to the said questions whereupon he shall be so examined.

"XII. Provided nevertheless, and be it further enacted by the authority aforesaid, that if any of the persons which are hereby limited and appointed to continue and abide within five miles of their usual dwelling place, or of such place where they were born, or where their father or mother shall be dwelling as is aforesaid, shall have necessary occasion or business to go and travel out of the compass of the said five miles; that then and in every such case, upon licence in that behalf to be gotten under the hands of two of the justices of the peace of the same county, with the privy and assent in writing of the bishop of the diocese, or of the lieutenant, or of any deputy-lieutenant of the same county, under their hands, it shall and may be lawful for every such person to go and travel about such their necessary business, and for such time only for their travelling, attending and returning, as shall be comprised in the same licence; any thing before in this act to the contrary notwithstanding.

"XIII. Provided also, that if any such person so restrained as is aforesaid, shall be urged by process, without fraud or covin, or be bounden without fraud or

(1) *Be committed to prison*.—A person was committed upon this statute by the Earl of Nottingham, "until he should be delivered by due course of law;" and the court of King's Bench held, that the commitment in that form was nought, because the statute

was not pursued; being rather a kind of conviction or judgment to be found upon the statute. The court held further, that they had a power to examine, and he being examined, made answer, "No Jesuit," and was discharged. *Foxley's case*, 1 Salk. 351.

covin, to make appearance in any of her majesty's courts, or shall be sent for, commanded, or required by any three or more of her majesty's privy council, or by any four or more of any commissioners to be in that behalf nominated and assigned by her majesty, to make appearance before her majesty's said council or commissioners; that in every such case, every such person so bounded, urged, commanded, or required to make such appearance, shall not incur any pain, forfeiture, or loss for travelling to make appearance accordingly, nor for his abode concerning the same, nor for convenient time for his return back again upon the same.

"XIV. And be it further provided and enacted by the authority aforesaid, that if any such person or persons so restrained as is aforesaid, shall be bound, or ought to yield and render their bodies to the sheriff of the county where they shall happen to be, upon proclamation in that behalf without fraud or covin to be made; that then in every such case, every person which shall be so bounden, or ought to yield and render their body as aforesaid, shall not incur any pain, forfeiture, or loss for travelling for that intent and purpose only, without any fraud or covin, nor for convenient time taken for the return back again upon the same.

"XV. And furthermore be it enacted by the authority of this present parliament, that if any person or persons that shall at any time hereafter offend against this act, shall, before he or they shall be thereof convicted, come to some parish church on some Sunday or other festival day, and then and there hear divine service, and at service-time, before the sermon, or reading of the gospel, make public and open submission and declaration of his and their conformity to her majesty's laws and statutes, as hereafter in this act is declared and appointed; that then the same offender shall thereupon be clearly discharged of and from all and every pains and forfeitures inflicted or imposed by this act for any of the said offences in this act contained: the same submission to be made as hereafter followeth; that is to say,

"XVI. 'I *A. B.* do humbly confess and acknowledge, that I have grievously offended God in contemning her majesty's godly and lawful government and authority, by absenting myself from church, and from hearing divine service, contrary to the godly laws and statutes of this realm; and I am heartily sorry for the same, and do acknowledge and testify in my conscience, that the bishop or see of Rome hath not, nor ought to have, any power or authority over her majesty, or within any her majesty's realms or dominions; and I do promise and protest, without any dissimulation, or any colour or means of any dispensation, that from henceforth I will from time to time obey and perform her majesty's laws and statutes, in repairing to the church, and hearing divine service, and do my utmost endeavour to maintain and defend the same.'

"XVII. And that every minister or curate of every parish, where such submission and declaration of conformity shall hereafter be so made by any such offender as aforesaid, shall presently enter the same into a book to be kept in every parish for that purpose, and within ten days then next following shall certify the same in writing to the bishop of the same diocese.

"XVIII. Provided nevertheless, that if any such offender, after such submission made as is aforesaid, shall afterwards fall into relapse, or eftsouns become a recusant, in not repairing to church to hear divine service, but shall forbear the same, contrary to the laws and statutes in that behalf made and provided; that then every such offender shall lose all such benefit as he or she might otherwise by virtue of this act have or enjoy by reason of their said submission; and shall thereupon stand and remain in such plight, condition, and degree, to all intents, as though such submission had never been made.

"XIX. Provided always, and be it enacted by the authority aforesaid, that all and every woman married, or hereafter to be married, shall be bound by all and every article, branch, and matter contained in this statute, other than the branch and article of abjuration before-mentioned: and that no such woman married, or to be married, during marriage, shall be in any wise forced or compelled to abjure, or be abjured, by virtue of this act; any thing therein contained to the contrary thereof notwithstanding."

STAT. 35 ELIZ.
c. 2.

Persons which
are to yield
their bodies to
the sheriff.

An offender
upon open
submission
shall be
discharged.

The form of
the submission.

The minister
shall enter the
submission.

A recusant
submitting,
falleth into a
relapse.
1 Bulst. 133.

Women bound,
saving for
abjuration.
Bridgm. 120.

STAT. 35 ELIZ.
c. 3.

XLV. STAT. 35 ELIZABETHÆ, c. 3 (1). A.D. 1593.

"An Act for Explanation (2) of the Statute made in the thirty-fourth Year of King Henry the Eighth, as well touching Grants made to his Majesty, as for Confirmation of Letters Patents (3) made by his Highness to others."

All abbey lands which came to the hands of King Henry 8, &c. shall be adjudged to have been in his actual and lawful possession, &c., and all letters patents made by him for the foundation of any dean and chapter, or college, shall be reputed good. 34 & 35 Hen. 8, c. 21. 11 Co. 11. 3 Co. 73. Other men's rights saved.

"Forasmuch as divers ambiguities, doubts, and questions have arisen and been moved, as well touching divers surrenders, grants, and conveyances made and granted by sundry late abbots, priors, and other religious and ecclesiastical persons, to the late king of famous memory King Henry the Eighth, after the fourth day of February, in the seven and twentieth year of his reign, of divers their honours, manors, lands, tenements, and hereditaments; as also touching and concerning the validity of the erections of such deans and chapters, and such colleges as were erected, ordained, made, or founded by the said late King Henry the Eighth, after the said fourth day of February, in the said seven and twentieth year of his reign; and forasmuch as the same doubts and questions seem not to be sufficiently remedied or provided for by the statute made in the four and thirtieth year of the reign of the said late King Henry the Eighth, intituled, 'An Act for Confirmation or Letters Patents,' notwithstanding misnaming of any thing contained in the same, &c."

STAT. 35 ELIZ.
c. 7.

XLVI. STAT. 35 ELIZABETHÆ, c. 7 (4). A.D. 1593.

"An Act for the reviving, continuance, explanation, and perfecting of divers Statutes (5)."

Poor.

It is lawful to give land towards the maintenance of the house of correction, or of the poor. 39 Eliz. c. 5.

"XXVII. And be it also enacted by the authority aforesaid, that it shall be lawful for every person, for and during the space of twenty years next ensuing, to make feoffments, grants, or any other assurances, or by last will in writing to give and bequeath in fee-simple, as well to the use of the poor, as for the provision, sustentation, or maintenance of any house of correction or abiding-houses, or of any stocks or stores, all or any part of such of his lands, tenements, and hereditaments, and in such manner and form, as he might have done to and for the provision, sustentation, or maintenance of any houses of correction or abiding-houses, or of any stocks or stores by force of the said statute."

STAT. 35 ELIZ.
c. 14.

XLVII. STAT. 35 ELIZABETHÆ, c. 14 (6). A.D. 1593.

"A Confirmation of the Queen's general and free Pardon, &c."

[All offences against the ecclesiastical state; disturbers of divine service; offences committed by Jesuits or seminary priests; ecclesiastical dilapidations; incest; adultery; fornication; and simony.]

(1) *Vide* Stat. 31 Geo. 3, c. 32.

(2) *Explanation*:—Stat. 34 & 35 Hen. 8, c. 21, (*antè* 287,) is only a general confirmation of grants made by the king, and the letters patents whereby they were made.

(3) *Letters Patents*:—In the 8th year of Queen Elizabeth, a bill (for the confirmation of late erected deaneries and prebends) was read a second time in the House of Lords, and committed, but it proceeded no further. "Whereupon, great disturbance having been given to the deans and chapters of the new foundation, under pretence, that the possessions thereof were passed by letters patents of

concealment; they did, this year, unanimously apply themselves to the Lord Treasurer Burleigh, for a confirmation of them by parliament; as appears from a letter sent by them from the convocation house, bearing date, March 16th, 1592, in which they beseech him, that by his honourable mediation and countenance, a remedy may at this parliament, (by confirmation of the said grants,) be obtained." Stry. Park. App. 143.

(4) *Vide post.* 469, Stat. 39 Eliz. c. 5.

(5) Stat. 13 Eliz. c. 20, continued. Stat. 5 Eliz. c. 5, amended.

(6) Expired.

XLVIII. STAT. 39 ELIZABETHÆ, c. 5 (1). A.D. 1597.

STAT. 39 ELIZ.
c. 5.

"An Act for erecting of Hospitals, or Abiding and Working Houses for the Poor."

"Whereas at the last session of parliament, provision was made as well for maimed soldiers by collection in every parish as for other poor, that it should be lawful for every person, during twenty years next after the said parliament, by feoffment, will in writing, or other assurance, to give and bequeath in fee-simple, as well to the use of the poor as for the provision, sustentation, or maintenance of any house of correction, or abiding houses, or of any stocks or stores, all or any part of his lands, tenements, or hereditaments; her most excellent majesty understanding and finding that the said good law hath not taken such effect as was intended, by reason that no person can erect or incorporate any hospital, houses of correction, or abiding places, but her majesty, or by her highness' special licence, by letters patents under the great seal of England in that behalf to be obtained: her majesty graciously affecting the good success of so good and charitable works, and that without often suit unto her majesty, and with as great ease and little charge as may be, is of her princely care and blessed disposition to and for the relief and comfort of maimed soldiers, mariners, and other poor and impotent people, pleased and contented that it be enacted by authority of this present parliament; and be it enacted by the authority of this present parliament, that *all and every person and persons* (2) seised of an estate in fee-simple, their heirs, executors, or assigns, at his or their wills and pleasures, shall have *full power* (3), strength, licence, and lawful authority, at any time during the space of twenty years next ensuing, by deed enrolled in the high court of Chancery, to erect, found, and establish one or more hospitals, *maisons de Dieu*, abiding places, or houses of correction, at his or their will and pleasure, as well for the finding, sustentation, and relief of the maimed, poor, needy, or impotent people, as to set the poor to work, *to have continuance for ever* (4), and from time to time to place therein such head and members, and such number of poor, as to him, his heirs and assigns, shall seem convenient: and that the same hospitals or houses so founded, shall be incorporated, and have perpetual successions for ever, in fact, deed, and name, and of such head, members, and numbers of poor, needy, maimed, or impotent people as shall be appointed, assigned, limited, or *named by the founder* (5) or founders, his or their heirs, executors, or assigns, by any such deed enrolled; and that such hospital, *maison de Dieu*, abiding place, or house of correction, and the persons therein placed, shall be incorporated, named, and called by such name as the said founder or founders, his heirs, executors, or assigns, shall so limit, assign, and appoint: and *the same hospital, maison de Dieu, abiding place, or house of correction so incorporated and*

35 Eliz. c. 7,
s. 27.

Any person may erect an hospital or house of correction, which may purchase and enjoy goods or lands not exceeding the yearly value of 200l. &c
2 Inst. 720.
16 Vin. 414.

Any person may erect an hospital or house of correction.

Incorporation of the hospital by the founder.

The hospital or house of correction shall be named by the founder.

The hospital shall be a body politic and corporate.

(1) Difficulties having been experienced in effecting the objects of Stat. 35 Eliz. c. 7, (*antè* 468,) from the expenses of incorporation and the licence of mortmain, occasioned the enactment of Stat. 39 Eliz. c. 5, which was made perpetual by Stat. 21 Jac. 1, c. 1.

(2) *All and every person and persons*:—These words extend to such bodies politic and corporate, as may alienate, such as mayor and commonalty, bailiffs and burgesses, and the like, but not to those whose power of alienation is restrained by act of parliament. 2 Inst. 721.

(3) *Full power*:—"This," states my Lord Coke, (2 Inst. 722,) "is a very beneficial law; for the charges of incorporation, and of the licence of mortmain, in these days, grow so great by one means or other, as it hath discouraged many men to undertake these pious and charitable works; whereas, in former times, such works of piety and charity

for the poor, did ever pass *in formâ pauperis*, and so we hope to see it again."

(4) *To have continuance for ever*:—"The founder cannot erect, &c., any of these for years, lives, or any other limited time, but for ever." Ibid. 723.

(5) *Named by the founder*:—"So as the persons, to be by this act incorporated, must be there placed and named, when the founder giveth them their name of incorporation; for the parliament incorporateth them, and the founder only giveth them their name." "Although that, at the common law, a corporation may be of an hospital, (*i.e.* *in potestate*, of certain persons to be governors of the hospital,) and not of the persons placed therein; yet the safest and surest way upon this statute, is, first to prepare the hospital, and to place the poor therein, and to incorporate the persons therein placed." Ibid. 723.

STAT. 39 ELIZ. c. 5. *named, shall be a body corporate and politick* (1), and shall by that name of incorporation have full power, authority, and lawful capacity and ability, to purchase,

(1) *The same hospital, maison de Dieu, abiding place, or house of correction so incorporated and named, shall be a body corporate and politick*.—Eleemosynary corporations are such as are constituted for the perpetual distribution of the free alms, or bounty of the founder of them, to such persons as he has directed. 1 Black. Com. by Chitty, 471.

These are of two general descriptions; hospitals for the maintenance and relief of poor and impotent persons; and colleges for the promotion of learning, and the support of persons engaged in literary pursuits; of which the greater number are within the universities, being corporations within a corporation, of which they form a component part; and other colleges are out of the universities, and not necessarily connected with them.

Colleges are considered in two different points of view; first, as corporate bodies, and, secondly, as eleemosynary; in each of which characters they are subject to a different jurisdiction,—in matters which concern their public corporate character, they are, like every other corporate body, subject to the control of the general law of the country,—in matters which regard their private eleemosynary character, their proceedings are subject to the examination of their respective visitors.

Of hospitals, says Lord Coke, “some are corporations aggregate of many, as of master or warden, and his *confrères*; some, where the master or warden hath alone the estate of inheritance in him, and the brethren or sisters have power to consent, having a college or common seal.” Co. Lit. 342 (a). 1 Kyd on Corporations, 26. 1 Stephens on Corporations, 2, (2nd edit.)

Between such hospitals as these, and colleges either in the universities or out of them, there is no difference in legal consideration, the difference is only in degree; for, where in an hospital the master and poor are incorporated, it is a college, having a common seal by which it acts, although it have not the name of a college. There are other hospitals, where the master or warden hath the estate in view, but they have no college or common seal, and therefore such institutions cannot properly be considered as corporations, the master or warden being merely a trustee for the house. *Phillips v. Bury*, Skin. 484.

Another class of hospitals is, where the poor, who are the objects of the founder's bounty, are not themselves incorporated, but the corporate succession is vested in trustees under various denominations, who, of course, have no beneficial interest, but are only employed as instruments to effectuate the purposes of the institution; of this description is Sutton's Hospital, (10 Co. 1–35,) and most other hospitals of modern creation; but these, says Lord Coke, are not legal hospitals. *Ibid.* 31 (a).

There are also many other corporations, resembling hospitals, of this last description,

which are neither colleges nor hospitals, but which may be classed under the head of eleemosynary corporations, as their object is, by means of trustees incorporated, to carry into execution some public charity; such is the corporation created in the reign of Queen Anne, under the name of “The Governor of the Bounty of Queen Anne, for the augmentation of the maintenance of the poor Clergy;” and such are many corporations of trustees for the education of children at free schools, and many others, for various purposes. Stat. 2 & 3 Ann. c. 11. Stat. 5 Ann. c. 24. Stat. 6 Ann. c. 27. Stat. 1 Geo. 1, St. II. c. 10. Stat. 3 Geo. 1, c. 10.

In order to illustrate the foregoing observations, and those which will succeed, it may not perhaps be inexpedient to make a few observations respecting the prerogatives of the crown in relation to corporations.

The king can grant a licence to a subject to erect a particular corporation, and can likewise give a general power by charter to erect corporations indefinitely. 2 Hen. 7, 13 (a) (b). *Le case de Sutton's Hospital*, 10 Co. 27 (b). Bro. Abr. *Prerog.* 53. 17 Vin. Abr. *Prerogative of the King*, 87. 1 Black. Com. by Chitty, 474.

A corporation cannot be created with any powers which are at variance with the common and statute law, and if any such privileges are required, they can only be attained through the instrumentality of parliament.

There is no prescribed form for the erection of a corporation; but any words or forms which show an intention to create a body politic, will suffice. *Le case de Sutton's Hospital*, 10 Co. 28 (a), 29 (b). Mad. Fir. Bur. c. 11. Mad. Hist. Exch. 402.

The grant must be accepted by the voluntary consent of a majority of those whom it is intended to incorporate; otherwise the grant will be void. *Bagg's case*, 1 Roll. 226. 1 Kyd on Corporations, 65. 1 Stephens on Corporations, 4, (2nd edit.)

If a new charter be given to a corporation already *in esse*, and acting either under a former charter or prescriptive usage, such corporation already existing is not obliged to accept the new charter, but if it do, the acceptance will operate as a repeal *pro tanto* of such privileges, as may be inconsistent with those which have been recently granted, for a charter cannot be partially accepted.

A corporation can accept a charter which directly abridges or alters any of their liberties; and when a corporation takes a new charter concerning their liberties, they may make use of it as a grant, or as a confirmation. 1 Kyd on Corporations, 67. *Rex v. Larwood*, 4 Mod. 269. 1 Salk. 167. 1 Ld. Raym. 29.

When a licence is given to erect an eleemosynary or charitable corporation, and to endow it with possessions or revenues, the donor is called the *founder*.

The word *foundation* is distinguished by the terms *fundatio incipiens*, and *fundatio perficiens*, for as to the politic capacity, the

take, hold, receive, enjoy, and have, to them and to their successors for ever, as well goods and chattels, as manors, lands, tenements, and hereditaments, being

STAT. 39 ELIZ. c. 5.

act of incorporation is metaphorically called foundation, that being the beginning, as a foundation *quasi fundamentum capacitatis*, preceding the whole; but as to the dotation, the first gift of the revenues is called the foundation, and he who gives it, is the *founder* in law. *Le case de Sutton's Hospital*, 10 Co. 33. 3 H. 7, 6 (b), cit. 3 Co. 74 (a). 2 Inst. 68. 38 Ass. 22. 1 Kyd on Corporations, 50.

The foundership is so inseparably incident to the blood of the founder, that it cannot be granted over; and if a subject founder were to grant his foundership to the king by deed inrolled, it would be a void grant. *Magdalen College case*, 11 Co. 77 (a), 78 (a). 1 Kyd on Corporations, 51. But if the king and a subject were *eo instanti* to give possessions to a corporation on its original creation, the king, by his prerogative, will be the founder. 50 Ass. 6. 1 Rol. Abr. *Corporations* (H), 514. *Quick's case*, 9 Co. 129 (b). 2 Inst. 68, cit. 44 Edw. 3. 24, 25.

The mode by which a corporation is erected where a subject is the founder, is either that the king expresses the words of incorporation, designs the place, appoints the number, and gives them a constitution and a name by his charter, so that the corporation is complete; and then the founder or donor has nothing more to do, than to make the dotation, without any instrument comprehending words of incorporation:—or the king may reserve as well the nomination of the persons, as the name and constitution of the corporation, to the person who is to be the founder; then the founder must name the persons, and declare by what name they shall be incorporated, and what powers they shall exercise; and then they become incorporated by virtue of the king's letters patent and not by the founder, because he is but an instrument. 38 Edw. 3, 14 (b). 22 Edw. 4, Grant, 30. 2 Hen. 7, 13 (a) (b). 20 Hen. 7, 7. *Le case de Sutton's Hospital*, 10 Co. 33 (b).

The incorporation ought, in fact, to precede the dotation, because before the incorporation, there is no capacity to take as a corporation; (*Ibid.* 26 (b);) but, it is not necessary, that in the letters patent the licence to incorporate and the licence to endow should be in distinct independent clauses, or that the licence to incorporate should, in the order of expression, precede that to endow, because the law would construe that to precede, which ought to be first. *Ibid.* 27, 28.

It is not requisite, that a corporation should be *in esse* at the time when the licence to grant to it be given; it is sufficient that it exist at the time of the grant made. 1 Kyd on Corporations, 54.

Nor is it necessary, that all the persons who are to be the constituent members of the corporation, should be named in the letters patent; it is sufficient that a power of future nomination or election be given; because the letters patent have made a corporation *in abstracto*, and a corporation *in con-*

creto will be created upon the nomination of the constituent members. *Le case de Sutton's Hospital*, 10 Co. 8 (b).

The incorporation at common law may be of certain persons to be governors of the hospital, which at the time of the incorporation may be only in contemplation, and not of the persons placed in it.

But, as previously stated (*antè* 469, n. (5).) under Stat. 39 Eliz. c. 5, the founder should first prepare the hospital, and place the poor in it, and then incorporate them, or rather give them their name of incorporation; for it is the parliament which incorporates them, and the founder only gives them their name.

After the incorporation, the lands, tenements, and hereditaments, should be conveyed to the persons incorporated, which can be done by bargain and sale, by deed indented and enrolled according to Stat. 27 Hen. 8, c. 16, between the founder or founders on the one part, and the master and brethren on the other, in consideration of five shillings in hand paid by the master of the hospital, for himself and for his brethren, and of other five shillings in hand paid by the master and brethren. *Le case de Sutton's Hospital*, 10 Co. 17 (b).

An opinion has been expressed by Mr. Shelford, that hospitals may at the present moment be founded and endowed under Stat. 39 Eliz. c. 5, provided the further requisites of Stat. 9 Geo. 2, c. 36, be complied with. Shelford on Mortmain, 46.

When a private eleemosynary corporation is created by the crown, it is subject to no other control on the part of the crown, than what is expressly or impliedly reserved by the charter itself. Unless a power be reserved for that purpose, the crown cannot by virtue of its prerogative, (without the consent of the corporation,) alter or amend the charter, or divest the corporation of any of its franchises, or increase them, or add to or diminish the number of the trustees, or remove any of the members, or change or control the administration of the charity, or compel the corporation to receive a new charter. *Rex v. Pasmore*, 3 T. R. 199. But if an integral part of a corporation be gone, and the corporation have no power of restoring it, or of doing any corporate act, the corporation is so far dissolved that the crown may grant a new charter. *Ibid.*

Where individuals are incorporated as governors of a school, care should be taken in filling up the vacancies in their number, for if it be reduced to one, there will be no one having a power to do any corporate act, and there is danger of the revenues of the foundation being lost; for, on the dissolution or determination of a corporation, the lands belonging to it, do not escheat to the lord, but revert to the donor, or his heirs. 1 Rol. Abr. *Eschete* (A), 816. Co. Lit. 13 (b). *Edmunds v. Brown*, 1 Lev. 237. *Rex v. Pasmore*, 3 T. R. 241. *Colchester* (*Mayor, &c. of*) *v. Seaber*, 3 Burr. 1868.

Where a certain number are incorporated,

STAT. 39 ELIZ.
c. 5.

The hospital
may purchase
goods or lands.
7 Edw. 1,
St. II.

The hospital
may sue and
be sued.

The hospital
shall have a
common seal.

The ordering,
directing, and
visiting of an
hospital.

freehold, of any person or persons whatsoever: so that the same *exceed not the yearly value of two hundred pounds*(1) above all charges and reprises, to any one such abiding house, hospital, *maison de Dieu*, or house of correction, and so as the same or any part thereof be not holden of our sovereign lady the queen, her heirs or successors, immediately in chief, or else of our said sovereign lady the queen, or any other person by knight's service; without licence or writ of *ad quod damnum*; the Statute of Mortmain, or any other statute or law to the contrary notwithstanding; and that the same hospital, *maison de Dieu*, abiding place, or house of correction, and the persons so being incorporated, founded, and named, shall have full power and lawful authority by the true name of the incorporation thereof, to sue and to be sued, implead and to be impleaded, to answer and to be answered unto, in all manner of courts and places that now are or hereafter shall be within this realm, as well temporal as spiritual, in all manner of suits whatsoever, and of what nature and kind soever such suits or actions be or shall be: and that the same hospital, *maison de Dieu*, abiding house, or house of correction, shall have and enjoy for ever such a common seal or seals, as by the said founder or founders, his or their heirs, executors, or assigns, shall be in writing under his or their hand and seal assigned, named, or appointed, whereby the same corporation shall or may seal any manner of instrument touching the same incorporation, and the lands, tenements, hereditaments, goods, or other things thereto belonging, or in any wise touching or concerning the same: and further *shall be ordered, directed, and visited*(2), placed, or upon just cause displaced, by such

a major part of them may do any corporate act, notwithstanding that the charter is silent respecting the number of persons requisite to constitute an assembly. *Attorney-General v. Davy*, 2 Atk. 212.

Nor is it necessary that every corporate act should be under the seal of the corporation. *Ibid*.

But the signing of any contract for leasing by the masters and fellows of the college, unless under the college seal, will not be binding on the college. *Taylor v. Dulwich Hospital*, 1 P. Wms. 656.

In ascertaining the meaning and effect of a charter, contemporaneous documents, proceedings in causes relating to it, and parol testimony, may be resorted to, in order to explain and give to the charter a construction, but not to contradict it. *Pierrepoint v. Scarlett*, 2 Y. & J. 330.

It is a general right of corporations, of whatever nature, at law, to alienate their lands held in fee, subject, as to ecclesiastical corporations, to the restraining statutes; and there is no instance, where a trust has attached upon the ground of misapplication from corporate purposes, except the case of corporations holding to charitable uses. *Colchester (Mayor, &c. of) v. Louten*, 1 V. & B. 226. *Sed vide* Stat. 2 & 3 Gul. 4, c. 69, and Stat. 5 & 6 Gul. 4, c. 76.

If a regular corporate resolution have been passed, and upon faith of it expenditure has been incurred, for granting an interest in the corporate property, the court will compel a corporation to make a legal grant in pursuance of the resolution, although not under the corporate seal. *Marshall v. Queenborough (Corporation of)*, 1 S. & S. 520.

But whether a corporation, consisting of numerous governors, would be bound by the acquiescence of some, standing by, permitting expenditure, has been questioned. *Macher v. Foundling Hospital*, 1 V. & B.

188. *Wych v. Meal*, 3 P. Wms. 310.

Where a person gives a debt by will to a corporation, it vests in them in law, and they may recover it in the ecclesiastical courts. *Attorney-General v. Pye*, 1 Atk. 435. But a college is not bound to accept an accession to its foundation. *Attorney-General v. Catherine's Hall, Cambridge*, Jacob, 391.

A corporation can claim the benefit of the Statute of Limitations, as well as any private person. *Wych v. East India Company*, 3 P. Wms. 309.

(1) *Exceed not the yearly value of two hundred pounds*:—Respecting the property by which the endowment must be made, the manors, lands, tenements, or hereditaments of which the endowment is made, must be of an estate in fee simple, either absolute, conditional, or qualified; they must be freehold; of the clear yearly value of 10*l*. or more, and not exceeding the yearly value of 200*l*. above all charges and reprises; but if the first endowment be of the yearly value of 10*l*. or more, and under the yearly value of 200*l*. they may purchase, or take by gift from others, without licence of mortmain, any manors, lands, tenements, or hereditaments, of such value as, together with their first endowment, will amount to the yearly value of 200*l*. above all charges and reprises. And if, at the time of the foundation or endowment, they be of the yearly value of 200*l*. or under, and afterwards they become of greater value, by good husbandry or other causes, they shall continue to be enjoyed by the hospital, though they be above the yearly value of 200*l*.; for that must be reckoned as it was at the time of the endowment made. But goods and chattels, whether real or personal, can be taken to any value. 1 Kyd on Corporations, 59, 60. 2 Inst. 722.

(2) *Shall be ordered, directed, and visited*:—In considering the subject of visitation generally, it has been deemed expedient to

person or persons, bodies politic or corporate, their heirs, successors, or assigns, as STAT. 39 ELIZ.
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do so under the several heads of: i. Appointment of visitors. ii. Powers of visitors. iii. Duties of visitors. iv. Incapacities of visitors. v. Enforcement of the duties of visitors. vi. Cases in which the visitatorial jurisdiction of the lord chancellor will be exercised. vii. Cases in which the visitatorial jurisdiction of the lord chancellor will not be exercised. viii. Costs.

i. *Appointment of Visitors.* To all eleemosynary institutions a visitatorial power exists as a necessary incident, (*Appleford's case*, 1 Mod. 85,) and the law has provided that there shall somewhere exist a power to visit, inquire into, and correct all irregularities and abuses in such institutions, and to compel the original purposes of the charity to be fulfilled. 1 Black. Com. by Chitty, 480.

No particular form of words is necessary for the appointment of either a general or a special visitor, but the intention of the founder is to be collected from the statutes. The founder can delegate the power of visitation either generally or specially; by prescribing in the *latter* case a mode for the exercise of any *part* of it; but if a mode be prescribed in any particular case, that will not take away the general power incidental to the office of visitor. Thus the visitation of the corporation or institution at large may be in one person, and that of one of the members, as of the head, may be in another; and if the founder of a college appoint a visitor of the head specially, the general power of visitation remains in the founder and his heirs. *Attorney-General v. Talbot*, 1 Ves. Sen. 78. *St. John's College, Cambridge v. Todington (Clerk)*, 1 Burr. 200. *Weavers' Company q. t. v. Haywood*, 3 Atk. 363. *Attorney-General v. Middleton*, 2 Ves. Sen. 328.

"*Sit visitor* is sufficient for the appointment of a general visitor, and gives a consummate jurisdiction for all purposes incidentally necessary for this power. If a person be thus constituted visitor in general terms, whatever comes in derogation of his power must be expressed, otherwise he is *pleno jure*." Per Lord *Ellenborough*, in *Rex v. Worcester (Bishop of)*, 4 M. & S. 420.

Whether a person appointed by the statutes of the founder to take cognizance of certain particular things, be a general visitor, without general words giving him that authority, depends on the nature of those particular things, and on the terms in which his jurisdiction over them is given; when, therefore, a question arises about the extent of the person's power, who claims to be visitor, recourse must be had to the statutes, and the court will then collect from the whole, considered together, whom the founder intended should be appointed as a general visitor.

Where the king is visitor, the crown is always visitor; but where a private person is founder, his heirs are visitors; but the founder may vest a visitatorial power in any other person or his heirs. *Eden v. Foster*, 2 P. Wms. 325.

Where the poor, or those who receive the charity, are not incorporated, but there are certain trustees who dispose of the charity, there is no visitor; because the interest of the revenue is not vested in the poor that have the benefit of the charity, but they are subject to the orders and directions of the trustees.

But if they who are to enjoy the benefit of the charity be incorporated, a visitatorial power will then exist by law, in order to prevent all perverting of the charity, or to compose differences that may happen among them; and it being a creature of the founder's own, it is reasonable that he and his heirs should have that power, unless by the founder it be vested in some other.

There is no difference between a college or an hospital, except only in degree, and if in an hospital "the master and poor" be incorporated, it is a college having a common seal to act by, although it hath not the name of a college, (which always supposeth a corporation,) because it is of an inferior degree; and in the one case, and in the other, there must be a visitor, either the founder, and his heirs, or one appointed by him, and both are eleemosynary.

But where there is a charter giving proper powers, the charity must be regulated in the manner in which the charter has pointed out; and where there is a local visitor, the court of Chancery has no jurisdiction over any object within the cognizance of the visitor. *Attorney-General v. Price*, 3 Atk. 108. *Attorney-General v. Middleton*, 2 Ves. Sen. 328. *Attorney-General v. Dulwich College*, 4 Beav. 265. *Attorney-General v. Foundling Hospital (Governors of)*, 2 Ves. 41. *Attorney-General v. Brentwood School (Masters of)*, 1 M. & K. 376. *Attorney-General v. Crook*, 1 Keen, 121. *Attorney-General v. Smithies*, *Ibid.* 289.

Where the persons for whose benefit a charity is established, are not themselves incorporated, but trustees or governors are appointed, as in the *case of Sutton's Hospital*, (10 Co. 31 (a),) the governors have a kind of visitatorial power, with respect to the objects of the charity; but where no visitor is expressly appointed, and the legal estate of the endowment is vested in the governors, the latter, as to the management of the revenues, are subject to the jurisdiction of the court of Chancery; (*Attorney-General v. Middleton*, 2 Ves. Sen. 329; 2 Kyd on Corporations, 187;) because it would be a most pernicious consequence, that a person entrusted with the receipt of the rents and profits, especially for a charity, should not be accountable, however he might misemploy them.

Where the king was founder of a school, and endowed it, and appointed governors with powers to make bye-laws, and who had the legal estate of the endowment vested in them, but with no express words appointing them visitors, it was resolved, that a commission might issue to visit and call to account these governors, because the word "governor" did not *per se* imply "visitor." *Eden v. Foster*, 2 P. Wms. 325.

STAT. 39 ELIZ. shall be so nominated or assigned by the founder or founders thereof, their heirs c. 5.

ii. *Powers of Visitors.* "Visitors" have absolute power, the only absolute one known in England, but it is confined to offences against the private laws of the college. *Rex v. Chester (Bishop of)*, Str. 797. 1 Wilson, 206. *Rex v. St. John's College, Cambridge*, 4 Mod. 233.

Patronage and visitation are necessary consequents one upon another; for visitatorial power was not introduced by any canons or constitutions ecclesiastical; it is an appointment of law, it ariseth from the property of the donor, and the power every one has to dispose, direct, and regulate his own property, like the case of patronage, *cujus est dare*, &c.; therefore, if either the crown or the subject create an eleemosynary foundation, and vest the charity in the persons who are to receive its benefit, since a contest might arise about its government, the law allows the founder or his heirs, or the person especially appointed by him to be visitor, to determine concerning his own creature. *Green v. Rutherford*, 1 Ves. Sen. 471. *Philips v. Bury*, Skin. 483. 2 T. R. 352. *Farchild v. Gayre*, Cro. Jac. 63. Yelv. 60.

"A general visitatorial power requires particular words to abridge it;" and it is incidental to the office of visitor to deprive for, as well as to correct, offences. *Rex v. Worcester (Bishop of)*, 4 M. & S. 421. *Philips v. Bury*, 2 T. R. 349.

If the power given to the visitor be unlimited and universal, he has, in respect of the foundation and property moving from the founder, no rule but sound discretion, because he is the judge whom the founder has appointed. *Appleford's case*, 1 Mod. 82. *Parkinson's case*, Carth. 92. *Widdrington's (Dr.) case*, 1 Lev. 23. *Queen's College case*, alias *Patrick's (Dr.) case*, Ibid. 65. Raym. (Sir T.), 100. *Rex v. New College, Oxford*, 2 Lev. 14. *Hurst's case*, Raym. (Sir T.), 56, 94. *Philips v. Bury*, 2 T. R. 346. 4 Mod. 106. 1 Show. (Sir B.), 360. 1 Ld. Raym. 5. Skin. 447.

Although the visitor has no court, and it may seem unreasonable to conclude a man by the sentence of a person who has no court, yet it is immaterial, the only question being whether the visitor has jurisdiction and cognizance of the matter and person, and whether sentence has been pronounced in the matter; his sentence makes a vacancy, however erroneous it may be, and there is no appeal if the founder have not thought fit to direct one. *Philips v. Bury*, Skin. 485. 2 T. R. 353.

A visitor need not hear parol evidence on an appeal to him; it is sufficient if he receive the grounds of the appeal, and the answer to it be in writing. *Rex v. Ely (Bishop of)*, 5 T. R. 475.

A visitor can administer an oath, or require an answer upon oath; and he ought to give a convenient time for an answer, and for the examination of witnesses. Shelford on Mortmain, 379.

"The king's courts, if the college do not

exceed their jurisdiction, have no cognizance, or superintendence; but the visitor is the only person to be applied to, and, moreover, his judgment is final. He does not proceed by the rules and forms of the common law; but he suffers a party, *allegare non allegata et probare non probata*, and decides entirely upon the merits." *Rex v. Grundon*, Cowp. 322. *Blackham's case*, 1 Salk. 290.

Visitors of colleges, not being tied up to any particular forms, cannot be prohibited in their proceedings for informality in their acts, but only for want of jurisdiction; and therefore, where a visitor cited the master of a college to appear before him as *special* visitor, and afterwards in a plea to an action of prohibition, he insisted on being *general* visitor of the college, this variance was held not to be erroneous; but he, having jurisdiction either in the one character or the other, had a right to proceed upon the citation. *Ely (Bishop of) v. Bentley*, 2 Bro. P. C. 220. Str. 912.

One of the incidental powers belonging to a visitor is, that of hearing complaints and deciding them, and which includes a jurisdiction over elections. *Philips v. Bury*, 2 T. R. 346. 2 Kyd on Corporations, 236.

Where the visitor acts in a judicial capacity, the interested parties should be convened, in order that they might have an opportunity of defending themselves. *Rex v. Ely (Bishop of)*, 2 T. R. 336. *Rex v. Cambridge (University of)*, 2 Ld. Raym. 1334. 8 Mod. 148. *Doe d. Thanet (Earl of)*, v. *Gartham (Clerk)*, 1 Bing. 357. *Rex v. Gasikin (Dr.)*, 8 T. R. 209.

Offences against the private statutes of a college are not pardoned by an act of grace, but are still inquirable by a visitor. *Bentley v. Ely (Bishop of)*, Str. 912.

The members of a college can enter a protest against a visitation; but refusing to submit to the visitor's examination, turning their backs upon him, and not appearing upon his summons, is an offence amounting to contumacy: for the visitor is to inquire into the state of the college, and of each member's particular behaviour and conformity to the college statutes; and if, on his coming to make such inquisition, the head, or the members, absent themselves, or will not appear to be examined, it tends to the subversion of the whole constitution of the college, and is a good cause of deprivation mentioned in the statutes. *Philips v. Bury*, 2 T. R. 357. Skin. 490.

The jurisdiction of a visitor is confined to the foundation, and is derived solely from the intention of the founder, with respect to the distribution of his property. Thus fellow-commoners, being independent members, are strangers to the foundation, and have no right to appeal to the visitor; and in the case of any particular grievance, as expulsion from the college, they have no other remedy than that, which the laws of the land afford them. *Rex v. Grundon*, Cowp. 315. *Davison's case*, cit. Ibid. 319.

Whether fellows of colleges have power to

let their chambers, held in right of their fellowships, is a matter to be determined by the visitor, and not a proper subject for the jurisdiction of a court of Chancery. *Attorney-General v. Stephens (Dr.)*, 1 Atk. 360.

"Governors" are likewise subject to the jurisdiction of a visitor with respect to the revenues, although absolute with respect to the government, because, as previously observed, the word *governor* does not imply visitor. *Eden v. Foster*, 2 P. Wms. 325.

Where there is a general visitor, and the time of his general visitation is not restricted by the statutes to particular periods, he can visit whenever he pleases. 2 Kyd on Corporations, 226.

Local visitors only visit every three years; and it was said, that if a visitor's reward be too small, the court may augment it. *Attorney-General v. Price*, 3 Atk. 109.

If a visitor appoint a visitation to be held at a specified time, and be unable to hold his visitation from the ill-conduct of the members, he can appoint another visitation, because the hindrance upon the first occasion, would be considered as not constituting a visitation. *Philips v. Bury*, 2 T. R. 346. 1 Ld. Raym. 9. 4 Mod. 106. 1 Show. (Sir B.), 360.

Although the time of a general visitation be restricted, the visitor can at any time take cognizance of any dispute between the members, on an appeal made to him for that purpose; because visiting is one act in which he is limited to time, but hearing appeals and redressing grievances is his proper office and work at all times. *Appleford's case*, 1 Mod. 83. *Philips v. Bury*, 2 T. R. 348. 4 Mod. 122.

Therefore, the members of a college can complain to the visitor when he is not in his visitation, if the head should waste the revenues, behave himself scandalously, or improperly retain his office.

iii. *Duties of Visitors.* The powers of a visitor being absolute and final, his duties are to receive appeals, and to do all acts incident to his office. *Attorney-General v. Talbot*, 1 Ves. Sen. 78. 3 Atk. 662. *St. John's College v. Todington (Clerk)*, 1 Burr. 158. *Rex v. Ely (Bishop of)*, 1 Black. (Sir W.), 71, 90.

Although a visitor, in all inquiries and determinations, made either by way of general visitation or on a particular complaint, proceeds in a summary way, he is bound to pay more attention to matters of necessary substance than of positive form, yet the cause of complaint ought to be reduced into writing, notice of it given to the party complained of, and regard paid to the positive form prescribed by the statutes. Com. Dig. *Visitor* (C). Shelford on Mortmain, 379.

When a visitor comes to execute his visitatorial power at the time appointed by the founder, he is to inquire into all the affairs of the college, and is bound to proceed with any complaint of the fellows upon their information, but he may proceed, even to deprivation, whenever he sees cause, and contumacy is a good cause of deprivation. *Philips v. Bury*, 2 T. R. 357. Skin. 490. *Antè* 474.

Founders of colleges have, in some in-

stances, given a preference in the election of scholars, and others, to those of their own blood: in such cases, the only question for the visitor is, the intention of the founder, and if such intention be not repugnant to reason, morality, or the municipal laws of the kingdom, it must be implicitly obeyed, *secundum verum literalem et grammaticalem sensum*, and the words *de consanguinitate, genere, et sanguine*, will comprehend all persons whatsoever who were of the same blood with the founder, to the remotest generation, and no boundary line can be drawn to the consanguinity, but by the hand of time, which sooner or later levels all distinctions of families; and upon such principles a visitor has pronounced for the appeal in favour of a claimant in the fourteenth canonical degree. *Spencer v. All Souls' College, Oxford (Warden and Fellows of)*, Wilm. 163. 1 Burn's E. L. by Phillimore, 485, 490. Shelford on Mortmain, 375.

"After the visitor has received an appeal, which he is bound to do, if it be not frivolous, he ought of common right to grant an inhibition to stay all further proceedings against the appellant, and to restore him to his former state in the college, until the appeal shall be determined: and the visitor ought to require all parties interested in the appeal to appear before him, and give an account of their proceedings, which ought regularly to be *dispatched* in the presence of a notary public, or other credible witnesses, in order that the proceedings may be transmitted to the visitor with the evidence." Shelford on Mortmain, 379.

iv. *Incapacities of Visitors.* If there be particular statutes, they are the rule by which the visitor is bound; and if he act contrary to, or exceed them, he acts without jurisdiction, and consequently his decrees will be invalid; (*Rex v. Chester (Bishop of)*, 1 Wilson, 206; *Philips v. Bury*, 1 Ld. Raym. 5; Skin. 447; *Green v. Rutherford*, 1 Ves. Sen. 472;) because the visitor derives his being, power, and authority from the founder. *Philips v. Bury*, 2 T. R. 346. Skin. 454. The lord chancellor can, however, in some cases, dispense with the necessity of "residence;" where the master of a charitable foundation is unable to reside from illness. *In re St. Mary Magdalen, Colchester*, 12 Law Journ. N. S. 375.

Although it is the duty of the visitor to determine all controversies relating to persons who are of the foundation, yet he has no powers of interference before a person becomes a member: and the masters and fellows of a college, exercising discretionary power, cannot be compelled to admit a particular individual as member. *Rex v. St. John's College, Oxford*, 4 Mod. 260. Comb. 238. *Rex v. Lincoln's Inn (Benchers of)*, 4 B. & C. 860.

"In the case of a private, particular, limited jurisdiction, and of courts proceeding by rules different from the general law of the land, no appearance, answering, or pleading of the party, will give a jurisdiction to the court; but if there be a want of jurisdiction in the cause, it may be called in question at any time, even after sentence, which is the

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case of all prohibitions granted every term by the common law courts for a nullity of jurisdiction; so that it may be applied to, even against the party's own suit, and the same holds in a collateral action or suit." Per Lord Chancellor *Hardwicke*, in *Green v. Rutherford*, 1 Ves. Sen. 470. Therefore, when the right of a visitor to interfere is submitted to by answering an appeal to him, such admission will not give a jurisdiction the visitor had not, nor take away the ordinary jurisdiction of the courts, nor even bind the parties themselves.

A general visitatorial power may cease and revive, and, during such cessation, the jurisdiction will, for want of particular appointment or reservation of power, devolve on the king's courts of general jurisdiction, because no other visitatorial power is in force. *Rex v. Chester (Bishop of)*, Str. 797. *Rex v. Blooper*, 2 Burr. 1043. *Green v. Rutherford*, 1 Ves. Sen. 471. Stat. 2 Geo. 2, c. 29.

A visitor cannot be a judge in his own cause, unless that power be expressly given.

A founder can give such authority to a visitor, but such an authority is not to be implied; and therefore where the visitor claims an interest, and asserts a right in the appointment of the master, and that appointment is the act complained of, the power of deciding devolves on the King's Bench, and a *mandamus* will be granted, if the application be supported by other substantial grounds. *Rex v. Ely (Bishop of)*, 2 T. R. 338. *Rex v. Chester (Bishop of)*, Str. 797.

Though the visitor of a college has a jurisdiction over matters of election, he has no right to appoint to a vacant office in default of the electors; and if the statutes in default of an election by the college, by express provision give the appointment to the same person who is general visitor, he has that appointment, not as visitor, but by virtue of that express provision. *Rex v. Ely (Bishop of)*, 2 T. R. 290, 345. 2 Kyd on Corporations, 275.

Where the electors of a master of a free school have been designated by the founder; the visitor, even though the visitatorial power should be lodged in the crown, has no right to appoint a master, notwithstanding the electors have made two void elections: the lord chancellor, however, as visitor in right of the crown, will provide for the internal management of the school; and refer it to the attorney-general, to report what directions or alterations may be necessary touching the mode of election. *Attorney-General v. Black*, 11 Ves. 193.

In a dispute between a college and a third party respecting the performance of an agreement, an application to a visitor is nugatory, for he cannot compel a specific performance. *Rex v. Windham*, Cowp. 378.

If an advowson be devised to a college, under particular trust, by a third person, not the founder, the visitor has no jurisdiction to determine of the presentation, or to interpose in execution of the trust. *Green v. Rutherford*, 1 Ves. Sen. 462.

If the heir of a founder be affected with legal incapacity, such as lunacy, the right of visitation devolves upon the crown; and the

lord chancellor is invested, *pro tempore*, with the visitatorial powers. *Attorney-General v. Dixie*, 13 Ves. 519.

It does not seem that visitors have the power to allow the officers of a charity to occupy apartments and other premises designed for the accommodation of the objects of it. *Attorney-General v. Lubbock*, Cooper (C. P.), 31.

And an act of parliament has been deemed requisite for the increase of the salaries of the officers of a charity, and of the pension of objects of it, beyond the amount fixed by the founder's will. Ibid. 25.

v. *Enforcement of the Duties of Visitors.* If the visitor of a college refuse to exercise his visitatorial power, by receiving and hearing an appeal, the court of King's Bench will grant a *mandamus* to compel him. *Rex v. Ely (Bishop of)*, 5 T. R. 475. *Rex v. Lincoln (Bishop of)*, 2 Ibid. 338. *Philips v. Bury*, Ibid. 346. *Rex v. Worcester (Bishop of)*, 4 M. & S. 415.

If, in an application to the king's courts for their interposition, by the members of an eleemosynary foundation, in a case coming within the general visitatorial power, it should appear that there is a visitor, and that no application has been made to him, the courts will not interpose, because no court of law or equity can anticipate the judgment of the visitor, or take away his jurisdiction. *Attorney-General v. Clare Hall (Masters & Fellows of)*, 3 Atk. 674.

When the existence of a visitor is not doubted, it frequently becomes a question, whether the person complaining, or the act of which the complaint is made, be within the visitor's jurisdiction; and the determination of such questions belongs ultimately to the king's courts, though the visitor may decide in the first instance. 2 Kyd on Corporations, 240.

If no person applies to the court, who claims the visitatorial power, except one who has long exercised it, the court will not grant a prohibition on the motion of a single fellow, who suggests that the power is in another. *Martyn (Dr.) v. Canterbury (Archbishop of)*, Andr. 258.

A prohibition lies against a person acting as visitor without any right, or who exceeds his authority, or intermeddles with a matter out of his jurisdiction. *Philips v. Bury*, 4 Mod. 110. *Rex v. Chester (Bishop of)*, 1 Wilson, 206. Ibid., 1 Black. (Sir W.), 22. *Chichester (Bishop of) v. Harward*, 1 T. R. 650. Com. Dig. *Visitor* (B). Shelford on Mortmain, 379.

A prohibition will be granted when a visitor proceeds contrary to his citation, or inflicts penalties different from those prescribed by the statutes. *Bentley v. Ely (Bishop of)*, 1 Barnard. 192.

vi. *Cases in which the Visitatorial Jurisdiction of the Lord Chancellor will be exercised.* Eleemosynary corporations and institutions founded by the king, or when the king and a subject are joint founders, or where a private person endows a royal foundation, without specially appointing a particular visitor, are subject to the visitation of the king by his chancellor, or by special com-

missioners. Co. Lit. 96 (a). F. N. B. 42. 2 Inst. 68. 2 Rol. Abr. *Prerogative le Roy* (E), 230. *Eden v. Foster*, 2 P. Wms. 326. *Le case del Deane et Chaptre de Fernes*, Dav. 46 (b). Com. Dig. *Visitor* (A). *Anon.* 12 Mod. 233.

Where no specific provision is made for the regulation and management of a charity, the court of Chancery, by virtue of its general jurisdiction, takes cognizance of it, by information in the name of the attorney-general; and since Stat. 43 Eliz. c. 4, by commission in all cases within the general purview of that statute not coming within the exception of the proviso.

In the exercise of a visitatorial jurisdiction, "the lord chancellor is not bound down by any regular and exact forms of proceeding; but that the parties may offer to the consideration of the visitor anything which they think pertinent and proper." *Case of Queen's College*, Jacob, 19.

The power of visitation exercised by the lord chancellor is not part of his equitable jurisdiction, but in his character as lord chancellor, and therefore, where an action had been brought by a solicitor for the amount of his costs incurred, respecting an application to the chancellor as visitor of a charity of royal foundation, and the usual order had been made under the Stat. 2 Geo. 2, c. 23, s. 23, for referring such bill to be taxed, it was held, that the proceedings did not come within that act, which only contemplates proceedings in a court of law or equity. *Exp. Dann*, 9 Ves. 547.

Directions in the will of the founder, giving the sole government and management of a charity to the visitors, do not exclude the jurisdiction of the court, when such visitors are also the trustees of the charity estates. *Attorney-General v. Lubbock*, Cooper (C. P.), 15.

In cases where it is stated, and not controverted, that the crown is the visitor, the lord chancellor, if any abuse exist, will apply the proper remedies.

When the lord chancellor, as representing the crown, is called upon to remedy an abuse in a charity, he will not go into a controverted case for the purpose of establishing the fact that the crown is the visitor. *In re Garstang Church Town School*, 7 Law Journ. 169, 172.

Nor will the chancellor enter into the merits of a petition, unless he be satisfied, in the first instance, that the crown is visitor; and a clear undisputed case must appear upon the face of the petition, showing that the crown is visitor.

And even when the election of governors might be said to have been a fraud upon the court of Chancery, the lord chancellor declined proceeding to their removal until a petition was presented to him in his visitatorial capacity. *Attorney-General v. Dixie*, 13 Ves. 519.

Corporations constituted trustees are sometimes, by the decrees of the court of Chancery, divested of their trust, where it has been abused, as any other trustees would be. *Coventry (Mayor, &c. of) v. Attorney-General*, 7 Bro. P. C. 235. *Exp. Greenhouse*, 1 Madd. 108.

Where the king erects a school, appoints governors, and gives them land, and a power of making bye-laws, they are subject to royal visitation, because the revenues are liable to abuse; and the king being the curator of his own charities, will not be construed to have parted with the visitatorial power, without express words for that purpose.

If on an appeal to the lord chancellor, as visitor of a college in right of the crown, it appears, that the crown has any direct interest in the question in dispute, as a right to fill up a vacancy which has occurred, the attorney-general must appear on behalf of the crown.

In case of the failure of the heirs of the founder, when there has been no visitor appointed by the latter, the right of visitation devolves to the crown to be exercised by the lord chancellor. *Rex v. Catherine's Hall, Cambridge (Master of)*, 4 T. R. 233.

Upon a petition to the lord chancellor as visitor of Trinity Hall, Cambridge, there being no heir of the founder to declare the election of a fellow void, and to order the petitioner to be admitted; the court of King's Bench having in a similar case declined jurisdiction, the lord chancellor heard the petition, and upon the construction of the statute dismissed it. *Exp. Wrangham*, 2 Ves. 609.

If the governors appointed for the regulation of a charity, be not those who have the management of the revenues, the court assumes a jurisdiction of necessity, so far as they are to be considered trustees of the revenue.

But where a local visitor is appointed, and a trust is expressed in the original instrument, as to the application of the revenue, the court of Chancery has jurisdiction to compel a due application, although the charity was a royal foundation. *Exp. Berkhamstead Free School*, 2 V. & B. 138.

Where a charity was founded by royal charter, and an application was made by petition against the trustees, on a charge of their having misapplied part of the charity funds, but not requiring the interference of the court to regulate the charity, nor to alter or carry it into execution on any principle of *Cy-pres*; it was held, that the court had jurisdiction to entertain the petition under Stat. 52 Geo. 3, c. 101. *In re Chertsey Market*, 6 Price, 276. *Attorney-General, ex relat. St. John's College, Cambridge, v. Shrewsbury (Town of)*, Bunb. 215.

Where an addition is made to the endowment of a college of royal foundation, without the appointment of any special visitor by the donor, the power of the lord chancellor, as visitor in right of the crown, will extend to the new gift. Thus, when two fellowships were added to University College, Oxford, Lord Hardwicke took cognizance of a complaint respecting them, and determined in a summary way as visitor, and would not permit the matter to proceed in the usual course of a charity cause. *Attorney-General v. Clare Hall (Master of)*, 3 Atk. 667. *Attorney-General v. Catherine's Hall, Cambridge (Master of)*, Jacob, 382.

Where a testatrix devised estates for

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that she appointed no visitor of the foundation; but in case any complaint arose touching the execution of the statutes presented by her, she directed that an application should always be made to the lord high chancellor or lord keeper of the great seal of Great Britain, that the same might be heard by petition, or such other summary mode as his lordship should appoint, and by him to be finally determined; and a question was raised, whether the king, or the heir at law of the testatrix, was the visitor of the new foundation; Lord Eldon said, "the king is the visitor of the old college, and the question is, whether if a person makes an addition to an old foundation, the visitor of that foundation does not become the visitor of the new foundation; and whether the foundress having said, that she appoints no visitor, is sufficient to take from him that authority? I have no recollection of any case on the subject, but I should think that if the king was the visitor of the old college, and they accepted an accession to it, (which I doubt whether they could do without the king's consent,) the king would become the visitor of the new foundation, although the testatrix had said there should be no visitor at all." His lordship thought, the intention of the testatrix, that the lord chancellor should, under his judicial authority, have jurisdiction to hear any dispute in a summary way by petition, was void; for no individual can prescribe the mode of proceeding in the court of Chancery, nor give the power the testatrix had attempted to give in that case. *Attorney-General v. Catherine's Hall, Cambridge (Master of)*, Jacob, 382.

vii. *Cases in which the Lord Chancellor's Visitatorial Jurisdiction will not be exercised.* The court of Chancery has no jurisdiction with regard either to the election or the amotion of the members of a body corporate of any description; and where, for want of an heir of the founder, the crown becomes the visitor of a charity, the application must be made by petition to the great seal, and not by bill or information, for the removal of a governor from the corporate character, which he *de facto* holds. *Cases of Grant-ham School & Richmond School*, cit. 17 Ves. 499.

The court of Chancery will not entertain a general jurisdiction to regulate and control charities established by charter, which the court cannot alter.

The court of Chancery will not in the case of a corporation instituted by charter and act of parliament, for the purpose of governing a charity, take the jurisdiction out of their hands, unless an actual abuse of trust has been committed. *Attorney-General v. Foundling Hospital (Governors of)*, 2 Ves. 42. *Attorney-General v. Dulwich College*, 4 Beav. 265. Shelford on Mortmain, 335.

A free school founded by charter or by act of parliament, with proper powers, must be regulated, in the first instance, by the charter, not by application to the court of Equity. *Attorney-General v. Middleton*, 2

Ves. Sen. 327. *Attorney-General v. Price*, 3 Atk. 108. *Attorney-General v. Harrow School (Governors of)*, 2 Ves. Sen. 552. *Attorney-General v. Bedford (Corporation of)*, Ibid. 505. *Attorney-General v. Foundling Hospital*, 2 Ves. 42. 4 Bro. C. C. 165. *Attorney-General v. Smart*, 1 Ves. Sen. 72. *Attorney-General v. Talbot*, Ibid. 78. *Attorney-General v. Clarendon (Earl of)*, 17 Ves. 491. *Berkhampstead School*, 2 V. & B. 134.

By a private act of parliament for regulating Bolton School, the number of trustees was limited to twelve, of whom seven were to constitute a *quorum*; and there was a clause in the act by which it was enacted, that if any of the constitutions or provisions in the act should be found inconvenient or impracticable, the trustees might apply by petition to the lord chancellor, who might, in a summary way, vary such constitution or provisions.

It having been found impracticable to assemble seven out of the twelve trustees, all of them except two applied to the lord chancellor, either to increase the number of trustees to sixteen, or to limit the *quorum* to five only. But the lord chancellor thought, this was not within his jurisdiction, which, though it might extend to varying bye-laws, or particular provisions, did not comprise a power to alter the general constitution of the trust itself, and therefore, that the application must be made to parliament. *Exp. Bolton School*, 2 Bro. C. C. 662. *Attorney-General v. Foyster*, 1 Anst. 118.

Where there is a foundation by the crown, and there is a particular direction by the charter for the application of the revenue, no decree will be made for the establishment of a charity, which is properly regulated by charter from the crown. *Attorney-General v. Smart*, 1 Ves. Sen. 72. Shelford on Mortmain, 336.

Questions which properly fall under the cognizance of the visitor of a charitable foundation, cannot be decided by a court of Equity, nor the decision of the visitor, however erroneous, be altered upon bill or information. *Attorney-General v. Harrow School (Governors of)*, 2 Ves. Sen. 552. *Attorney-General v. Bedford (Corporation of)*, Ibid. 505. *Attorney-General v. Catherine's Hall, Cambridge (Master of)*, Jacob, 392. Shelford on Mortmain, 370. And *à fortiori* such questions cannot be determined upon petition under Stat. 52 Geo. 3. c. 101. *Exp. Berkhampstead Free School*, 2 V. & B. 137. *In re Bedford Charity*, 2 Swanst. 520, 524. *Coveney's case*, Dyer, 209 (a), pl. 20.

viii. *Costs.* Where a petition had been presented in the year 1813, to the lord chancellor, as visitor of a college in right of the crown, touching the same matters as were in question in an information and bill filed in 1817, the order for taxing the costs in the suit included specifically those of the petition. *Attorney-General v. Catherine's Hall, Cambridge (Master of)*, Jacob, 401, 402.

The lord chancellor can award costs on a petition to him as visitor, and in a case which arose between the fellows of a college

or assigns, according to such *rules, statutes, and ordinances*(1) as shall be set forth, made, devised, or established by the said founder or founders, their heirs or assigns, in writing under his or their hand and seal, not being repugnant or contrary

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relative to the election of a president, the petitions having been dismissed, the costs were ordered to be paid out of the funds of the college. *Case of Queen's College*, Jacob, 47. *In re Bedford Charity*, 2 Swanst. 532.

(1) *Rules, statutes, and ordinances*:—It is a legal incident to every corporation, that it should possess the power of making bye-laws, regulations, or ordinances, relative to the purposes for which such corporation is instituted. *Le case de Sutton's Hospital*, 10 Co. 30 (b). *Feltmakers (Corporation of) v. Davis*, 1 B. & P. 100.

There are, as previously observed, two sorts of corporations; *first*, those that are for public government; and, *secondly*, those that are for private charities; the first are governed by the common law, but the second are the creatures of the founders, and governed by their private laws; not that the particular persons are exempted from the common law, but the body in general is; and as these are private laws, they are in the nature of trusts, and the breach of them is no crime cognizable by the common law. The king's power of pardoning arises from his having the executive in him, and when the king is founder of an eleemosynary corporation, yet the breach of his private statutes is not a crime against the crown. The crimes pardoned are such as are against the public laws and statutes of the realm, whereas eleemosynary statutes are in the nature of domestic rules for the better ordering of a private family. *Rex v. Ely (Bishop of)*, 2 T. R. 290. Str. 912. Vide etiam *Philips v. Bury*, 1 Ld. Raym. 5. 4 Mod. 106. Skin. 447. 1 Burn's E. L. by Phillimore, 439 (b). *Green v. Rutherford*, 1 Ves. Sen. 472. Ayliffe's Hist. Univ. Oxford, 95.

Where a founder makes a perfect constitution of his charity, the trustees can make bye-laws,—which are absolute. *Attorney-General v. Lock (Sir John)*, 3 Atk. 164. *Attorney-General v. Price*, Ibid. 108.

A power may be given to commissioners to make bye-laws for the regulation of a charity, and where the power so given is too extensive, it will be void only *pro tanto*. *Eden v. Foster*, 2 P. Wms. 325.

A bye-law can regulate in a reasonable manner the exercise of a right, the internal affairs of a corporation, or the conduct of its members, or the mode by which a person is to be admitted to the exercise of a right to which he has an inchoate title; but it cannot take away a right, or impose any unreasonable restraint in its exercise. 1 Rol. Abr. *Bylawes* (A), 365. *Erdbury v. Button*, 1 And. 234. *Player v. Jenkins*, 1 Sid. 284. *Gunmaker's Company v. Fell*, Willes, 384, 388. *Taylor's de Ipswich v. Sherring*, 1 Roll. 4. 1 Saund. 312. *Harscot's (Dr.) case*, Comb. 203.

Corporations can make bye-laws of amotion for just cause, upon the principle, that it is

requisite to the good order and government of corporations that there should be such a power. *Rex v. Richardson*, 1 Burr. 517.

If a bye-law or private statute be not observed for a long time, a repeal of it must be presumed. *Attorney-General v. Middleton*, 2 Ves. Sen. 328.

A bye-law can always be rescinded by those who have the powers of legislature for the time being.

The charter or statute by which a corporation has been created, can alone prescribe the mode of its continuance, and any bye-law varying such constitution will be invalid. *Rex v. Spencer*, 3 Burr. 1827.

A bye-law may be good in part, and bad in part—this is meant of a whole body of bye-laws, one of which may be good, and the other bad; but when two parts of a bye-law cannot be severed, and one is bad, and the other is good, the bye-law is invalid.

Bye-laws that are unreasonable or unjust are bad, and so also are those which are uncertain. *Bosworth v. Hearne*, Andr. 93. *Robinson v. Groscolt*, Holt, 130. *Mitchell v. Reynolds*, 10 Mod. 133. *Leathley v. Webster*, Say. 252.

A bye-law to incur a forfeiture, or the imposition of personal restraint, is illegal.

The mode of election prescribed by the founder cannot be altered, except where its exercise has become impracticable. *Lee v. Wallis*, 1 Ken. 292. *Rex v. Ginever*, 6 T. R. 732.

Neither can any other qualifications or restraints upon those who are to be the objects of the founder's bounty, be in any respect diverted. *Rex v. Tappenden*, 3 East, 186.

If a donation be made to an existing eleemosynary institution, a bye-law cannot make it subservient to the bye-laws of the original founder, unless made so by the second founder, in which case he will be considered as a co-founder, because every man is considered the regulator of his own gift. *Green v. Rutherford*, 1 Ves. Sen. 462. *Attorney-General v. Talbot*, Ibid. 78. *Attorney-General v. Clare Hall, Cambridge*, 3 Atk. 674.

Any bye-law for the imposition of an oath, except in relation to those oaths which are sanctioned by the common law, or where express authority is given to them by statute, is illegal; and if such a bye-law be made, the persons who administer such an oath, (except as so authorized,) are liable to fine and imprisonment. 2 Inst. 478, 479. 3 Ibid. 165. 1 Stephens on Corporations, 12, (2nd edit.)

The visitor, as before mentioned, is the proper judge of the laws of the college; he is alone to determine offences against these private laws, and to punish their violation.

But when the law of the land is disobeyed, the court of King's Bench will exercise its jurisdiction. *Rex v. St. John's College, Cambridge*, 4 Mod. 233.

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The statutes and ordinances of an hospital. The founder may place the head and members. Leases made by hospitals.

A saving of the right of others in the hospital lands.

Certain persons not enabled to create hospitals.

Ten pounds lands at the least shall be assured to an hospital.

The construction of this act.

Farther provisions relating hereto, see 13 & 14 Car. 2. c. 12; 7 & 8 Gul. 3, c. 37, empowering the king to grant licence to alien in mortmain; and 9 Geo. 2, c. 36, which restrains gifts in mortmain by will.

to the laws and statutes of this realm; any law, statute, custom, usage, or other thing whatsoever to the contrary in any wise notwithstanding: and that it shall be lawful unto the founder or founders, his and their heirs or assigns, upon the death or removing of any head or member of any such corporation, to place one other in the room of him that dieth, or is removed, successively for ever.

“II. Provided always, that all leases, grants, conveyances, or estates, to be made by any corporation so to be founded as aforesaid, exceeding the number of one and twenty years, and that in possession, and whereupon the accustomed yearly rent or more, by the greater part of twenty years next before the making of such lease, shall not be reserved and yearly payable, shall be void. Saving to all persons, bodies politic and corporate, their heirs and successors, (other than the founders and givers, their heirs and successors,) all such right, title, claim, possession, rents, services, commons, demands, interest, and profits, which they or any of them shall have, or of right ought to have, of, in, or to any the lands, tenements, or hereditaments hereafter to be given, limited, or assigned in form aforesaid, in as ample manner as if this statute had never been had or made.

“III. Provided also, that this act or any thing therein contained shall not extend to enable any person or persons, being within age, women covert without their husbands, or of not *sane memoriæ*, to make any such corporation, or to endow the same; any thing in this present act to the contrary thereof in any wise notwithstanding.

“IV. Provided always, that no such hospital, *maison de Dieu*, abiding place, or house of correction, shall be erected, founded, or incorporated by force of this act, unless upon the foundation or erection thereof, the same be endowed for ever, with lands, tenements, or hereditaments, of the clear yearly value of ten pounds by the year.

“V. Provided also, and be it further enacted, that no such incorporation to be founded by force of this act shall at any time hereafter do or suffer to be done any act or thing, whereby or by means whereof any of the lands, tenements, hereditaments, stock, goods, or chattels of such incorporation, or any estate, interest, possession, or property of or in the same or any of them, shall be vested or transferred in or to any other whatsoever, contrary to the true meaning of this act: and that such construction shall be made upon this act as shall be most beneficial and available for the maintenance of the poor, and for repressing and avoiding of all acts and devices to be invented or put in ure contrary to the true meaning of this act.”

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c. 6.

XLIX. STAT. 39 ELIZABETHÆ, c. 6(1). A.D. 1597.

“Commissions may be awarded to certain Persons, to inquire of Lands or Goods given to Hospitals, or other Charitable Uses, misemployed, and to reform them. Saving for the Execution of Orders and Decrees before made by Commissioners according to this Statute.”

STAT. 39 ELIZ.
c. 8.

L. STAT. 39 ELIZABETHÆ, c. 8(2). A.D. 1597.

“An Act concerning the Confirmation and Establishment of the Deprivation of divers Bishops and Deans, in the beginning of Her Majesty's Reign.”

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c. 22.

LI. STAT. 39 ELIZABETHÆ, c. 22. A.D. 1597.

“An Act for the Establishment of the Bishoprick of Norwich, and the Possessions of the same, against a certain pretended concealed Title made thereunto.”

LII. STAT. 39 ELIZABETHÆ, c. 23 (1). A.D. 1597.

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c. 28.

"A Confirmation of the Queen's General and Free Pardon."

[Except all offences of dilapidations for which any suit is or was depending (2) upon the said first day of this parliament.]

LIII. STAT. 43 ELIZABETHÆ, c. 2 (3). A.D. 1601.

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"An Act for the Relief of the Poor."

LIV. STAT. 43 ELIZABETHÆ, c. 4. A.D. 1601.

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"An Act to redress the misemployment of Lands, Goods, and Stocks of Money heretofore given to certain Charitable Uses (4)."

"Whereas lands, tenements, rents, annuities, profits, hereditaments, goods, chattels, money, and stocks of money, have been heretofore given, *limited*,

Commissioners
authorized to
inquire of mis-
employment of

(1) Expired.

(2) *Is or was depending*:—About the time that the act of pardon, 2 G. & M. c. 10, was passed, a suit had been commenced in the ecclesiastical court by the successor against the executor, for dilapidations; and prohibition was prayed, upon this suggestion; that though in the said act offences for dilapidations were excepted, the exception was limited to such dilapidations for which any suit is or was depending on the 20th day of March then last; and that the suit in question had been commenced since. But the whole court conceived, that "the parliament never intended to take away the successor's remedy for dilapidations, for that would be to ease the executor of the last incumbent, who was the wrong doer, and translate the charge to the successor." But they would intend this exception, of such suits as might be in the ecclesiastical court, *ex officio*, against the dilapidator himself, to punish it as a crime against the ecclesiastical law, and to pardon it, unless there were prosecution before the day aforesaid: and so the prohibition was denied. *Anon.*, 2 Vent. 216.

(3) It has not been deemed expedient to print the Poor-Law Statutes, as such statutes do not strictly come under the designation of Clerical Statutes or Eleemosynary Institutions; exclusive of which, if the Poor-Law Statutes, with the decisions thereon, were printed, the bulk of this publication, and its expense, would be greatly increased.

This statute has been amended by Stat. 2 Jac. 1, c. 25. 7 Jac. 1, c. 5. 21 Jac. 1, c. 12. 3 Car. 1, c. 4. 13 & 14 Car. 2, c. 12. 8 & 9 Gul. 3, c. 30. 9 & 10 Gul. 3, c. 11. 12 Ann. c. 18. 9 Geo. 1, c. 7. 12 Geo. 2, c. 29. 17 Geo. 2, c. 3. 17 Geo. 2, c. 37. 17 Geo. 2, c. 38. 18 Geo. 3, c. 47. 22 Geo. 3, c. 83. 32 Geo. 3, c. 57. 33 Geo. 3, c. 55. 35 Geo. 3, c. 101. 41 Geo. 3, c. 23. 50 Geo. 3, c. 49. 51 Geo. 3, c. 80. 52 Geo. 3, c. 160. 53 Geo. 3, c. 113. 54 Geo. 3, c. 70. 54 Geo. 3, c. 91. 54 Geo. 3, c. 170. 55 Geo. 3, c. 137. 56 Geo. 3, c. 139. 57 Geo. 3, c. 93. 59 Geo. 3, c. 12. 59 Geo. 3, c. 50. 59 Geo. 3, c. 95. 1 Geo. 4, c. 36. 1 & 2 Geo. 4, c. 32. 1 & 2 Geo. 4, c. 56. 6 Geo. 4, c. 57. 7 & 8 Geo. 4, c. 17. 1 Gul. 4, c. 18. 2 Gul. 4, c. 42. 3 & 4 Gul. 4, c. 30. 3 & 4 Gul. 4, c. 40. 3 & 4 Gul. 4, c. 63. 4 & 5 Gul. 4,

c. 76. 5 & 6 Gul. 4, c. 69. 6 & 7 Gul. 4, c. 96. 1 Vict. c. 50. 2 & 3 Vict. c. 51. 3 & 4 Vict. c. 29. 3 & 4 Vict. c. 54. 3 & 4 Vict. c. 89. 4 & 5 Vict. c. 32. 4 & 5 Vict. c. 48. 5 Vict. c. 7. 5 & 6 Vict. c. 18. 5 & 6 Vict. c. 48. 5 & 6 Vict. c. 50. 5 & 6 Vict. c. 57. 5 & 6 Vict. c. 97. 6 & 7 Vict. c. 8. 6 & 7 Vict. c. 36. 6 & 7 Vict. c. 48. 6 & 7 Vict. c. 92.

(4) *Charitable Uses; generally*:—"Charity, in its widest sense, denotes all the good affections, men ought to bear towards each other; in its most restricted and common sense, relief of the poor. In neither of these senses is it employed in this court. Here its signification is derived chiefly from the statute of Elizabeth. Those purposes are considered charitable, which that statute enumerates, or which, by analogies, are deemed within its spirit and intendment; and to some such purpose every bequest to charity generally shall be applied. But it is clear, liberality and benevolence can find numberless objects, not included in that statute, in the largest construction of it." Per Sir William Grant, in *Morice v. Durham (Bishop of)*, 9 Ves. 405.

The senses of the word *liberality* are various. Assisting persons deprived not of the necessities, but of the comforts of life, may come within the description of *liberality*. Formerly exhibitions or combats by wild beasts and gladiators were considered objects of *liberality*. At present a public exhibition of pictures may be so considered, but such an application may be properly made in opposition to a gift to an hospital, which would be correctly termed *charitable*.

Liberality is distinguished from *benevolence*, but *benevolence* is also distinguishable from *charity*. For although many charitable institutions are very properly called *benevolent*, every object of a man's benevolence, is not an object of his charity.

No case appears where a bequest has been deemed *charitable*, if the testator did not use that word, or point out some object which the court has considered charitable in its nature. *Morice v. Durham (Bishop of)*, Ibid. 399. *Hereford (Bishop of) v. Adams*, Duke's Charitable Uses, 566. *Moggridge v. Thackwell*, 1 Ves. 464. *Paice v. Canterbury (Archbishop of)*, 14 Ibid. 370. *James v. Allen*, 3 Meriv. 17. *Vezey v. Jamson*, 1 S. & S. 69. *Ommaney v. Butcher*, 1 Turn. & R. 260.

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Things which can be granted to a charitable use. It is not necessary, that the gift should be to the poor, for many of the objects considered charitable are more beneficial to the rich than the poor; such as repairing and preserving bridges and buildings, &c., which are of indiscriminate benefit. *Attorney-General v. Dublin (Mayor of)*, 1 Bligh N. S. 312.

Funds supplied from the gift of the crown, or from the gift of the legislature, or from private gift, for any legal, public, or general purpose, are charitable funds to be administered by courts of equity.

It is not material if the particular, public, or general purpose be not expressed in Stat. 43 Eliz. c. 4; all other legal, public, or general purposes being within the equity of that statute.

It is the source from whence the funds are derived, and not the mere purpose to which they are dedicated, which constitutes the use *charitable*; and funds derived from the gift of the crown, or from the gift of the legislature, or from private gift, for paving, lighting, cleansing, and improving a town, are within the equity of Stat. 43 Eliz. c. 4.

But when an act of parliament passes for paving, lighting, cleansing, and improving a town, to be paid for wholly by rates or assessments to be levied upon the inhabitants of that town, the funds so raised being in no sense derived from bounty or charity, in the most extensive sense of that word, are not charitable funds to be administered, by the court of Chancery. *Attorney-General v. Heelis*, 2 S. & S. 67, 76, 77. *Attorney-General v. Crompton*, 1 Y. & C. 424. *Harvey v. Harvey*, 4 Beav. 219.

If the crown be entitled to tolls, and grant them as a charitable use, they are subject to all the incidents of other property so granted.

Although the crown might grant its own lands with all its own incidents, such as a right to impose a toll for passing through them; it is doubtful, when the crown creates tolls *de novo*, and does not grant existing tolls, whether it can be considered as a charitable trust. Because, if the crown had a right to originate a distinct unattached grant of tolls for charitable purposes, it might be difficult to say, what burdens the subject might not be exposed to. *Attorney-General v. Galway (Corporation of)*, 1 Molloy (Irish), 103. 1 Beatty (Irish), 298.

If there be a general obligation to be performed by a civil corporation, which is in the nature of a charitable use, the court will give relief, and therefore, a grant from the crown of certain privileges and property for the defence and preservation of the peace within a city, is a charitable gift. *Attorney-General v. Carlisle (Corporation of)*, and *Robinson v. Carlisle (Corporation of)*, 2 Sim. 437. *Attorney-General v. Brown*, 1 Swanst. 265. *Attorney-General v. Heelis*, 2 S. & S. 67. *Attorney-General v. Gort*, 6 Dow. 136. *Attorney-General v. Dublin (Corporation of)*, 1 Bligh N. S. 312.

It is competent for a party by deed to point out particular classes of persons which are intended to be the objects of his favour, and then to leave it to an individual, or to a

body of individuals after his death, to select out of those classes the particular individuals, or the particular objects, to whom his bounty shall be applied. *Crichton v. Grierson*, 3 Bligh N. S. 424.

But where a testator made a bequest of stock to government, "in exoneration of the national debt," it was directed to be transferred to such persons as the king, under his sign manual, should appoint. *Newland v. Attorney-General*, 3 Meriv. 684.

A bequest to a charitable use, of damages to be recovered in an action of debt, &c. by the donor's executors, is a good bequest. So are damages recovered by a tennor in covenant upon an ejectment. And the same law has been held to apply to lands recovered in value, and of a tenancy which escheated to a seignior, if granted to a charitable use.

"An advowson may be granted upon condition, that so often as the church shall be void, a poor scholar of such a college shall be preferred, and the limitation is good." *Duke's Charitable Uses*, 137.

If a man make a lease for life upon condition, and then grant his reversion, upon condition, to perform a charitable use, if the grantee enter for conditions broken, he will presently hold as charged with the use. *Ibid.*

An annuity, neither charged on land, nor to be paid out of nor secured by any charge or interest in land, can be given to charitable uses, and a direction to executors, to settle an annuity for a charitable purpose generally, and not requiring the fund to be laid out in land, is valid. *Waite v. Webb*, 6 Madd. 71. *Sorresby v. Hollins*, 9 Mod. 221.

Things which cannot be granted to a charitable use. There are five descriptions of things which cannot be granted to a charitable use; 1st, things that yield no profit; 2nd, things that are incident to others, and inseparable; 3rd, possibilities of interest; 4th, conditions; and 5th, copyholds, if any way prejudicial to the lords.

In order to create a charitable use, the trust must be of such a tangible nature, that the court can deal with it, when it is mixed up with general moral duty, and is not the subject of the jurisdiction of a court of justice. *Ommanney v. Butcher*, 1 Turn. & R. 273. *Nash v. Morley*, 5 Beav. 177.

A gift to a person for his own benefit, whereby consequential charity might arise, is not a charitable use. *Attorney-General v. Haberdasher's Company*, 5 Sim. 478. *Attorney-General v. Fishmongers' Company*, 5 M. & C. 11.

An advowson in gross, a way or passage, matters of pleasure, as licence to hunt in a park, a seignior *pro fealty* only, &c., cannot be granted to a charitable use. So likewise a devise to a college, not for academical or collegiate purposes, but merely to make the testator's house alienable, is not a grant to a charitable use. *Attorney-General v. Whorwood*, and *Whorwood v. University College, Oxford*, 1 Ves. Sen. 534. *Duke's Charitable Uses*, 137.

A gift for erecting a monument to the testator's memory, or for the reparation of a vault, is not a charitable use. *Mellick v. The Asylum (The President and Guardians*

appointed(1), and assigned, as well by the queen's most excellent majesty, and her most noble progenitors, as by sundry other well disposed persons: some for *relief*(2) of *aged, impotent, and poor people*(3), some for maintenance

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lands or goods given to hospitals, &c.

of), Jacob, 186. *Durour v. Motteux*, 1 Ves. Sen. 320. *Gravenor v. Hallum*, Ambl. 643. *Doe d. Thompson v. Pitcher*, 3 M. & S. 407.

But they may be released to a charitable use, or sold, and the money provenient, disposed to a charitable use. *Duke's Charitable Uses*, 137.

A common appendant, or an annuity *pro consilio impendendo*, and such things as are not separable, cannot be granted to a charitable use. Ibid.

A direction to executors to apply property in general and undefined terms without naming any specific object, will not create a charitable use. *James v. Allen*, 3 Meriv. 17. *Morice v. Durham* (*Bishop of*), 9 Ves. 399. *Browne v. Yeall*, cit. 7 Ibid. 50. *Vezey v. Jamson*, 1 S. & S. 69. *Doe d. Toone v. Copestake*, 6 East, 328. *Corbyn v. French*, 4 Ves. 418. *Attorney-General v. Whorwood*, 1 Ves. Sen. 534. *Townley v. Bedwell*, 6 Ves. 194.

And where a testator, who has given his personal estate to charitable uses, contracts to sell real estates, but the sale is not completed in his life-time, his lien upon the estate for the amount of the purchase money is an interest in land within the Statute of Mortmain, and the purchase money will not pass by his will to a charity. *Harrison v. Harrison*, 1 Russ. & M. 71. *March v. Attorney-General*, 6 Jurist, 831. *Selsey (Lord) v. Lake (Lord)*, 1 Beav. 146.

(1) *Limited, appointed*.—Under these words the judges have held, that "if there was a gift in fact by a person who had a legal capacity to give in any way, the intention, improperly executed, was a sufficient foundation for supplying any imperfection in the mode of donation, and that the legislature intended, that if estates were given in fact, defects in form were to be overlooked, and the charity to take place." *Attorney-General v. Tancred*, 1 Eden, 14.

In Lord Nottingham's MSS. it is stated, there are no words in Stat. 43 Eliz. c. 4, which apply to an antecedent gift, which do not apply to subsequent gifts; and he considers that all subsequent gifts and subsequent conveyances, though in themselves void, were made good by effect of Stat. 43 Eliz. c. 4.

"One would have thought, *primâ facie*, that this act could give effect only to those assurances and conveyances which had been made at the time of passing the act, and which ought to be presumed to be good, and that it could not give validity to void assurances and conveyances subsequently made; yet the authorities have decided, that it had both a retrospective and a prospective effect." Dict. Lord Eldon, *Attorney-General v. Skinners' Company*, 2 Russ. 419.

The Statute of Charitable Uses is a partial repeal of the exception in the Statute of Wills; thus, when Doctor Floyd was seised of lands in *capite*, and devised them to Jesus College, in Oxford, and their successors,

to find a fellow there, which should be of his blood and alliance; it was referred to the judges, whether this devise was good or no; and they resolved and certified, that "by the common law, and Statute of Wills, the devise was void; for these statutes enabled persons to devise their lands, excepting to corporations, for that is mortmain. Also, none can devise all their *capite* lands to any, but must leave a third part to descend;" but they certified and resolved, that "although it be void by the common law, yet the statute of 43 Eliz. for charitable uses, doth make this good, as a limitation and an appointment, and that it was good for all the land. But if an infant or lunatic, who, by law, is disabled to make a will, or [to make a] devise of his land, do devise his land to a charitable use, this is void, and not made good by the statute, for want of a capacity to make a will by law." *Jesus College, Oxford*, *Duke's Charitable Uses*, 363. *Attorney-General v. Skinners' Company*, 2 Russ. 418. *Collison's case*, Hob. 136.

A conveyance to charitable uses, on account of uses being limited to certain officers of a corporation, and not to the corporate body, was aided under Stat. 43 Eliz. c. 4. *Attorney-General v. Tancred*, 1 Eden, 10. *Case of Christ's College, Cambridge*, 1 Black. (Sir W.), 90.

(2) *Relief*.—Under the word *relief* are comprised meat, drink, and apparel, wherein the following requisities are essential: i. That it be for necessity only, not for ornament or superfluity; ii. That it be according to the laws, not against the law; iii. That it be not given to do some act against the law.

A gift to build houses for the poor, with four acres to a cottage; to make conduits to such almshouses; to maintain a common laundress for the poor of such houses; to maintain one to read prayers to the poor of such a house; to build a house for the poor to resort unto, to receive their alms, pensions, or payments; to provide them weapons for the defence of their houses, not to wear abroad for ostentation; to increase the diet of almsmen upon festival days: are charitable uses. *Duke's Charitable Uses*, 126.

(3) *Aged, impotent, and poor people*.—Poverty is the principal and essential circumstance to bring the gift within the compass of this statute, for a gift to the aged of such a parish, or to the impotent of such a parish, without expressing their poverty, is not within the reach of this act, because they may be rich.

But a gift to the poor, of a particular place, or sect, without expressing age or impotency, is good enough; for poverty, without further regard, is a subject sufficient, for charity to work upon.

A gift to all the aged or impotent of such a parish, not assessed in the subsidy, was held to be good; for those which were not assessed in the subsidy were poor within the intent of this statute.

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A gift of money to make a stock to bind apprentices, the children of such men as were not in the subsidy of goods, or to relieve bastards, is a charitable use, because they are like orphans, having (by intendment of law) no parents to relieve them.

To find bows and arrows for the children of poor men in such a parish, was good also, because it was an ease to their fathers who were poor, and yet were bound to find them. Duke's Charitable Uses, 125.

A gift was made to a parson and his successors, to the use of the "poor of the parish;" the parson made a lease for thirty years, the lessee did not perform the use, and the poor made an entry. It was held, that the gift was good, and that the lease for so many years was good also, notwithstanding Stat. 13 Eliz. c. 10; (*antè* 424;) 1st, because, it was not an ancient glebe of the church; 2nd, because it could not tend to the impoverishment of the successor, inasmuch, as it was given to a charitable use. *Bannister's case in the Star Chamber*, 44 Eliz. Duke's Charitable Uses, 133.

Lands were given to the "poor" of the Hospital of Reading,—the hospital was no corporation, and so not capable; but the "mayor and burgesses" were governors and supervisors of the hospital. The land in equity was decreed to the mayor and burgesses to the use of the poor of that hospital. Duke's Charitable Uses, 136.

Where a testator directed, that as his debts should come in, and his effects be disposed of, his executors should purchase certain annuities, one half to be paid to the elders of a Baptist congregation in trust, for the poor of that congregation, and the other half to the elders of a congregation of Independents, to be distributed amongst the poor in like manner; and the testator, by a codicil, gave another annuity to a person for life, and upon her death to go upon the like trusts as the other annuities; the decree directed the master to set apart a proper fund of the testator's personal estate for securing the payment of the annuities, which were to be applied during the continuance of the lives for which they were given, and after to the charitable uses given by the testator's will. *Attorney-General v. Graves*, Ambl. 157. Shelford on Mortmain, 241.

A conveyance of lands to trustees and their heirs, "in trust for the 'churchwardens and overseers of the poor and inhabitants of the parish of St. Owen, for the time being,' to the intent that the rents and profits might be paid and applied for their use and benefit from time to time, in aid of the rate for the relief of the poor," was held to be a charitable use. *Doe d. Preece v. Howells*, 2 B. & Ad. 744. Shelford on Mortmain, 63.

In all cases where the expressions for the erection or support of a charity are general and uncertain, the court forms a judgment upon taking all the circumstances into consideration, and inclines in favour of the disposition, *ut res magis valeat*. *Reeve v. Attorney-General*, 7 Jurist, 1168. In the case of the *Attorney-General v. Rance*, (Ambl. 422,) a legacy was given to "the poor." There were no words in the will which discovered

what poor were meant; but it appearing that the testator was a French refugee, the court directed the legacies to be given to the poor refugees. Upon which principle a bequest of monies to the poor "inhabitants" of St. Leonard, Shoreditch, was held to be good, and that it should be distributed among the poor not receiving alms. *Attorney-General v. Clarke*, Ambl. 422. Vide etiam *Attorney-General v. Comber*, 2 S. & S. 93. *Powell v. Attorney-General*, 3 Meriv. 48. *West v. Knight*, 1 Ch. Ca. 134. *Champion v. Smith*, Duke's Charitable Uses, 622.

But where the gift is to "the poor" indefinitely, which in common construction extends to all the poor in England, the king will have the disposal of the fund. *Attorney-General v. Matthews*, 2 Lev. 167. Shelford on Mortmain, 62.

So likewise in cases of gifts to "poor relations," (*Attorney-General v. Bucknall*, 2 Atk. 328,) "or to relations the greatest objects of charity," (*Attorney-General v. Doyley*, cit. 7 Ves. 58; *Goodinge v. Goodinge*, 1 Ves. Sen. 231; *Attorney-General v. Buckland*, cit. Ambl. 71; *Thomas v. Hole*, C. T. T. 251; *Anon.*, 1 P. Wms. 327; *Roach v. Hammond*, Pre. Ch. 401; *Crossly v. Clare*, 9th April, 1761, in Ch.) the court of Chancery will exercise its discretion as to the specific objects intended by the testator.

"Such of my nearest relations as my executors shall think the greatest objects of charity," has been held to extend only to such as would take under the Statute of Distributions, because if it were otherwise, "it would be endless to find out everybody that were relations;" evidence will be refused to prove an intention in favour of more distant relations; but evidence will be received in case of an uncertain description of the person, as by a wrong name, to show that the person intended to be described by the testator was known to him by such a nick-name. *Edge v. Salisbury*, Ambl. 70. *Green v. Howard*, 1 Bro. C. C. 31. *Isaac v. Defriez*, Ambl. 595. *Whithorne v. Harris*, 2 Ves. Sen. 527. *Maitland v. Adair*, 3 Ves. 231. *Brunsdon v. Woolredge*, Ambl. 507. *Widmore v. Woodroffe*, Ibid. 636. *Worseley v. Johnson*, 3 Atk. 758. *Davies v. Bailey*, 1 Ves. Sen. 84. *Garrick v. Camden (Lord)*, 14 Ves. 372. *Bailey v. Wright*, 18 Ibid. 49. 1 Swanst. 39. *Thomas v. Hole*, C. T. T. 251. *Mahon v. Savage*, 1 Sch. & Lef. 111. *Pope v. Whitcombe*, 3 Meriv. 689. *Smith v. Campbell*, 19 Ves. 400. *Harding v. Glyn*, 1 Atk. 469. *Cotton v. Cotton*, 2 Beav. 67. *Doe d. Garner v. Lawson*, 3 East, 278. *Hands v. Hands*, 1 T. R. 437, in not. *Devisme v. Mellish*, 5 Ves. 529.

But a donation to poor relations will be supported as a charity in favour of all such relations of the testator as are poor and proper objects. *Brunsdon v. Woolredge*, Ambl. 507. *Carr v. Bedford*, 2 Ch. Rep. 146. *White v. White*, 7 Ves. 423. *Attorney-General v. Price*, 17 Ibid. 371.

Where a person seised in fee of a manor, granted a rent in fee out of it as a charity for the support of several poor persons, and afterwards granted the manor to J. S. in fee;

of sick and maimed(1) soldiers(2) and mariners(3), schools of learning(4), free STAT. 43 ELIZ.
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it was held, that the nomination of the poor persons belonged to the heir of the grantor, and did not go with the manor. *Attorney-General v. Rigby*, 3 P. Wms. 145.

(1) *Sick and maimed*:—"These words must be taken disjunctively and dividedly, so that *and* must be construed for *or*; for if the party be either sick or maimed, he is relievable; but if he be sick, his relief must last no longer than the time of his sickness, and the sickness must be such as ariseth by reason of service, as of fluxes, consumptions, as a maim is a part that disables him for serving any more as a soldier or mariner.

"If the maim happened in lawful service, the party is relievable, and therefore, if in conductions, or in camp, a soldier be maimed by misadventure, he is relievable, although he depart from service without licence, after the maim taken, because the maim was lawful. But if one serve an enemy, and be there maimed, although he be after pardoned, yet he is not to be relieved by this law. So if his hand be cut off for an offence, though he were in an English band, because it was not in service." *Duke's Charitable Uses*, 127.

(2) *Soldiers*:—"Under the word *soldiers* are contained every one, whether voluntary or pressed, that hath served in any band as a common soldier, or captain; but no voluntary victuallers, nor the wives, children, or servants of maimed soldiers, because they cannot participate of their maims. If an alien be maimed in English service, he is relievable by this statute. But if an Englishman serve in the wars of an alien, he is not a soldier within the meaning of this act." *Ibid*.

(3) *Mariners*:—"By this word are understood all necessary servants in a ship, as well as the master or pilot; so are victuallers; so are artificers; and so are mariners in merchants' ships, as well as in the king's, or in ships of war; because the merchants' are employed in service of the realm, as well as men-of-war; but neither the owners, nor passengers, nor bargemen, nor wherry-men, nor such as serve in the ships of aliens, or such ships as go to sea without letters of mart, are mariners within the intent of this law." *Ibid*.

If a college be built for the reception of poor merchants who have lost their estates by perils of the sea, or other accidents, looking at the class of persons who are the objects of this charity, its increased income should be devoted to their more comfortable support, rather than to the augmentation of their number. *Attorney-General v. Lubbock*, Cooper (C. P.), 28.

(4) *Schools of learning*:—"Such are schools of writing, reading of languages, music, or any mathematical sciences, or playing of organs by men, because such music is used in churches.

"But no schools of dancing or fencing are within the intent of this law, because they are matters of delicacy, not necessity.

"No schools for catechizing, because religion is variable, and not within this sta-

tute." *Duke's Charitable Uses*, 128.

All schools and establishments for learning are considered charities under the statute of Elizabeth, and therefore, the British Museum, intended for public improvement, is in the nature of a charitable institution. *British Museum (Trustees of) v. White*, 2 S. & S. 594. *Attorney-General v. Lonsdale (Earl of)*, 1 Sim. 109.

Mr. Shelford, (Law of Mortmain, 182,) conceives that the authorities may, perhaps, warrant the conclusion, that a bequest to build upon land to be given by others for the purposes of the particular charity specified by the testator, will be valid, provided land be afterwards legally acquired for the purpose; but in the absence of an express declaration upon the subject, it will be inferred, it was the testator's intention that land should be bought by his trustees, and not that it should be supplied by others, in which case the gift will be void.

Where a tenant in tail devised lands for the maintenance of a schoolmaster, and other charitable purposes, it was decreed to be a good appointment within the Statute of Charitable Uses, though no fine was levied, or recovery suffered. *Attorney-General v. Rye*, 2 Vern. 453.

In *Attorney-General v. Williams*, (2 Cox, 387; 4 Bro. P. C. 526,) the testator directed the dividends of certain sums in the public funds to be applied for or towards establishing a school. It did not appear, that there was any school already in existence; and he afterwards declared his meaning to be, that the schoolmaster should not have a less salary than 30*l.* per annum, and that the overplus of the dividends should be applied in buying books, fire, clothes, and other necessities for the children, and placing them out as apprentices, but no part to be applied for victuals, drink, or lodging. The court thought this bequest was not void under the statute. *Vide etiam Attorney-General v. Nash*, 3 Bro. C. C. 588.

A bequest of 7,100*l.* to be laid out in funds, the interest and dividends to be applied in providing a proper school-house, has been held to be good. And a bequest of residue for benefit of such charities, public and private, as executors may think fit, and amongst others to establish a life-boat at B. has likewise been supported. *Johnston v. Swann*, 3 Madd. 457.

Where a testator directed, that "a proper school-house should be provided," which might be by hire, it is some evidence of an intent that land should not be bought, and where that is apparent the devise is good. *Ibid. Giblett v. Hobson*, 5 Sim. 661. *Attorney-General v. Chester (Bishop of)*, 1 Bro. C. C. 444. *Henshaw v. Atkinson*, 3 Madd. 313.

A bequest in the following words was held not to amount to a direction for building or hiring a school: "I direct also, that my executors or the survivor, &c. do and shall pay, out of some part of my money in the funds, the yearly sum of 200*l.* for and towards the support of a school at Ross,

STAT. 43 ELIZ. *schools*(1), and *scholars in universities*(2), some for *repair of bridges*(3), *ports*, c. 4.

in Herefordshire, at the discretion of my said executors." *Attorney-General v. Jordan*, Highmore on Mortmain, 225.

As to how far a testator's intention may be effected by hiring land, or by a gift from others; it has been held, that where money was given towards erecting a school, that the end might be obtained by hiring a house which was directed for ever. *Cantwell v. Baker*, cit. 2 Ves. Sen. 185.

Where a school-house was built prior to Stat. 9 Geo. 2, c. 36, on the waste of a manor, given by the lord for that purpose, and paid for by subscriptions, from the lord of the manor and other parishioners, and never subsequently used, otherwise than as a public school-house; it is so dedicated to charity and in mortmain, that a bequest for the purpose of repairing and enlarging it, and of providing a salary for a schoolmaster, was held to be a valid legacy. *Ingleby v. Dobson*, 4 Russ. 342.

A residuary bequest for the purpose of bringing up children in the Roman catholic faith, although void, does not go to the next of kin, but is in the disposition of the crown to some other charitable use by sign manual. *Cary v. Abbot*, 7 Ves. 490. *Attorney-General v. Fishmongers' Company*, 2 Beav. 151.

Where a sum of money was bequeathed to erect a blue-coat school, and establish a blind asylum, with a direction, that lands should not be purchased, and the expression of an expectation that lands would be given for the charities; the bequest was held not to be void under the Mortmain Act. *Henshaw v. Atkinson*, 3 Madd. 306.

(1) *Free schools*.—These are to be understood grammar schools, and all things requisite thereunto, as provision for the room, for the school, the master and usher, and the lodgings, &c. Sed vide *Attorney-General v. Jackson*, 2 Keen, 541.

Gifts of lands to maintain the schoolmaster of a town, (*Hynshaw v. Morpeth* (Corporation of), Duke's Charitable Uses, 242,) to build a school, (*Rugby School*, Ibid. 633,) or to erect a free grammar school, (*Gibbons v. Maltyard*, Poph. 6; *Shelford on Mortmain*, 70,) have been held to be charitable uses.

If a school upon the true construction of the instruments establishing it, ought to be a grammar school for instruction in the classics, the trustees will not be permitted to convert it into a school for teaching merely English, writing, and arithmetic, though it had ceased, from before the time of living memory, to be a place for classical education, and though it appeared, from old regulations, that elementary instruction in English had always been one of the objects of the institution. *Attorney-General v. Mansfield* (Earl of), 2 Russ. 501.

Where the original statutes of a school show, that the intention of the founder was, that the master should be employed personally in teaching the children, he must not leave the detailed management of the school to an usher, nor is it any excuse for his

doing so, that, as minister of a chapel annexed to the school, he devotes his time to ecclesiastical duties. Ibid.

Upon a devise to trustees in trust to constitute and support a grammar school at P., to appoint a master and usher, and to pay them certain salaries, and the trustees to direct the management of the school: it was held, that the school was to be a free grammar school for teaching the learned languages; that the proper objects were the children of the resident inhabitants of P.; that they must be the children of protestants, and must be educated according to the principles of the church of England; that the master might take boarders and day scholars; that the number of free scholars was to be limited; and in fixing the number, the court was guided by the amount of salary originally provided; that the free scholars were to be nominated by the trustees; that the trustees were to visit the school at their discretion, and to be allowed their reasonable expenses: but an augmentation of the salaries of the master and usher made by the trustees upon an increase of the income of the charity, was not allowed to them, the school, through error, not having been devoted to the proper objects. *Attorney-General v. Christ Church, Oxford*, Jacob, 474.

On construction of the will of Sir A. Judd, the Skinners' Company were held to be trustees of certain lands in their corporate character as governors of the possessions, &c., of the free grammar school of Sir A. Judd, in the town of Tonbridge, and that the same were held by them according to the tenour of letters patent of Edward 6, "for the support of the master and under master of the said school, and for the reparation of the said lands, and tenements, and not otherwise, nor to any other uses and intents." *Attorney-General v. Skinners' Company*, 5 Madd. 173, affirmed, Jacob, 629.

The master of a free school being appointed by the persons acting as trustees, and having acted as such for many years, the validity of his appointment cannot be questioned, if he have duly executed the duties of his office; and the master of a free grammar school can be permitted to take boarders to be educated in the school, but not so, as to prejudice the free scholars. Several donations, partly for the support of a school, and partly for the support of a grammar school, being devoted, by the commissioners of charitable uses in 1623, to the maintenance of a grammar school, and that decree having since been followed, the whole revenues must be applied to the use of a grammar school, at least during the continuance of a master appointed under the present system. *Attorney-General v. Hartley*, 2 J. & W. 353. Vide etiam *Attorney-General v. Stamford* (Earl of), 12 Law Journ. N. S. 297.

On an application for the regulation of a free grammar school, the practice at that period of the appointment of the present master thereof, was considered during his continuance in office. Ibid.

Several endowments, partly for a school,

and partly for a grammar school, were held, upon the ground of constant usage, to have been legally devoted to the latter purpose. *Ibid.* 379.

The court of Chancery will extend the application of the surplus income of property, given for the support of grammar schools, beyond the mere literally expressed intention of the donor, provided such income be applied to subjects connected with that intention. *Attorney-General v. The Haberdashers' Company*, 3 Russ. 530. *Attorney-General v. Brentwood School*, 1 M. & K. 377. *Attorney-General v. Dulwich College*, 4 Beav. 265. *Attorney-General v. Pretyman*, *Ibid.* 464.

If a man give a stock of money to be put out to young tradesmen at 5l. per cent., the interest money to be employed upon young students in divinity, to provide them living withal: this use to the students is not a charitable use, because "it depends upon usury, and maintains simony." *Duke's Charitable Uses*, 136.

If a poor scholar be married, or be placed in the College of Physicians, he is not to be relieved by this statute, because it is presumed he hath competent advancement.

By Stat. 2 & 3 Gul. 4, c. 115, Roman catholics are to be subject to the same law as protestant dissenters with respect to schools. But Roman catholic schoolmasters are required to take the oath which is prescribed by Stat. 10 Geo. 4, c. 7.

As to the regulation of charity schools, vide *Attorney-General v. Clarendon (Earl of)*, 17 Ves. 491. *In re Rugby School*, 1 Beav. 457. *Attorney-General v. Ladyman*, Cooper (C. P.), 180.

Upon a petition to the lord chancellor, as visitor in right of the crown of the free school of W., it appeared that two persons had been elected; the right of election being in the chief inhabitants; but the chief inhabitants at the time of the foundation, and the heir of the survivor could not be discovered; both elections were declared void; and a reference was directed to the attorney-general to report, what directions or alterations would be proper, as to the mode and right of election, and in the orders, constitutions, and directions of the school; as should seem to him most conducive to the interests of the objects of the charity, and the furtherance of the intention of the donors. *Attorney-General v. Black*, 11 Ves. 191.

The court will not interfere where there are particular powers by charter as to a school, though not appointing general visitors, but will as to management of the revenue, and make the master (on collusion with usher) to account for fifteen years' salary. *Attorney-General v. Bedford (Corporation of)*, 2 Ves. Sen. 505. Vide etiam *Attorney-General v. Pretyman*, 4 Beav. 462.

A free school founded by charter, with proper powers, must be regulated in the first instance by the charter, not by application to a court of equity. *Attorney-General v. Middleton*, 2 Ves. Sen. 327.

The nomination of a master to a charity school, is not subject to the general rules of a lapse, as in cases of presentation to liv-

ings. *Attorney-General v. Wyeliffe*, 1 Stat. 43 Eliz. *Ibid.* 80. c. 4.

If a corporation nominate a schoolmaster contrary to the particular tenour of their charter, they will be liable to costs. *Salop (Town of) v. Attorney-General*, 2 Bro. P. C. 402.

Rudiments of English, writing, and arithmetic, will be directed to be taught in a free grammar school. *Attorney-General v. Ladyman*, Cooper (C. P.), 184.

An information will be granted against governors of a charity as individuals, and not in their corporate capacities. *Ibid.* 186.

(2) *Scholars in universities*:—"These general words must be restrained to the particular universities of Oxford and Cambridge; and to such students that study divinity, physic, or law; not students in arts only, nor to any students of divinity in popery," &c. *Duke's Charitable Uses*, 128.

A devise to a college generally for their benefit, to increase the foundation, and advance the end of the institution, as to augment a headship or fellowship, or found a new one, was considered so laudable a charity, that it was excepted out of Stat. 9 Geo. 2, c. 36. *Attorney-General v. Whorwood*, 1 Ves. Sen. 536. *Attorney-General v. The Margaret and Regius Professors in Cambridge*, 1 Vern. 55. *Plate v. St. John's College*, *Duke's Charitable Uses*, 379. *Case of Jesus College*, *Ibid.* 363. *Flood's case*, Hob. 136. *Rex v. Newman*, 1 Lev. 284. *Case of Christ's College*, Cambridge, 1 Black. (Sir W.), 90. *Attorney-General v. Tancred*, Ambl. 351. 1 Eden, 10. *Porter's case*, 1 Co. 25 (b). *Shelford on Mortmain*, 69.

But a devise answering no immediate academical collegiate purpose, or good to the public, is invalid. *Attorney-General v. Whorwood*, 1 Ves. Sen. 534. *Cary v. Abbot*, 7 Ves. 496. *Attorney-General v. Power*, 1 Ball & Beatty, 145. *Doe d. Burdett v. Wrighte*, 2 B. & A. 722.

A devise to promote the studies of a certain number of students within a college, is a devise for the benefit of the body corporate, because it is really and *bonâ fide* beneficial for the college. *Attorney-General v. Tancred*, 1 Eden, 10. *Case of Christ's College*, Cambridge, 1 Black. (Sir W.), 90. *Attorney-General v. Munby*, 1 Meriv. 227.

Lord Rosslyn has questioned the opinion of Lord Northington, (*Attorney-General v. Tancred*, 1 Eden, 16), that the exception contained in Stat. 9 Geo. 2, c. 36, only applied to colleges established in the universities at the time the act passed. *Attorney-General v. Bowyer*, 3 Ves. 728.

(3) *Repair of bridges*:—Such only are intended as are for public passage, not private ease.

A civil corporation will be accountable in Chancery for revenues granted for divers public uses and purposes, for the improvement of the city, and the preservation and support of public buildings, bridges, highways, and establishments therein. *Limerick (Corporation of) v. Attorney-General*, 6 Dow's Parliamentary Cases, 136. *Attorney-General v. Shrewsbury (Corporation of)*, 12 Law Journ. N. S. 465.

STAT. 43 ELIZ. *havens* (1), *causeways, churches* (2), *sea-banks* (3), and *highways* (4), some for education. c. 4.

(1) *Ports, havens*:—Such only as tend to safety of ships of sail, not other vessels; and creeks of harbour, which are employed to find lights to guide ships into the haven, is a charitable use within these words. An imposition granted upon commodities imported or transported, to be employed upon repair of ports or havens, where they shall land, is a charitable use, and within this statute. *Common ponds*, or watering places, are within the equity of these words. Duke's Charitable Uses, 129.

(2) *Churches*:—No use shall be taken by equity to be a charitable use within this statute, if it be not within the letter or words of the statute. But a use may be construed to be within the statute by equity taken upon the letter of the statute, and so within the words *repair of churches, chapels*, may be taken by equity, and under that word *church* all convenient ornaments and concurrents convenient for the decent and orderly administration of divine service, (as for the finding of a pulpit or a sermon bell,) as may be comprehended; for reparations of churches are but preparations for the administration of divine service. Vide etiam *Turner v. Ogden*, 1 Cox, 316.

Trusts for the support of religious institutions belonging to those whom the legislature have countenanced in the Act of Toleration as a denomination of Christians, are charitable. *Attorney-General v. Cock*, 2 Ves. Sen. 275. *Attorney-General v. Fowler*, 15 Ves. 85. *Doe d. Wellard v. Hawthorn*, 2 B. & A. 97. *Doe d. Thompson v. Pitcher*, 6 Taunt. 359. *Corbyn v. French*, 4 Ves. 418. *Grieves v. Case*, 4 Bro. C. C. 67. 2 Cox, 301. *Shanley v. Baker*, 4 Ves. 732. *Davis v. Hopkins*, 2 Beav. 276. *Shuttleworth v. Greaves*, 4 M. & C. 39.

Devises for the advancement of Christianity are pious and good uses, and will be supported by the court of Chancery as charitable uses. *Attorney-General v. Herrick*, Ambl. 712. *Cook v. Duckenfield*, 2 Atk. 562. *Attorney-General v. Stepney*, 10 Ves. 22. *Powerscourt v. Powerscourt*, 1 Molloy, 616. *Grieves v. Case*, 2 Cox, 301. *Doe d. Phillips v. Aldridge*, 4 T. R. 264. *Attorney-General v. London (City of)*, 3 Bro. C. C. 171. *Clifford v. Francis*, 1 Freem. C. C. 330. *Shelford on Mortmain*, 74.

Stat. 2 & 3 Gul. 4, c. 115, has conferred upon Roman catholics those privileges for the support of their chapels, which protestant dissenters enjoy.

If land or money be properly given for maintaining "the worship of God," without more, the court will execute the trust in favour of the established religion. But if it be clearly expressed, that the purpose is that of maintaining dissenting doctrines, so long as they are not contrary to law, the court will execute the trust according to the express intention. And where the intention clearly appears *aliunde*, though not expressed in the instrument creating the trust; the court will also carry the manifest design of the founder into execution, so far as it is consistent with law; and it is not in the

power of the trustees or congregation to alter the designed objects of the institution. *Attorney-General v. Pearson*, 3 Meriv. 410. *Attorney-General v. Cullum*, 1 Y. & C., N. C. 411. *Shore v. Wilson*, 9 C. & F. 355.

Where trustees of copyholds in trust for repairing the church of A., and chapel of B., in that parish, by desire of the parishioners, bought new ground and built a new chapel, the old being too small and in ruins; this was held not to be a deviation from the trust, and they were allowed to apply the rents and savings, but not to mortgage the estate. *Attorney-General v. Foyster*, 1 Anst. 116.

Although Sir F. Moore has stated, that a gift of lands, &c. to maintain a minister to celebrate divine service, is a superstitious use, and was purposely excluded from the statute of Elizabeth; it has since been held in a variety of cases, that such a gift is within the equity of the statute of Elizabeth. *Pember v. Knighton (Inhabitants of)*, Duke's Charitable Uses, 381. *Sir Baptist Hickeys' case*, Poph. 139. *Turner v. Ogden*, 1 Cox, 316. *Durour v. Motteux*, 1 Ves. Sen. 320. *Attorney-General v. Parker*, Ibid. 43.

In *Attorney-General v. Hickman*, (Kel. (Sir W.), 34,) a bill was filed to establish a charity given by a codicil, by which a testator devised his residue "for encouraging such nonconforming ministers as preach God's word in places where the people are not able to allow them sufficient and suitable maintenance, and for encouraging such as are designed to labour in God's vineyard as dissenters;" the testator appointed two persons to dispose of his charity, both of whom died in his life-time. *Per curiam*, though this is a lapsed legacy at law, yet in equity it subsists, and the substance of the charity remains; and there is sufficient evidence of the testator's intent to maintain it under Stat. 43 Eliz. c. 4. Upon the next point, the lord chancellor thought this was not a superstitious use within Stat. 1 Edw. 6, c. 14; nonconforming ministers and dissenters here meaning such Protestant dissenters as act under the Toleration Act of Stat. 1 G. & M. c. 18, and decreed, the *residuum* to be disposed of *presenti*, and not in a perpetual charity.

Where A., by will in 1676, gave 600*l.* to be distributed amongst sixty ejected ministers; the charity, upon an information by the attorney-general, was decreed to be void, and the money directed to be applied for maintenance of a chaplain for Chelsea College. But this decree was reversed by the lords commissioners in Trinity Term, 1689, and the 600*l.* which had been brought into court, was ordered to be paid out and distributed according to the will. *Attorney-General v. Baxter*, 1 Vern. 248, 251.

The court will sanction the appointment of a minister to a congregation for a limited period, and not for life, provided such be the usage of the members, or the provisions of the original trust. *Attorney-General v. Pearson*, 3 Meriv. 400.

If there be a gift of residue to J. V. to such charitable uses as he shall appoint, but recommending poor clergymen, &c., and J.

V. die in the life-time of the testatrix; the charity will be sustained and executed by the court. *Moggridge v. Thackwell*, 3 Bro. C. C. 517. 1 Ves. 464. 13 Ibid. 416.

A legacy towards establishing a bishoprick in America, was considered not to be void, notwithstanding that, no such bishoprick then existed. *Attorney-General v. Chester (Bishop of)*, 1 Bro. C. C. 444.

Devises for the benefit of the ministers of protestant dissenters and quakers are charitable uses, because the legislature has extended the Toleration Act to them. *Attorney-General v. Cock*, 2 Ves. Sen. 275. *Lloyd v. Spillett*, 2 Atk. 149. *Shore v. Wilson*, 9 C. & F. 355.

The court will not enforce a charitable bequest, when it is for the support of a creed in contradiction to the Christian religion, which has been declared to be part of the law and constitution of the kingdom. *De Costa v. De Pas*, Ambl. 228. *Attorney-General v. Guise*, 2 Vern. 266. *Attorney-General v. Baxter*, 1 Ibid. 248. *Taylor's case*, 1 Vent. 293. 3 Keb. 607, 621. *Rex v. Woolston*, Fitzg. 64. Str. 834.

Augmentations made by ecclesiastical persons to small vicarages and curacies, under Stat. 29 Car. 2, c. 8, are charitable uses. *Vide* Stat. 3 Geo. 3, c. 107. *Et vide* Stat. 45 Geo. 3, c. 84. *Attorney-General v. Brereton*, 2 Ves. Sen. 426.

By Stat. 43 Geo. 3, c. 108, a devise by will, executed three months before the death of the testator, giving five acres of land, or personal property to the amount of 500*l.*, for the building or repair of any church or parsonage house, is a valid bequest.

The amount of a legacy, to be laid out in repairing a free chapel, is not within the Statute of Mortmain. *Harris v. Barnes*, Ambl. 651.

If money be left to *repair* parsonage houses: (*Attorney-General v. Chester (Bishop of)*, 1 Bro. C. C. 444; *Attorney-General v. Oxford (Bishop of)*, 2 Eden, 207; *et vide Chapman v. Brown*, 6 Ves. 408; *Attorney-General v. Parsons*, 8 Ibid. 191;) or if money be left to *build* parsonage houses where no land is to be purchased, such bequests are not within the Statute of Mortmain. *Brodie v. Chandos (Duke of)*, 1 Bro. C. C. 444 (n.).

A devise of 500*l.* to a specific church will be supported, and will belong to the churchwardens, to be employed by them in repairing and adorning the church. *Attorney-General v. Ruper*, 2 P. Wms. 125.

It has been held, that a bequest to Roman catholic bishops and their successors, is void, no such characters being known to the laws of Ireland, but where they are particularly named, though so described, the bequest is good for their joint lives, subject to the control of the court of Chancery. *Attorney-General v. Power*, 1 Ball & Beatty, 145.

Under a commission of charitable uses, it was agreed, that copyhold lands formerly surrendered for the maintenance of a minister in Willenhall Chapel, should be let, and the rents employed towards the maintenance of the minister, to be chosen and appointed by the inhabitants, and presented and allowed

by the lord of the manor, who, upon complaint, might give the minister half a year's warning, and if he had not reformed by that time, might remove him. The information prayed, that the lord might be decreed to allow and approve of the candidate, who had the majority of votes, which was refused on the ground of misconduct, and, the evidence clearly proving it, a new election was directed; upon which the same candidate being returned, and producing strong affidavits of good conduct for the then last six years, the decree stating the affidavits declared: that in consequence thereof, the relator deserved the approbation of the trustees. *Attorney-General v. Stafford (Marquis of)*, 3 Ves. 77.

At a meeting held to appoint a successor to an office in a charity, after a candidate has been elected, and a minute of his election has been entered by the clerk, it is competent for the majority of the electors, before the meeting is dissolved, to reverse their vote, rescind the minute of election, and postpone the election to a subsequent day, provided in so doing, they act *bonâ fide*, and with a view to the welfare of the charity. *Attorney-General v. Matthew*, 3 Russ. 500.

Where there was a trust of an advowson to present some fit person, "such as the inhabitants and parishioners, or the major part of the chiefest and discreetest of them," should nominate; and the right of election was in the inhabitants paying the church and poor rates, above the age of twenty-one; a popular election by a majority of such voters, and others not so qualified, was established. *Fearon v. Webb*, 14 Ves. 13.

Superstitious uses. It may, perhaps, be expedient to make a few observations respecting superstitious uses.

A superstitious use is where property is given for the support of priests to say mass, or for the maintenance of prayers, or of obits, lamps, &c., for the soul of a dead man, in any church or chapel. *Whetstone's case*, Duke's Charitable Uses, 486. *Colborn v. Dale*, Ibid. *Adams v. Stoke*, 4 Co. 116. Duke's Charitable Uses, 468, 469, 473. *Sir John Tate's case*, 4 Co. 113. *Walpole's case*, Ibid. 113. *Pele's case*, Ibid. 113. *Adams v. Lambert*, Ibid. 115. *Wickham v. Wood*, Lane, 112. *Doe d. Wellard v. Hawthorn*, 2 B. & A. 96. *Pits v. Webster*, Palm. 124. *Attorney-General v. Fishmongers' Company*, 2 Beav. 51.

Stat. 23 Hen. 8, c. 10, s. 2, (*antè* 137,) made void all direct and collateral assurances of lands to churches, chapels, &c., for superstitious uses; but in cities and towns corporate, wherein by custom they had authority to devise lands in mortmain, such custom was not prejudiced.

Stat. 1 Edw. 6, c. 14, (*antè* 294,) enacted: that all colleges, free chapels, and chantries, existing within the preceding five years, and all lands and revenues for the finding of priests, were to be vested in the king. That all brotherhoods or guilds and their possessions, except companies of trade, should be vested in the king. That commissioners should be appointed to survey all lay corporations, and to inquire of the revenues applicable to priests, obits, &c., and of lands, &c.

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vested in the king, and to make regulations respecting the same. But that the act should be inoperative as to the colleges in Cambridge, Oxford, St. George's Chapel, Windsor, Winchester, Eton, parochial chapels of ease, cathedrals, or other lands, except chantries existing, within five years.

By Stat. 2 & 3 Gul. 4, c. 115, Roman catholics are, as previously observed, to be subject to the same laws as protestant dissenters, with respect to schools and places of worship; (vide *Waller v. Childs*, Ambl. 524; *Attorney-General v. Pearson*, 3 Meriv. 409;) but the property to be held is to be subject to the provisions of Stat. 9 Geo. 2, c. 36.

Stat. 2 & 3 Gul. 4, c. 115, has a retrospective operation, and the validity of bequests for carrying on the good designs of catholic schools, and for promoting the knowledge of the catholic religion among the poor and ignorant inhabitants of certain specified districts in England have been recognised; but gifts to Roman catholic priests for saying masses for the testator, have been held to be illegal. *Bradshaw v. Tasker*, 2 M. & K. 221.

Where superstitious and lawful uses are so interwoven, that they cannot be severed, the illegal use will prevail; and the property will thereby become forfeited to the crown. *Waldern v. Ward*, 2 Sid. 13. *Sir Bartholomew Read's case*, Moore (Sir T.), 654. *Adams v. Lambert*, Ibid. 648.

But if they can be dissevered, then the crown will only take that which is illegal. *Hynshaw v. Morpeth (Corporation of)*, Ibid. 242. *Sheffield (Lord) & Ratchiff's case*, Godb. 309. *Bagnall & Pot's case*, Ibid. 233. Shelford on Mortmain, 95, et seq. *Waller v. Childs*, Ambl. 524.

That condition is not unlawful which looks forward to the possibility of a court deciding that the gift is unlawful: if the condition were in itself illegal, the whole deed would be void; but where the unlawful gift will not prevail, the legal condition will prevail. *De Themmines v. De Bonneval*, 5 Russ. 288.

The Toleration Acts, (1 G. & M. c. 18; 10 Geo. 4, c. 7; 2 & 3 Gul. 4, c. 115,) give no new rights, but only an exemption from the penal laws to dissenters under certain regulations and tests, which renders those religions legal. *Harrison v. Evans*, 2 Burn's E. L. by Phillimore, 207, 220. *Rex v. Baker*, 3 Burr. 1265. 1 Black. (Sir W.), 300, 352. *Attorney-General v. Pearson*, 3 Meriv. 353. *In re Bedford Charity*, 2 Swanst. 490.

If a trust or bequest be made that is subversive of the Christian religion, (*De Themmines v. De Bonneval*, 5 Russ. 288; *De Garcin v. Lawson*, 4 Ves. 433, in not.; *Attorney-General v. Power*, 1 Ball & Beatty, 145; *Rex v. Waddington*, 1 B. & C. 26; or for the maintenance of a hostile religion, it is illegal. *Smart v. Prujeau*, 6 Ves. 567. *Lady Egerton's case*, Duke's Charitable Uses, 127, 128. *Cary v. Abbot*, 7 Ves. 490. *De Costa v. De Pas*, Ambl. 228. 2 Swanst. 487. *Attorney-General v. Guise*, 2 Vern. 266. *Attorney-General v. Baxter*, 1 Ibid. 248. *De Garcin v. Lawson*, 4 Ves. 433. *Mills v. Farmer*, 1 Meriv. 100. *Attorney-*

General v. Pearson, 3 Ibid. 409. *Attorney-General v. Cock*, 2 Ves. Sen. 273. *Villareal v. Mellish*, 2 Swanst. 539. *Rex v. Woolston*, Fitzg. 64. Str. 834. *In re Bedford Charity*, 2 Swanst. 470. *Jack d. McGuirk v. Reilly*, 2 Hudson & Brooke, 301.

A bequest for the publication of a treatise for the assumption of the Pope in ecclesiastical affairs over the sovereignty of the state, is a superstitious use, and adverse to public policy. *De Themmines v. De Bonneval*, 5 Russ. 289.

Where there is an absolute devise, an averment, that it was for a superstitious use, is excluded by the Statute of Frauds, and the nature of the thing; but an information may be maintained at the suit of the crown for a discovery of the superstitious use, as the Statute of Frauds did not affect the king, who is bound by law to see that nothing be done to the propagation of a false religion. Stat. 29 Car. 2, c. 3. *Rex v. Portington (Lady)*, 1 Salk. 162. *S. C.*, 3 Ibid. 334. Shelford on Mortmain, 98.

When a devise is to a superstitious use, and made void by statute, or to a charity void by the Statute of Mortmain, the land or fund will belong to the heir at law, or next of kin; but where it is in itself a charity, the mode in which it is to be disposed of is such, that by the law of England it cannot take effect, as in promoting a religion contrary to that established by law; there the crown by sign manual, directed to the attorney-general, may give orders in what charitable manner it shall be disposed of. *De Costa v. De Pas*, Ambl. 228. *Cary v. Abbot*, 7 Ves. 490. *Attorney-General v. Berryman*, Dick, 168. *Attorney-General v. Guise*, 2 Vern. 266. *Attorney-General v. Baxter*, 1 Ibid. 248.

Stat. 1 Edw. 6, c. 14, (antè 294,) is not prospective, but only retrospective, (*Rex v. Portington (Lady)*, 3 Salk. 334; *Cary v. Abbot*, 7 Ves. 495; *Porter's case*, 1 Co. 23 (b),) its policy being to subvert the authority of the Pope. *Gibbons v. Maltyard*, Poph. 8. Shelford on Mortmain, 95.

The act only related to colleges that were superstitious, and did not extend to lay or religious hospitals, and parsonages and vicarages were excepted by an equitable construction. *Eyston v. Studd*, Plowd. 466. *Pits v. Webster*, Palm. 125. *Pits v. James*, Hob. 122. Co. Lit. 342 (a).

If a fund real or personal be given, promoting no doctrines contrary to law, although such as may be at variance with the doctrines of the established religion, it will be administered in Chancery according to the intent of the founders. *Attorney-General v. Pearson*, 3 Meriv. 409. *Attorney-General v. Cock*, 2 Ves. Sen. 273. *Waller v. Childs*, Ambl. 524. *Corbyn v. French*, 4 Ves. 418. *Ashburnham v. Kirkhall*, cit. in *Attorney-General v. Lloyd*, 1 Ves. Sen. 32. *Bradshaw v. Tasker*, 2 M. & K. 221. *Attorney-General v. Drummond*, 1 D. & W. 353.

And a bequest for the benefit of Jews or Unitarians having no reference to the propagation of their peculiar tenets, would be valid. *Israel v. Simmons*, 2 Stark. N. P. C. 356. *Edenborough v. Canterbury (Arch-*

cation and preferment of *orphans* (1), some for or towards relief, stock, or maintenance for *houses of correction* (2), some for *marriages of poor maids* (3), some for *supportation, aid, and help of young tradesmen* (4), handicraftsmen, and *persons decayed* (5), and others for *relief or redemption of prisoners or cap-* STAT. 43 ELIZ. c. 4

bishop of), 2 Russ. 111. *De Costa v. De Pas*, 2 Swanst. 487, in not.

The crown did not, under Stat. 1 Edw. 6, c. 14, (*antè* 294,) acquire the freehold of copyhold lands given to superstitious uses, but it remained in the lord of the manor, the uses being void, and the copyhold tenure destroyed. *Bagnall & Pot's case*, Godb. 233.

If a grant be acquired by undue influence and abused confidence from a person under a religious delusion, such grant will be invalid upon principles of public policy. *Norton v. Kelly*, 2 Eden, 286. *Huguénin v. Baseley*, 14 Ves. 273. *Shelford on Mortmain*, 116.

(3) *Sea-banks*.—"Intend only where the sea ebbs and flows. And a gift to repair sea banks is good, notwithstanding others stand bound by covenant or prescription to repair them, because it is a common good, in preventing a common danger." *Duke's Charitable Uses*, 129.

A parliamentary grant of a duty on coal imported into a town, in aid of the pecuniary inability of the inhabitants to protect the crown from the encroachment of the sea, is a gift to a charitable use, the act having recited, that the inhabitants were unable to raise money sufficient for that purpose without the aid of parliament. *Attorney-General v. Brown*, 1 Swanst. 265.

(4) *Highways*.—"Gifts of a general nature, as "for the repair of the highways of a parish," (*Eltham Parish v. Warreyn*, *Duke's Charitable Uses*, 641; *Collison's case*, Hob. 136,) or for the improvement of a city, are charitable uses. *Howse v. Chapman*, 4 Ves. 542. *Jones v. Williams*, Ambl. 651. Vide etiam *Attorney-General v. Lonsdale (Earl of)*, 1 Sim. 105. *Johnston v. Swann*, 3 Madd. 457. *Townley v. Bedwell*, 6 Ves. 194. *Shelford on Mortmain*, 76.

(1) *Orphans*.—"Are those, that are poor and parentless, and such are bastards after the death of their mother, and are to be relieved, until by indentment they are able to get their living, which is the age of twenty-one years. *Duke's Charitable Uses*, 130.

If a parentless poor child be married under twelve years of age, it continues an orphan, until the age of assent; no servant or apprentice is an orphan within the statute, because they have masters, which are in lieu of parents to provide for them; but a scholar may be an orphan until twenty-one years of age. *Ibid*.

"Lands given to buy horses, and to provide a rider, to teach orphans to ride which hold by knight's service, is within this law." *Ibid*. Vide etiam *Attorney-General v. Comber*, 2 S. & S. 93. *Powell v. Attorney-General*, 3 Meriv. 48. *Attorney-General v. Drapers' Company*, 12 Law Journ. N. S. 421.

(2) *Houses of correction*.—"Cannot be founded by charter without an act of parliament, because it tends to corporeal punishment, which cannot be inflicted without par-

liament; but justices at their sessions, may find one, by virtue of the act of parliament, made 39 Eliz." *Duke's Charitable Uses*, 130.

A gift of money to erect a house of correction, is good, and within the meaning of this law. *Ibid*.

The mayor, bailiffs, and burgesses of Berwick-upon-Tweed, in consideration of 50l. left by will for the erecting and maintaining of a house of correction there, by feoffment, dated 28th May, 1653, conveyed the moiety of a property there to the churchwardens and overseers for the erecting and maintaining of a house of correction within the borough, and for maintaining and ordering the poor therein for ever, and all other sturdy and idle persons coming and being therein, and for the getting them and every of them to work. By another feoffment of the same date, in consideration of 350l. owing by them to the poor, the mayor, &c. conveyed the other moiety and some other lands for the like purposes. Upon such facts, it was held, that this town never having at this time raised poor rates under the act of Elizabeth, these were gifts in aid of the poor rate.

That as to a part of the land, the rents of which had been duly applied down to the eighteenth century, when their application ceased for the use of the poor, and was wholly carried to the corporate chest: the court, being satisfied upon the evidence, it was intended to be comprised in the second feoffment, declared it to be a part of the charity, and that the rents should be accounted for from 1823, when the same were claimed for the use of the poor, and the rents thereof were also declared to be applicable in aid of the poor rates: that the costs of the relators should be taxed as between party and party, and paid by the mayor, bailiffs, and burgesses: and that the extra costs of the relators should come out of the fund. *Attorney-General v. Berwick-upon-Tweed (Corporation of)*, 1 Tam. 239.

(3) *Marriages of poor maids*.—"These words extend not to such, as have parents able to give portions with them, nor to such as have legacies given them, nor to such as are incontinent, nor such as marry without, or against, the consent of their parents. But though they have uncles, and able to give portions, yet they are poor within this law. To provide them wedding apparel, or an offering dinner, is a good use; but not to provide them wedding rings, because that is the husband's part. *Duke's Charitable Uses*, 130.

(4) *Supportation, aid, and help of young tradesmen*.—"Not after five years continuance in trade." *Ibid*.

(5) *Persons decayed*.—"Bankrupts are within these words, if they lie in prison, not if they keep their houses, because they have submitted themselves to the law. And the Statute for Charitable Uses was made after the Statute of Bankrupts. Such as are de-

STAT. 43 ELIZ. *tives* (1), and for aid or ease of any poor inhabitants concerning payments of fifteens, setting out of soldiers, and other *taxes* (2); which lands, tenements, rents,

c. 4.

Their orders shall be performed.

2 Inst. 707.

4 Vin. 476.

annuities, profits, hereditaments, goods, chattels, money and stocks of money, nevertheless have not been employed according to the *charitable intent of the givers and founders thereof* (3), by reason of *frauds, breaches of trust, and*

cayed by negligence, fraud of servants, or casualty by fire, &c. are within this law, but such as are decayed by suretyship, are not relievable by this act." Ibid. 131.

"To lend to young tradesmen, 'under 10*l.* the 100*l.*,' is charity. but to employ the interest is not within this statute, because no charity can arise out of usury, all usury being unlawful." Ibid.

Where a testator directed his residuary personal estate to be invested by his executors, and they were to receive and divide the income among poor pious persons, male or female, old or infirm, in 10*l.* or 15*l.* as they should see fit; not omitting large and sick families of good character: it was held to be a good charitable bequest, and that one of the executors was justified in filing a bill for a scheme to carry the charity into effect, without first applying to the attorney-general for his sanction to the suit. *Nash v. Morley*, 6 Jur. 520. Vide etiam *Attorney-General v. Fishmongers' Company*, 2 Beav. 589.

(1) *For relief or redemption of prisoners or captives*:—"Prisoners upon *præmunire*, or upon executions upon condemnations, are relievable.

"But seminaries committed by the high commissioners are not, because the ground of their restraint is a contempt."

An enemy taken captive by another Christian, is not relievable. But if a Christian be captive to a Turk, he is relievable, (vide *Attorney-General v. Ironmongers' Company*, 1 Cr. & Ph. 208,) because he was taken prisoner in defence of a common cause; for the Turk is *hostis communis* to all Christians. Duke's Charitable Uses, 131; *sed vide* Littleton's Readings on Stat. 27 Edw. 3, 17, cit. 1 Salk. 46. *Omychund v. Barker*, 1 Atk. 21.

Where a gift was made to relieve such as were imprisoned for their conscience sake; it was agreed in *Throgmorton & Gray's case*, (Duke's Charitable Uses, 131,) that if they were in prison, in subjection to the law upon condemnation, they were relievable; but if upon obstinacy, that they could not be relieved by the charity of this law.

The wives and children of prisoners are not within the equity of this act.

(2) *Taxes*:—"Subsidies, are not within the meaning of this statute, because poor men pay them not, and it is no ease to discharge them of that tax. But all taxes, wherewith the poor, as well as rich, are chargeable, are within the intent of this law, as keeping of watches, pursuing of hue and cries, &c. But fines for escapes, or for robberies, are not within this act. Ibid. 132.

By Stat. 42 Geo. 3, c. 116, s. 50, any corporation, company, or individual, can give any sum or sums of money for the purpose of the redemption of the land tax charged on any manors, messuages, lands,

tenements, or hereditaments, settled to any charitable uses.

"Penalties of statutes, *non obstantes*, monopolies, and such kind of privileges, cannot be granted to a charitable use." Duke's Charitable Uses, 132.

(3) *Charitable intent of the givers and founders thereof*:—"In construing devises to charitable uses, 'The court has not the power to make a will for the testator, but only to carry into execution that, which he has made himself; and this it can only do, by giving to it such a construction as former precedents have established to be the right construction in every particular instance.

"Neither is there any doubt that the same words in a will, when applied to the case of individuals, may require a very different rule of construction from that, which would govern them, if applied to the case of charity.

"If I give my property to such person as I shall hereafter name to be my executor, and afterwards appoint no executor; or if, having appointed an executor, he dies in my life-time, and I appoint no other to supply his place, in either of these cases, as to individuals, the testator must be held intestate, and his next of kin will take the estate. But, to give effect to a bequest in favour of charity, the court will, in both instances, supply the place of an executor and carry into effect that which, in the case of individuals, must have failed altogether. This distinction has proceeded partly, perhaps, on principles in the Roman Law, which we do not at this time perfectly comprehend; and partly, no doubt, on the religious notions which formerly obtained in this country; according to which it fell to the ordinary's province to distribute, in case of intestacy.

"A third principle, which it is now too late to call in question, is, that in all cases in which the testator has expressed an intention to give to charitable purposes, if that intention be declared absolutely, and nothing is left uncertain but the mode in which it is to be carried into effect, the intention will be carried into execution by this court, which will then supply the mode which alone was left deficient." Per Lord Eldon, in *Mills v. Farmer*, 1 Meriv. 94. *Moggridge v. Thackwell*, 3 Bro. C. C. 517.

Where a testator "directed" the residue of his personal estate "to be divided for" certain charitable purposes mentioned by him, "and other charitable purposes as I do intend to name hereafter;" but afterwards made a codicil, and named no charitable purposes: it was held, that a disposition of the residue in favour of charity, might be carried into execution by the court, having regard to the objects particularly pointed out by the testator. Ibid. Vide etiam *Attorney-General v. Merchant Vintners' Society*, 6 Jur. 772. *In re Storey's Charities*, 4 Jur. 620.

If land be settled in trust for maintenance

of a charity, with special directions as to part of the rents, the land to be let for a certain term, subject to a rent to that extent; at the expiration of the lease, the surplus with its increase results to the charity under the general trust, not to the heir. *Attorney-General v. Tonna*, 2 Ves. 1.

Where A. by will, executed before the Statute of Mortmain, directed B. to settle a freehold estate, to pay a sum not exceeding 100*l.* per annum, in such manner, and upon such trust, on such a part of the poorer people of a parish as he should think fit, and find to be a most proper charity; and B., in pursuance thereof, by will executed after the statute, appointed a sum less than the 100*l.* per annum: it was held, that the appointment was not void by the statute, and that the amount to be appointed was discretionary in B., and not to be increased under the Stat. 43 Eliz. to the whole amount given by the will of A. *Attorney-General v. Bradley*, 1 Eden, 482.

A bequest of residue "to the widows and children of seamen belonging to the town of Liverpool:" has been held to be a valid charitable bequest, to be applied in aid of a subsisting charity for such poor sailors, widows, and children as should, in the judgment of persons appointed to administer, be deserving objects of it. *Powell v. Attorney-General*, 3 Meriv. 48.

Where a testator gave a moiety of the residue to such lying-in hospital as his executors should appoint, and afterwards struck out the executor's name, and died without appointing any other executor. this was held, not to be a revocation of the legacy, because where the testator is willing, it shall go in the largest extent, and the court, by appointing only, follow his intent in marking out objects. *White v. White*, 1 Bro. C. C. 11. *Attorney-General v. Syderfen*, 1 Vern. 224. *Doyley v. Attorney-General*, 4 Vin. Abr. *Charitable Uses* (C), 485. *Baylis v. Attorney-General*, 2 Atk. 239.

The court has never executed a charitable purpose unless described by the will, or the property be devoted to charity in general. In the latter case the application, either by the trustees or the crown, must be to purposes expressed in Stat. 43 Eliz. c. 4, or analogous to those. *Morice v. Durham (Bishop of)*, 10 Ves. 540.

A trust for uncertain objects will result to those to whom the law gives property in default of disposition. *Ibid.*, 9 *Ibid.* 405. *Moggridge v. Thackwell*, 1 *Ibid.* 475.

The court will not execute a power given by the testator to trustees to continue his charities, or to give any bequests they should think fit. *Coxe v. Basset*, 3 *Ibid.* 155.

Where a testator gave by will a legacy to a charity void by the Statute of Mortmain, and by a codicil gave a less legacy "instead thereof" to a different charity; it was held to be charged on the same fund, and was also void, because it was thought the codicil only meant to alter the *quantum* of the bequest in some cases, and its objects in others, but not the fund out of which it was to be paid. *Leacroft v. Maynard*, 3 Bro. C. C. 232. *Attorney-General v. Goulding*, 2 *Ibid.*

428. *Crowder v. Clowes*, 2 Ves. 449. *Cooper* STAT. 43 ELIZ. c. 4.
v. Day, 3 Meriv. 154.

Where a will contained this residuary clause, "all the remainders of my different bequests," to trustees for charitable purposes, "and anything not specified, I commit to the discretion of my executors," it was held to pass the general residue by the former words to the charity, and not by the latter, to the executors, who would not under such words have been trustees for the next of kin: that the devise for the charity was void as to the real estate, or to the personal connected with land, as leaseholds and mortgages, by Stat. 9 Geo. 2, c. 36, and that the charges upon the fund must be apportioned accordingly. *Paice v. Canterbury (Archbishop of)*, 14 Ves. 364.

A bequest to the most "necessitous of my relations," will go according to the Statute of Distributions, because there is no distinguishing between the degrees of poverty; and the court have always construed a will, as if the word *poor* was not in it. *Jones v. Beale*, 2 Vern. 381. *Roach v. Hammond*, Pre. Ch. 401. *Carr v. Bedford*, 2 Ch. Rep. 146. *Widmore v. Woodroffe*, Ambl. 636.

The charity of an alien domiciled abroad for the relief of male descendants of his nephews, and male and female descendants of his nieces, has been established in England; and such a bequest to "male descendants," means descendants claiming solely through males. *Bernal v. Bernal*, Cooper (C. P.), 55.

It may be here observed, that recourse to foreign law for the construction of a foreign instrument, will sometimes be dispensed with; (*Ibid.*;) and that letters of administration have been granted by the Prerogative court, with a copy of the translation of a Spanish will, lodged with a notary abroad, annexed. *Ibid.* 61.

A bequest of money to be laid out in building upon land already in mortmain, will be good, although the bequest may be equivocal. *Attorney-General v. Munby*, 1 Meriv. 227.

And a bequest for rebuilding, repairing, altering, or adding to and improving almshouses, is valid to the extent of any application upon the land already in mortmain, but not for the addition of other land. *Attorney-General v. Parsons*, 8 Ves. 186.

Money left to build a church where no land is to be purchased, is not within the Statute of Mortmain; but the execution of the devise will not be enforced if opposed by the bishop; neither will it be applied in repairing a church, nor augmenting the salary of the chaplain, because the court will always enforce the implicit intention of the donor. *Attorney-General v. Oxford (Bishop of)*, 1 Bro. C. C. 444 (n.). *Attorney-General v. Tyndall*, 2 Eden, 207. *Vide Chapman v. Brown*, 6 Ves. 408. *Attorney-General v. Parsons*, 8 *Ibid.* 191.

A bequest of a sum of money for building a house in Ireland for reduced gentlewomen, is valid, and not against the Mortmain Act, for such statute does not extend to Ireland, where there is no similar restraint on devises to charitable uses. *Attorney-General v. Power*, 1 Ball & Beatty, 154.

Interest in land in England cannot be

STAT. 43 ELIZ. c. 4. given for charitable purposes in Ireland, but pure personal estate in England can be invested in lands in Ireland for charitable purposes. *Curtis v. Hutton*, 14 Ves. 540. *Page v. Leapingwell*, 18 Ibid. 463. *Attorney-General v. Harley*, 5 Madd. 321.

When a testator devised five twenty-fourth parts of the residue of his personal estate, after the death of his widow, and 20l. per annum after the death of his brother, or which shall be deemed equivalent to 570l. in some of the public funds, to stand in the names of trustees until the whole could be laid out in lands to the satisfaction of the governors of a charity, and his executors, who were always to be considered as trustees of the charity to which it was given: it was held to be a valid devise, the lord chancellor observing, "it would be a hard construction to say such a charitable bequest was void by the statute. If a person direct money to be laid out in lands for a charitable use, it would be void, although the court would order the money to be placed in the funds till the purchase is made; so where a man gives it, in such manner that the land to be purchased is the final end and thing given. But where there is sufficient room for the court to say, there is a discretionary power in the trustees to lay the money out, one way or other, either in the funds or in lands, I have determined such a devise to be good. [*Sorresby v. Hollins*, 9 Mod. 221. *Grayson v. Atkinson*, 2 Ves. Sen. 454.] I am of opinion, there is room to construe this bequest with such latitude." *Grimmett v. Grimmett*, Ambl. 210. Duke's Charitable Uses, 401. Sed vide *Grievess v. Case*, 1 Ves. 548.

Money to be laid out in the purchase of heritable security in Scotland, is not within the Statute of Mortmain; and the courts of equity in England will entertain jurisdiction, (over parties resident here,) and decree the establishment of a charity in Scotland, contrary to the report of Lord Hardwicke's opinion. *Oliphant v. Hendrie*, 1 Bro. C. C. 571. *Mackintosh v. Townsend*, 16 Ves. 330. *Edinburgh (Provost of) v. Aubery*, Ambl. 236. *Attorney-General v. Lepine*, 19 Ves. 309.

A legacy is valid which is to be laid out in land in Scotland for a charity, as not being within the Mortmain Statutes. *Mackintosh v. Townsend*, 16 Ves. 330.

If there be a devise of personal estate, upon trust, to be laid out in lands, or the funds, for the maintenance of a charity in Scotland, it will be valid by the effect of the option. *Attorney-General v. Winchelsea (Earl of)*, 3 Bro. C. C. 373. *Curtis v. Hutton*, 14 Ves. 537.

Where money upon mortgage in England was given to a charity in Ireland, and the executrix by her will affirmed the legacy, it was held to be a good bequest, because, exclusive of the charity being in Ireland, the executrix admitting by the devise to the same uses, that she had personal estate of the testator, she would, as executrix and residuary legatee, be therefore only paying a debt, not giving money upon mortgage. *Campbell v. Radnor (Earl of)*, 1 Bro. C. C. 272. *Attorney-General v. Tomkins*, Ambl. 216.

It is not competent for a testator to give directly any interest in land to a charitable use, yet it is competent for a testator to leave a sum of money for the purpose of meliorating any land, or for beautifying, sustaining, or repairing, buildings already vested in trustees for charitable uses. *Vaughan v. Farrer*, 2 Ves. Sen. 189. *Attorney-General v. Nash*, 3 Bro. C. C. 595. *Corbyn v. French*, 4 Ves. 427. Vide ante 487, n. (3).

Therefore, a bequest of money to be laid out in building a parsonage house or repairing a free chapel, is not within the Statute of Mortmain; because that statute was only intended to prevent new acquisitions in mortmain, and not to apply to the maintenance of existing institutions; and the litigation which has arisen upon such bequests, was for the purpose of ascertaining whether the testator meant the legacy to be applied in enacting, sustaining, or repairing buildings already vested in trustees for charitable uses, or intended fresh land to be purchased for that purpose, in which latter case the legacy would be void. *Glubb v. Attorney-General*, Ambl. 373. *Harris v. Barnes*, Ibid. 651. *Foy v. Foy*, 1 Cox, 163. *Brodie v. Chandos (Duke of)*, 1 Bro. C. C. 444 (n.). *Attorney-General v. Oxford (Bishop of)*, Ibid. *Attorney-General v. Chester (Bishop of)*, 1 Bro. C. C. 444. *Attorney-General v. Munby*, 1 Meriv. 327. *Attorney-General v. Parsons*, 8 Ves. 186.

The rule, that where the legal bequest and the illegal purpose are not so connected as to be inseparable, and the proportions are defined, or capable of being exactly calculated, the bequest may be supported, (*Blandford v. Fackerell*, 2 Ves. 238; 4 Bro. C. C. 394,) will receive illustration from the case of the *Attorney-General v. Stepney*, (10 Ves. 22, 29,) in which a testatrix devised a house to trustees and their heirs, upon trust, to deposit in the house certain books for the use of the Welsh charity school, for the increase and improvement of Christian knowledge, and to preserve the books in the house for such use, and to permit her servants, who should look after the books, to live in the house clear of rents and taxes: it was held that there was not enough to bring the case within the authority of the cases where, the principal devise having failed, the bequest of the personal property, as connected with it, must fail also; for it appeared that the testatrix meant that the house should be subservient to the distribution of her books, but it was not necessarily connected with her purpose, for the will contemplated the time when the charity might continue, and the house be no longer applicable; and there was enough in the will to give the personal estate to charitable purposes, connected with the plan of promoting Christian knowledge. *Shelford on Mortmain*, 203.

If a deviser leave his executors two methods to do a particular thing, the one lawful, the other prohibited by law, the court will not say, because one method is unlawful, that therefore the other is so too, and the whole bequest void; on the contrary, if one method be lawful, that shall be pur-

negligence(1) in those that should pay, deliver, and employ the same: for redress STAT. 43 ELIZ. c. 4.

sued and take effect; and where a testator directed in the first instance an illegal distribution of property, but went on in the disjunctive, "or otherwise as his executors should be advised," it was held to be a legal devise. *Grimmett v. Grimmett*, Amb. 212. *Attorney-General v. Whitchurch*, 3 Ves. 144. *Attorney-General v. Coventry (City of)*, 2 Vern. 397. *Sorresby v. Hollins*, 9 Mod. 221. *Shelford on Mortmain*, 184.

The rule of construction, as to a devise of money to be laid out in land, is the same now, as it was before the Statute of Mortmain. *Grimmett v. Grimmett*, Amb. 212.

Although the statute makes the grant of an interest in land to charitable uses, void, it does not avoid the deed altogether, and a conveyance to charitable uses, as far as it affects other lands not appropriated to such uses, remains good. *Collins v. Blantern*, 2 Wils. 351. *Doe d. Thompson v. Pitcher*, 6 Taunt. 359. *Greenwood v. London (Bishop of)*, 1 Marsh. 310. 5 Taunt. 727. *Norton v. Simmes*, Hob. 13. *Maleverer v. Redshaw*, 1 Mod. 35.

Negative words used by a testator, showing his intention to be, that the money was not to be applied to purchase or keep in repair any real estate, but that the bequest was intended to form an auxiliary fund, to go in aid of other donations, on the supposition that some other person would supply a house for the intended charity, will support a gift. *Henshaw v. Atkinson*, 3 Madd. 306. *Attorney-General v. Hinzman*, 2 J. & W. 276.

Words not amounting to a direction to trustees to purchase lands, but conferring no further discretion than the selection of such an estate as would constitute an advantageous investment of the money, is not within the Mortmain Act, because the words would relate to an event which had not happened.

Where a testator, after giving a legacy in trust for a charitable purpose, stated, "As money is of more uncertain value than land, I do also give them (the trustees) power to make such purchases as they shall think fit for perpetuating the gift:" it was held, that these words did not bring the legacy within the Mortmain Act. *Attorney-General v. Goddard*, 1 Turn. & R. 348.

The gift of the residue of a testator's personal estate to trustees, for the perpetual endowment and maintenance of a school, would be valid, but if the testator went on to recommend trustees to collect residue, purchase freehold lands, &c., it comes within Stat. 9 Geo. 2, c. 36. *Kirkbank v. Hudson*, 7 Price, 212.

Where a testator ordered real estates to be sold, and the produce applied, with so much of the personal estate, as should be necessary to secure an annuity of 30*l.* for the life of H. B., and after his death to go to a charity; and the estate sold for 250*l.*; the bequest as to the charity was held to be void as to the 250*l.*, but good as to the rest of the sum required from the personal estate to secure the annuity. *Waite v. Webb*, 6 Madd. 71.

Where there was a direction to raise and secure an annuity of 50*l.* per annum to charity, by purchase of lands of inheritance, or otherwise, it was held not to be within the Statute of Mortmain. *Sorresby v. Hollins*, 9 Mod. 221.

If there be a devise to trustees for a charity, and the trustees die in the testator's life time, such a devise will subsist in equity, though lapsed at law. *Attorney-General v. Hickman*, Kel. (Sir W.), 4.

A bequest out of real estate to erect a monument in a church to the testator's memory, is not within the Statute of Mortmain. Where there was a bequest to erect a monument to the testator's memory within a year after his death, in the church of A., with a legacy to the rector of A., on condition of his consenting to the erection of the monument, and a direction, that if he refused, the testator was to be buried elsewhere; it was held, that the purpose failed by the rector's refusing, for many years, to allow the monument to be erected, though a succeeding rector was willing to consent. *Mellick v. The Asylum (President & Guardians of)*, Jacob, 180.

Personal chattels, such as fixtures, which a testator has a right to remove from a leasehold house, may pass under a bequest of the residue of personal property for charitable purposes. *Johnston v. Swann*, 3 Madd. 467.

(1) *Frauds, breaches of trust, and negligence*:—Corporations being the mere creations of the statutes or charters, by which they have been created, possess no powers to alienate or dispose of property, which may be inconsistent with their grants, or prejudicial to their trusts, and when they depart from the spirit or letter of their charters, their acts are illegal.

The court never interferes with the alienation of property belonging to civil corporations, except where they are charitable trustees in their corporate capacities, and then they bear the same relation as other trustees. *Colchester (Mayor, &c. of) v. Lowten*, 1 V. & B. 246. *Attorney-General v. Carnarthen (Corporation of)*, Coop. C. C. 39.

The principal statutes which directly and incidentally relate to alienations of charitable property, are 13 Eliz. c. 10; 18 Eliz. c. 11; 39 Eliz. c. 5; 17 Geo. 3, c. 53; 21 Geo. 3, c. 66; 39 & 40 Geo. 3, c. 41; 55 Geo. 3, c. 147; 58 Geo. 3, c. 45; 59 Geo. 3, c. 134; 1 & 2 Geo. 4, c. 92; 3 Geo. 4, c. 72; 5 & 6 Gul. 4, cc. 30 & 76; 3 & 4 Vict. c. 60; 4 & 5 Vict. c. 39; and 5 & 6 Vict. c. 112.

The court will control the power of leasing in trustees of a charity, if the restriction be beneficial to the charity. *Ex parte Berk-hampstead School*, 2 V. & B. 138. Trustees are bound to a provident administration of the charitable funds, and there is no positive law which says, that, in no instance, shall there be an absolute alienation.

Alienation, not improvident, but beneficial to the charity, and conformable to the rule which ought to guide trustees, may be good; and, in such cases, alienation has taken

STAT. 43 ELIZ. and remedy whereof, be it enacted by authority of this present parliament, that c. 4.

place under the authority of the court. *Attorney-General v. Warren*, 2 Swanst. 302. *Attorney-General v. Cross*, 3 Meriv. 524. *Attorney-General v. Smith*, 2 Vern. 746. *Attorney-General v. Hungerford*, 2 C. & F. 357.

If an advowson belong to a charity, the trustees, when they make a presentation, must make such a profit by its disposal as the law will recognise. *Attorney-General v. Ward*, 7 Law Journ. 119.

A personal trust, such as the patronage of a school, is also the subject of alienation. *Attorney-General v. Brentford School (Master of)*, 1 M. & K. 393.

If trustees alienate or demise property for a long term under a decree of the court,—a succeeding court will not pronounce the same a breach of trust. *Ibid.*

Trustees of charity estates, having the absolute legal estate, may grant leases for any number of years; but if they are unreasonably long, without any circumstances showing that they were made in the fair management of the estate, and for the benefit of the charity, they will be set aside by the court of Chancery, as a breach of trust. *Attorney-General v. Stamford (Corporation of)*, 2 Swanst. 592. *Attorney-General v. Brooke*, 18 Ves. 319. *Attorney-General v. Green*, 6 *Ibid.* 452. *Attorney-General v. Griffith*, 13 *Ibid.* 565. *Attorney-General v. Hungerford*, 2 C. & F. 357.

The leases of trustees having a beneficial interest, will not be construed differently from those by mere trustees, on account of the inconvenience both ways, the trustees not doing their duty, and the lessees getting the land at a low rent. *Attorney-General v. Wilson*, 18 Ves. 518.

A lease, good at law, will not be set aside in equity, without allowing for lasting improvements, for where the lease is good at law, but bad in equity, the attorney-general seeking equity, must do equity. *Attorney-General v. Lloyd*, 6 Madd. 92. *Pugh v. Ryall*, Sel. Ca. Ch. 41. *Attorney-General v. Baliol College, Oxford*, 9 Mod. 411. *Shelford on Mortmain*, 703.

The jurisdiction to give effect to an award, confirmed by a decree of the court, in the case of a charity, is doubtful; but the renewal of a lease upon the terms of the award, having been twice directed by the court, was again enforced. *Attorney-General v. Clements*, 1 Turn. & R. 58.

By Stat. 5 & 6 Gul. 4, c. 50, s. 50, trustees are required to let lands or tenements, given for the maintenance of highways, at the most improved yearly value, without fine, for any term not exceeding ninety-nine years. But previous to the granting of such lease, the written consent of the justices, at a special sessions for the highways, neither of such justices being interested therein, must be obtained.

It was however decreed in a previous case, that where, in letting estates for the future, one consideration was, whether it should be let for the improved rent, or fines directed

to be taken; it should be left to the master to inquire, whether letting on improved rent, or leasing upon fines, would be for the benefit of the charity.

And the leases were directed to be to the best bidder, and whether upon fines, or the improved rack-rent, proper covenants were to be inserted, for the tenants to keep the houses in repair, and to pay all the charges of such repairs. *Attorney-General v. Price*, 3 Atk. 108. *Attorney-General v. Dulwich College*, 4 Beav. 265.

“Trustees for charities, and those to whom they give derivative interests, and who are also trustees of those interests, derived to them through a breach of trust by the former trustees, act under an obligation to use reasonable providence in the execution of the trust; and the proposition, that, in general, it is reasonable providence to make a lease at a rent not increasing in seventy years, an interest, the value of which is not very far short of the value of the inheritance, and no other consideration than a rent, admitted to be adequate at the commencement, is of such a nature, as at least not to exclude the power of the court to call upon those who are concerned, to show, that this *primâ facie* most improvident lease is reasonable, and the duty of explanation lies upon them.” Per Lord Eldon in *Attorney-General v. Griffith*, 13 Ves. 575.

A tenant of a charity estate, provided he has acted fairly, is not to be turned out of possession, or to have his lease set aside, merely on the ground of the inadequacy of the rent to the value of the estate. *Exp. Skinner*, 2 Meriv. 453. Vide etiam *Attorney-General v. Kerr*, 2 Beav. 420.

Where a lease of a charity estate sought to be set aside; first, as being a lease granted for a long term of years determinable on lives, at a small rent, on the payment of a fine, and secondly, on the ground of undervalue: it was not disturbed, the corporation, who were trustees of the charity, having been always in the habit of letting their estates according to the same mode, it being also supported by the custom of the country in which the estates are situate, and the evidence not bearing out the charge of undervalue. *Attorney-General v. Cross*, 3 Meriv. 524.

In order to set aside a lease of a charity estate already existing, it is not enough to say that the mode of letting is not the best that might be described; but it must be shown to be so positively bad, that no person meaning to discharge his trust fairly, could have resorted to it; e. g. a lease for a long term of years absolute, at a stationary rent. *Ibid.* 540.

Where it appears to have been the usual practice of landlords, in dealing with large estates in Ireland, to grant leases for lives, with covenants for perpetual renewal, on payment of a fine on each renewal, besides a certain rent, the validity of a lease made by the trustees of a charity upon those terms which were reasonable at the time, was held

it shall and may be lawful to and for the lord chancellor or keeper of the great seal STAT. 43 ELIZ. c. 4.

not to be affected by a subsequent alteration of circumstances. *Attorney-General v. Hungerford*, 2 C. & F. 357.

But there is no such principle, as that a lease of a charity estate for lives, or for a long term of years, determinable on lives in existence, is, on the face of it, an abuse of trust. *Attorney-General v. Cross*, 3 Meriv. 539. *Attorney-General v. Warren*, 2 Swanst. 302. *Attorney-General v. Smith*, 2 Vern. 746. *Attorney-General v. Hungerford*, 2 C. & F. 357. *Attorney-General v. South Sea Company*, 4 Beav. 453.

The lease of certain charity lands for eighty years, has been supported, as to the interest of a sub-lessee, upon a fair consideration, several years ago, and no notice, except that it was a charity estate. As to the original lease, (in consequence of the length of time, the surrender of a former lease, the terms of which did not appear, the rent reserved, and an expenditure, though not according to the covenants, equally beneficial,) inquiries were directed, to ascertain, whether the lease was reasonable or unreasonable, in such a degree, that fraud could be inferred. *Attorney-General v. Backhouse*, 17 Ves. 283. *Jones v. Smith*, 1 Keen, 63.

Where an application was made to set aside the lease of a charity estate, because it had a clause in the original lease for nine successive renewals, at the end of every seven years, a fine to be paid at each time; and if the lease could not be set aside, to be relieved against the covenant for renewal: the court thought there was not sufficient ground for setting aside the lease altogether, for there was no particular mode prescribed for leasing, and the trustees were only obliged to lease beneficially for the charity. *Attorney-General v. Baliol College, Oxford*, 9 Mod. 407.

A decree would be issued against a corporation to grant a new lease, according to a covenant for perpetual renewal, though the whole of the reserved rent had been for many years applied uniformly to one charitable purpose. *Gozna v. Grantham (Aldermen of)*, 3 Russ. 261.

If trustees of a charity grant an improper lease, in which they covenant with the lessee for the actual enjoyment, during the term; the court will order the indenture of demise to be cancelled *in toto*, and will not leave the personal covenants of the trustees in force for the benefit of the lessee. *Attorney-General v. Morgan*, 2 Ibid. 306. *Northcote v. Underhill*, 1 Salk. 199. *Shelford on Mortmain*, 703.

No allowance can be made for payments by which the charity has not been benefited, (*Attorney-General v. Pretymann*, 4 Beav. 462; *Attorney-General v. Christ's Hospital*, Ibid. 73; *Attorney-General v. Brittingham*, 3 Ibid. 91,) as the purchase money paid by the assignee of a lease. *Attorney-General v. Brooke*, 18 Ves. 236. *Attorney-General v. Mettingham*, 3 Beav. 93. *Attorney-General v. East India Company*, 11 Sim. 385. *Shore v. Wilson*, 9 C. & F. 451.

And when the purchaser's title is equally

bad at law and in equity, it is questionable whether any compensation will be made for money expended in buildings. *Attorney-General v. Lloyd*, 6 Madd. 92.

Although a purchaser of a lease has never been considered as a purchaser for valuable consideration, without notice to the extent of not being bound to know, from whom the lessor derived his title, it seems, that no case has gone the length, that he is to take notice of all those circumstances, under which the lessor derived that title. And although under-lessees of a charity estate, must be presumed at least to have notice that the lessors were trustees of a charity, yet it will not follow that they had notice of the lease being bad, as that depends upon a number of circumstances *dehors* the lease. *Attorney-General v. Backhouse*, 17 Ves. 293.

Where a lessee of a charity estate grants an under-lease for a fair consideration, and the original lease is set aside, the court will not disturb the possession of the sub-lessee, but transfer the interest acquired under the bargain for the benefit of the charity, and the decree will be modified by directing the sub-lessees to pay their rents to the charity, instead of the persons with whom they contracted. Ibid. 292.

When the original leases are set aside, without disturbing the under-leases, the persons representing the original lessees will be directed to assign all their interest to the trustees of the charity, in order that it may have the benefit of the under-leases. *Attorney-General v. Griffith*, 13 Ibid. 581.

Charitable leases cannot be granted for the personal benefit of the grantor or his representatives, or any of his children, or any person other than those entitled to the benefit of the charity. *Attorney-General v. Dixie*, 13 Ibid. 540.

Trustees, governors, or agents, can neither be purchasers nor lessees of the property belonging to their respective charities. *Attorney-General v. Clarendon (Earl of)*, 17 Ves. 500. *Exp. Skinner*, 2 Meriv. 457. *Pugh v. Ryall*, Sel. Ca. Ch. 40.

Neither can they stipulate for the render of any beneficial service from lessees. *Attorney-General v. Stamford (Mayor of)*, 2 Swanst. 592.

Stat. 13 Eliz. c. 10, (*antè* 424,) makes void all grants of property by the master or guardian of any hospital, other than for the term of twenty-one years, or three lives, from the time of granting such lease; whereupon the accustomed rent or more shall be reserved. And Stat. 18 Eliz. c. 11, (*antè* 437,) has enacted, that all leases, &c., within Stat. 13 Eliz. c. 10, whereof any former lease for years was in being, and not to be expired, surrendered, or ended, within three years next after the making of any such new lease, shall be void.

All leases, grants, conveyances, or estates, to be made by any corporation founded under Stat. 39 Eliz. c. 5, (*antè* 469,) exceeding the number of twenty-one years, and that in possession, and whereupon the accustomed

STAT. 43 ELIZ. of England, for the time being, and for the chancellor of the duchy of Lancaster, c. 4.

yearly rent or more, by the greater part of twenty years next before the making of such lease had not been reserved and yearly payable, are void. Where an hospital, being restrained from making leases exceeding twenty-one years, granted a lease for that term, with a covenant to make it by renewal sixty years, the covenant was held not to be binding in equity, as being equally prejudicial to the hospital as a lease for sixty years. *Lydiatt v. Poach (Sir John)*, 2 Vern. 410. *Watson v. Hemsworth Hospital (Master of)*, 14 Ves. 324. *Blackston v. Hemsworth Hospital, Duke's Charitable Uses*, 644. Vide etiam *Attorney-General v. Foord*, 12 Law Journ. N. S. 238.

If the *bonâ fide* grant of a lease should be questioned, an inquiry will be directed whether the lease was upon reasonable terms, having regard to the rent reserved, the money expended in building or otherwise, and the duration of the lease; and if it should appear to the master not to be upon reasonable terms, he will have to state the grounds of his opinion, so that the court may judge whether the lessee ought to be permitted to hold against the charity. *Attorney-General v. Backhouse*, 17 Ves. 283. *Attorney-General v. Magwood*, 18 Ibid. 315.

A deviation from the founder's intention, in the granting of a lease, will not be authorized by the court; and where charity estates have been directed by the founder to be leased for a certain term of years, the court has no jurisdiction to order a lease to be granted for a more extensive term. *Attorney-General v. Rochester (Mayor of)*, 2 Sim. 34.

A lease made under a power, by a person having only a particular estate, if not conformable to the power, is bad; but where the persons granting the lease have at law the inheritance, with directions only how they are to execute leases, the legal estate will pass from them, although such directions are not observed. *Attorney-General v. Griffith*, 13 Ves. 580.

The court will also execute the intention of a testatrix, desiring rents should not be raised during the lives of the then tenants, because it would only be to give the difference to the tenants for the time being; but if a testatrix were to order that rents should for ever continue the same, it would be a direction inconsistent with the legal devise of the estate, and the court will not give effect to such words. *Attorney-General v. Catherine Hall, Cambridge (Master of)*, Jacob, 381. *Attorney-General v. Cooper's Company*, 3 Beav. 29. *Watson v. Hinsworth Hospital*, 2 Vern. 596. *Exp. Berkhamstead Free School*, 2 V. & B. 134.

Where a college was restrained by its constitution from making any leases, except for twenty-one years, and at a rack rent, made orders recommending it to their successors to renew at less than the rack rent: such orders were not favoured, as tending to a breach of the statute. *Taylor v. Dulwich Hospital*, 1 P. Wms. 655.

Though courts of equity will effectuate a

clear, distinct contract, for perpetual renewal, they are unfavourable to any constructive inference of such contracts, and will not assist parties who, having once had the benefit of such a covenant, have lost it by laches or mere accident. *Tritton v. Foote*, 2 Bro. C. C. 636. *Bayley v. Leominster (Corporation of)*, 3 Ibid. 529. *Moore v. Foley*, 6 Ves. 232. *Iggulden v. May*, 9 Ibid. 325. *London (City of) v. Mitford*, 14 Ibid. 41(a). *Watson v. Hemsworth Hospital*, Ibid. 324.

Upon which principle a bill to compel an hospital to renew a lease upon payment of one year's rent by way of fine was dismissed, where a discretion was only vested, that the hospital should not increase their fines by taking two years' rent, but it was not to prevent their taking a year's rent, though it should amount to more than formerly; because an absolute and perpetual renewal upon particular terms would be equivalent to an alienation. *Somerville v. Chapman*, 1 Bro. C. C. 61.

A lease of a charity estate will be set aside for under-value, if considerable. *Smith v. Stowell*, 1 Ch. Ca. 195. *Wright v. Newport Pond (School of)*, Duke's Charitable Uses, 649. *Reresby (Sir W.) v. Farrer*, 2 Vern. 414. *Shelford on Mortmain*, 698. *Eltham Parish v. Warreyn*, Duke's Charitable Uses, 641. Where an under-lease, at a fine, had been granted, it was held not to be conclusive, although part was ascribed to the good will of a trade established, and repairs. But an inquiry was directed, whether the rent was fair and adequate; distinguishing how much of the premium on the under-lease resulted from the good will and repairs, and how much from the value of the lease, above the rent reserved to the charity. *Attorney-General v. Magwood*, 18 Ves. 315.

Leases of charity estates for twenty-one years, the lessors not being mere trustees, but having also a beneficial interest, have been set aside as breaches of trust, for under-value. *Attorney-General v. Wilson*, Ibid. 518.

Where charity lands had been let at great under-value, the lease was set aside, and it was decreed, that the lessee should pay the arrears of rent, according to the full value of the land, and deliver up the possession. *Reresby (Sir W.) v. Farrer*, 2 Vern. 414.

A long lease of a charity estate in 1715, at a great under-value, has been decreed to be delivered up, and an account directed with just allowances. *Attorney-General v. Green*, 6 Ves. 452. Vide etiam *Attorney-General v. Kerr*, 2 Beav. 420.

A lease for ninety-nine years of a charity estate, to farm as a husbandry lease, cannot stand, without proof of a consideration, showing that it is fair and reasonable, and for the benefit of the charity:—thus, long possession had been permitted, and the defendant had been the personal representative, a husbandry lease was set aside, but without costs, and without imposing an additional rent, previous to the bill, but it was stated that future

for the time being, for lands within the county palatine of Lancaster, from time to time to award *commissions* (1) under the great seal of England or the seal of the county palatine, as the case shall require, into all or any part or parts of this realm respectively, according to their several jurisdictions as aforesaid, *to the bishop* (2) of every several diocese and his chancellor, (*in case there shall be any* STAT. 43 ELIZ. c. 4. Cro. Car. 526. Commissioners to inquire of the gift of

cases would not be so treated. *Attorney-General v. Owen*, 10 Ves. 555.

So likewise in *Attorney-General v. Backhouse*, (17 Ibid. 291,) a lease of charity lands for ninety-nine years, as a mere husbandry lease, upon terms, and at a rent adapted to a lease for twenty-one years, was not allowed; nor a building lease for 999 years, upon an expenditure commensurate to a term of ninety-nine years. Vide etiam *Attorney-General v. Hotham (Lord)*, 1 Turn. & R. 209. *Attorney-General v. Brettingham*, 3 Beav. 91.

The trustee for a charity cannot, without an adequate consideration, let for ninety-nine years, not being the ordinary course of provident management; much less can he lease with a covenant for perpetual renewal, without an equivalent for the inheritance. *Attorney-General v. Brooke*, 18 Ves. 326.

In *Attorney-General v. Griffith*, (13 Ibid. 565,) a long lease of a charity estate in 1760, was set aside, the trustees joining in the application, as a breach of trust; not only as against the express directions of the founder, but also generally, as an improper administration of a charity estate; the relators not desiring to disturb under-leases. Vide etiam *Attorney-General v. Foord*, 12 Law Journ. N. S. 238.

A void contract for a thing that a man cannot enjoy, cannot imply an agreement to give up a former contract. Therefore, although the acceptance of a new good lease is a surrender of the former; yet the acceptance of a new void lease, which the lessee cannot enjoy, will not be a surrender of the valid lease; because it cannot operate by estoppel, and also by way of passing an interest. 1 Inst. 45 (a) *Treport's case*, 6 Co. 14 (b). Shep. Touchst. by Atherley, 269. *Whitley (Widow) v. Gough*, Dyer, 140 (b), pl. 43. *Davison d. Bromley v. Stanley*, 4 Burr. 2210. *Roe d. Berkeley (Earl of)*, v. *York (Archbishop of)*, 6 East, 86. *Doe d. Simpson v. Butcher*, Doug. 50. *Wilson v. Sewell (Sir Thomas)*, 4 Burr. 1975. *Mellow v. May*, Moore (Sir F.), 636.

(1) *Commissions*.—The court of Chancery was empowered to issue commissions to certain persons, for the purpose of inquiring, by the intervention of a jury, whether there had been any abuse, misapplication, or mistaken application, of charitable funds; but the proceedings of the commissioners were subject to reversal by the court of Chancery. Vide *Duke's Charitable Uses*, *passim*, for proceedings of the commissioners.

The commissioners were restrained to three things in making their decrees and orders: i. That it tend and conduce to the employment of the things given. ii. That the employment be faithful. iii. That the employment vary not from the use and intent for which the thing was given.

These three things being observed, the commissioners had power and authority to do five things more: "i. They may establish the property of the thing given in the person to whom it was given, or they may transfer it from one person to another. ii. They may supply the defects of the gifts or employments in certainties, circumstances, and decencies. iii. They may ordain conveyances or assurances to be made, for the better employment of the use. iv. They may add decencies in the employment for the honour of the donor. v. They may impose penalties for misemployments." *Readings of Sir F. Moore*, Duke's Charitable Uses, 153. *Attorney-General v. Dublin (Mayor, &c. of)*, 1 Bligh N. S. 347.

During the Stuart dynasty, numerous commissions were issued, but since the accession of the House of Hanover, they have gradually fallen into desuetude,—and only three commissions were issued in the reign of George the Third, which are to be found in the Petty Bag Office.

The mode of redressing charity abuses which has been invariably adopted of late years, has been that which existed as part of the original jurisdiction of the court, prior to the statute of Elizabeth; (*Attorney-General v. Brereton*, 2 Ves. Sen. 426; *Attorney-General v. Newman*, 1 Ch. Ca. 157; *Attorney-General v. Middleton*, 2 Ves. Sen. 328;) viz. by information in the attorney-general's name, who brings the matter in question formally upon record, stating the claims that were made upon the individuals charged with a breach of trust, calling upon them to make a defence, and putting their defence upon record, and thus having a complete issue upon the record, upon which the judgment of the court of Chancery may be founded.

Notwithstanding a decree under a commission of charitable uses, the court will still permit a suit to be instituted, in which neither side is bound by what appeared before the commissioners, but may set forth new matter. *Burford (Corporation of) v. Lenthall*, 2 Atk. 552. Commissioners of charitable uses have no power under Stat. 43 Eliz. c. 4, to give costs, but the court of Chancery can do it. *Aylet v. Dodd*, Ibid. 238. Objections to commissioners' decree must be taken by way of exceptions, not by bill. Beames' Ord. 41.

(2) *To the bishop*.—It was resolved by *Egerton*, *Popham*, *Anderson*, and *Cook* (*Attorney-General*), that the see being full at the time of sealing the commission, if the bishop be not named commissioner, the commission is void; but if he be named, it is not requisite that he be present at the execution, for that none is of the *quorum*; but any four, or more, may execute the same, without the presence of the bishop or his chancellor. *Duke's Charitable Uses*, 620.

STAT. 43 ELIZ.
C. 4.

lands and goods
to charitable
uses.

Four commis-
sioners at the
least.

Hob. 136.

The inquiry.

The commis-
sioners' orders.

The commis-
sioners' orders

bishop(1) of that diocese, at the time of awarding of the same commissions,) and to other persons of good and sound behaviour, authorizing them thereby, or any four or more of them, to inquire as well by the oaths of twelve lawful men or more of the county(2), as by all other good and lawful ways(3) and means, of all and singular such gifts, limitations, assignments(4), and appointments aforesaid, and of the abuses, breaches of trusts, negligences, misemployments, not employing, concealing, defrauding, misconverting, or misgovernment of any lands, tenements, rents, annuities, profits, hereditaments, goods, chattels, money or stocks of money, heretofore given, limited, appointed, or assigned, or which hereafter shall be given, limited, appointed, or assigned, to or for any the charitable and godly uses before rehearsed: and after the said commissioners or any four or more of them, (upon calling the parties interested(5) in any such lands, tenements, rents, annuities, profits, hereditaments, goods, chattels, money and stocks of money,) shall make inquiry by the oaths of twelve men or more of the said county, (whereunto the said parties interested shall and may have, and take their lawful challenge and challenges,) and upon such inquiry, hearing, and examining thereof, set down such orders, judgments, and decrees, as the said lands, tenements, rents, annuities, profits, goods, chattels, money and stocks of money, may be duly and faithfully employed, to and for such of the charitable uses and intents(6) before rehearsed respectively, for which they were given, limited, assigned or appointed by the donors and founders thereof: which orders, judgments, and decrees, not being

(1) *In case there shall be any bishop*:—“If the see of the bishop be void at the sealing of the commission, then the bishop need not be named a commissioner, neither his chancellor. And the metropolitan shall not be named instead of the bishop, for that he is not the bishop of the diocese. And if the bishop be named a commissioner, and die before the certificate returned; this doth not avoid the commission, but the other commissioners may proceed.” Duke's Charitable Uses, 620.

(2) *Of the county*:—That is, (as it was resolved in the case of *Rugby (School of)*, Ibid. 633,) of that county “where the lands do lie, and not where the charity ought to be employed, in case the counties are different.” But five years after, it was further resolved, in the case of *East Grinstead*, (Ibid. 638,) that “if a rent be granted out of lands in several counties, for maintenance of charitable uses in one county; the commissioners in that county, where the charitable use is to be performed, may make a decree to charge the lands in other counties, to pay an equal contribution of charge in payment of the said rent; and there needs not several inquisitions in each county, for that the rent is an entire grant, by the deed or will.”

(3) *By all other good and lawful ways*:—Such are, former inquisitions, witnesses, rentals, accounts, estreats, &c., and their own proper knowledge: by which means, they may supply the defects of the inquisition, in matters of particularity and circumstance.

(4) *Gifts, limitations, assignments*:—It hath been often resolved, that “this statute doth supply all the defects of assurances, where the donor is of a capacity to dispose, and hath such an estate, as is any ways disposable by him; and upon this ground it hath been held, that, if a copyholder dispose of copyhold lands to a charitable use, without a surrender; or if tenants in tail do

convey land to a charitable use, without a fine; or if a reversion be granted without attornment or inrolment;” or if in the deed, or will, by which the charitable uses were first created and raised, there be misnamings; in these, and other like cases, the defects are supplied by this statute, because the donor had a disposing power of the estate; and these are good limitations and appointments within the present statute. Ibid. 371.

Thus, where lands were given to the *churchwardens* of a parish, to a charitable use, though the devise was void in law, yet it was decreed to be valid in Chancery, by the words *limited and appointed*. *Pennyman v. Jenny*, Ibid. 374. But a parol devise to a charity out of lands, being defective as a will, cannot be supported as an appointment; because, being defective as a will, which was the manner of conveyance, the testator intended to pass it by, it can have no effect as an appointment, which he did not intend; and of this opinion the lord chancellor seemed to be, and decreed accordingly in the principal case. *Jennor v. Harper*, Pre. Ch. 389.

(5) *Parties interested*:—It was resolved in the case of *East Grinstead*, (Duke's Charitable Uses, 639,) that though the commissioners make a decree without giving such notice to the parties, it is good. And if the parties, upon their appeal, do take exception, that they had not any notice, such defect shall not avoid the decree, unless they show, (to the satisfaction of the lord chancellor,) that thereby they really lost the benefit of exception to some commissioner, or challenge to some juror; the intent of such notice being, that they may make their lawful exceptions and challenges.

(6) *Intents*:—The intent of the founder, (saith my Lord Coke, 2 Inst. 712,) is the *lapis ductitius*, whereby the commissioners and chancellors must institute their course.

contrary or repugnant to the orders, statutes, or decrees of the donors or founders, shall by the authority of this present parliament stand firm and good, according to the tenour and purport thereof, and shall be executed accordingly, until the same shall be undone or altered by the lord chancellor of England or lord keeper of the great seal of England, or the chancellor of the county palatine of Lancaster, respectively, within their several jurisdictions, upon complaint by any party grieved to be made to them.

“II. *Provided always* (1), that neither this act, nor any thing therein contained, shall in any wise extend to any lands, tenements, rents, annuities, profits, goods, chattels, money or stocks of money, given, limited, appointed, or assigned, or which shall be given, limited, appointed, or assigned, to any college, hall, or house of learning within the universities of Oxford or Cambridge, or to the colleges of Westminster, Eton, or Winchester, or any of them, or to any cathedral or collegiate church within this realm.

“III. And provided also, that neither this act, nor any thing therein, shall extend to any city, or town corporate, or to any the lands or tenements given to the uses aforesaid within any such city or town corporate, where there is a special governor or governors appointed to govern or direct such lands, tenements, or things disposed to any the uses aforesaid, neither to any college, hospital, or free school, which have special visitors or governors, or overseers appointed them by their founders.

“IV. Provided also, and be it enacted by the authority aforesaid, that neither this act, nor any thing therein contained, shall be any way prejudicial or hurtful to the jurisdiction or power of the ordinary, but that he may lawfully in every cause execute and perform the same, as though this act had never been had or made.

“V. Provided also, and be it enacted, that no person or persons that hath or shall have any of the said lands, tenements, rents, annuities, profits, hereditaments, goods, chattels, money or stocks of money in his hands or possession, or doth or shall pretend title thereunto, shall be named a commissioner or a juror for any the causes aforesaid, or being named shall execute or serve in the same.

(1) *Provided always*:—Three things are requisite to bring a case within the proviso of the statute.

“i. That the gift be made to a body politic, not to a part or principal member, as to the dean and chapter, and not to the dean alone.

“ii. Not only the gift, but the employment also must be limited to a corporation, yet if the gift be to the chief, or grand corporation, and the employment limited into an inferior corporation within it, it shall be exempted.

“iii. The corporations, overseers, or governors, must be able and have power to execute and employ the use, in as ample manner as the commissioners may do, otherwise if they cannot cause the use to be employed, the commissioners may intermeddle, and the proviso shall not save them.” *Readings of Sir F. Moore*, Duke’s Charitable Uses, 172.

In fact, where a college, hospital, or school is founded, and a special visitor appointed, or a visitor by operation of law, the commission by virtue of the statute cannot interfere. *Attorney-General v. Harrow School (Governors of)*, 2 Ves. Sen. 551.

Where the land is given to persons in trust, to perform a charitable use, and the donor appoints special visitors to see these trustees perform the use according to his intent, if the trustees defraud the trust, the

commissioners cannot meddle, but the visitors are to perform it; but where the visitors are trustees also, then the commissioners may reform the abuse of the charitable uses. *Case of Sutton Colefield*, Duke’s Charitable Uses, 642.

“If a corporation can deal but for part, the commissioners shall have jurisdiction for the whole, *maius dignum trahit ad se minus dignum*.” *Readings of Sir F. Moore*, Ibid. 173.

“If a gift be made to an hospital, which hath a governor appointed by the founder, and the gift be for increase of relief of the poor, this increase is exempted, as well as the foundation, from the jurisdiction of the commissioners.” Ibid.

“An hospital in reputation is exempt, as well, as if it were a corporation, if it have a governor appointed by the founder.” Ibid.

A limited power of visitation, which may be given by the founders of a charity, will not deprive the commissioners of charitable uses of their jurisdiction. *Case of Kirkby Ravensworth Hospital*, 8 East, 221. 15 Ves. 305.

“If there be inferior or petty corporations, as companies of mercers, grocers, &c. in a greater corporation, as in the city of London, the proviso will be extended by equity to such companies or corporations. Though colleges be only mentioned, yet the whole university, which is a body politic, will

STAT. 43 ELIZ. c. 4.

shall be executed.

The commissioners’ orders altered.

Colleges, halls in Oxford or Cambridge, Westminster, Eton, Winchester, cathedral churches. 1 Lev. 284.

City, town corporate, college, hospital, free school.

Ordinary’s jurisdiction.

None shall be commissioner or juror which hath any part of the lands or goods in question.

STAT. 43 ELIZ.
c. 4.

Purchasers of
the lands *bonâ*
fide.

Recompence
by those which
break the trust.

Lands assured
to King Henry
8, Edward 6,
Queen Mary,
and Queen
Elizabeth.

Certifying of
the orders.

Order for the
execution of
the commis-
sioners' decree.
Cro. Car. 40.

“VI. And provided also, that no person or persons which hath purchased or obtained, or shall purchase or obtain, upon valuable consideration of money or land, any estate or interest of, in, to, or out of any lands, tenements, rents, annuities, hereditaments, goods, or chattels, that have been or shall be given, limited, or appointed to any the charitable uses above-mentioned, *without fraud* (1) or covin, having *no notice* (2) of the same charitable use, shall not be impeached by any decrees or orders of the commissioners above-mentioned, for or concerning the same his estate or interest: and yet nevertheless, be it enacted, that the said commissioners, or any four or more of them, shall and may make decrees and orders for recompence to be made by any person or persons, who being put in trust, or having notice of the charitable uses above-mentioned, hath or shall break the same trust, or defraud the same uses, by any conveyance, gift, grant, lease, demise, release, or conversion whatsoever, and against the heirs, executors, and administrators of him, them, or any of them, having assets in law or equity, so far as the same assets will extend.

“VII. Provided always, that this act shall not extend to give power or authority to any commissioners before mentioned, to make any orders, judgments, or decrees, for or concerning any manors, lands, tenements, or other hereditaments assured, conveyed, granted, or come unto the queen's majesty, to the late King Henry the Eighth, King Edward the Sixth, or Queen Mary, by act of parliament, surrender, exchange, relinquishment, escheat, attainder, conveyance, or otherwise: and yet, nevertheless, be it enacted, that if any such manors, lands, tenements, or hereditaments, or any of them, or any estate, rent, or profit thereof, or out of the same or any part thereof, have or hath been given, granted, limited, appointed, or assigned to or for any the charitable uses before expressed, at any time sithence the beginning of her majesty's reign; that then the said commissioners, or any four or more of them, shall and may, as concerning the same lands, tenements, hereditaments, estate, rent, or profit so given, limited, appointed, or assigned, proceed to inquire, and to make orders, judgments, and decrees, according to the purport and meaning of this act, as before is mentioned; the said last-mentioned proviso notwithstanding.

“VIII. And be it further enacted, that all orders, judgments, and decrees of the said commissioners, or of any four or more of them, shall be certified under the seals of the said commissioners, or any four or more of them, either into the court of the Chancery of England, or into the court of the Chancery within the county palatine of Lancaster, as the case shall require respectively, according to their several jurisdictions, within such convenient time as shall be limited in the said commissions.

“IX. And that the said lord chancellor, or lord keeper of the said chancellor of the duchy, shall and may, within their said several jurisdictions, take such order for the due execution of all or any of the said judgments, decrees, and orders, as to either of them shall seem fit and convenient.

also be taken by *equity* to be within the proviso.” *Readings of Sir F. Moore, Duke's Charitable Uses*, 172.

(1) *Without fraud*.—The words “valuable consideration” have received the strictest construction.

A mixed consideration, as in consideration of money and marriage, is not a valuable consideration, under the statute; but a valuable consideration, coupled with another that is invaluable and void, is valid, because “utile per inutile non vitiatur.” *Readings of Sir F. Moore, Duke's Charitable Uses*, 178.

If the consideration be executory and not performed, it is not within the meaning of this proviso; but if part be executed and part executory, it is within the proviso. *Ibid.* 179.

A sale under the moiety of the value is

fraudulent and decreable. But if one purchase lands or goods under half the value, and sell them over to another, upon good consideration, *bonâ fide*, the fraud is purged. *Ibid.* 181.

(2) *No notice*.—The notice in order to bind a purchaser of lands charged with a charitable use, must be certain; a general notice is not sufficient. *Ibid.* 182.

Where a rent-charge is legal, it must, like every other legal incumbrance, bind the purchaser, although he purchased without notice; but where there is a mere equitable charge, no decree will be made for its payment against the purchaser, if he purchased without notice.

A purchaser without notice of land, which was subject to a rent-charge given to a charity, has been relieved from so much of the

"X. And that if after any such certificate or certificates made, any person or persons shall find themselves grieved with any of the said orders, judgments, or decrees, that then it shall and may be lawful to and for them or any of them, to complain in that behalf unto the said lord chancellor or lord keeper, or to the chancellor of the said duchy of Lancaster, according to their several jurisdictions, for redress therein: and that upon such complaint, the said lord chancellor or lord keeper, or the said chancellor of the duchy, may, according to their said several jurisdictions, by such course as to their wisdoms shall seem meetest, the circumstances of the case considered, proceed to the examination, hearing, and *determining* (1) thereof; and upon hearing thereof shall and may annul, diminish, alter, or enlarge the said orders, judgments, and decrees of the said commissioners, or any four or more of them, as to either of them in their said several jurisdictions shall be thought to stand with *equity and good conscience* (2), according to the true intent and meaning of the donors and founders thereof; and shall and may tax and award good costs of suit by their discretions, against such persons as they shall find to complain unto them without just and sufficient cause, of the orders, judgments, and decrees before mentioned."

STAT. 43 ELIZ.
c. 4.

A remedy for any person grieved by the commissioners' decree.

Cost of suit against the complainers.

See farther concerning gifts to charitable uses,
4 Ann. c. 14.

LV. STAT. 43 ELIZABETHÆ, c. 8. A.D. 1601.

"*An Act against fraudulent Administration of Intestate's Goods* (3)."

"Forasmuch as it is often put in ure, to the defrauding of creditors, that such persons as are to have the administration of the goods of others dying intestate, committed unto them, if they require it, will not accept the same, but suffer or procure the administration to be granted to some stranger of mean estate, and not of kin to the intestate, from whom themselves or others by their means do take deeds of gifts and authorities by letter of attorney, whereby they obtain the estate of the intestate into their hands, and yet stand not subject to pay any debts owing by the same intestate, and so the creditors, for lack of knowledge of the place of habitation of the administrator, cannot arrest him nor sue him; and if they fortune to find him out, yet for lack of ability in him to satisfy of his own goods for the value of that he hath conveyed away of the intestate's goods, or released of his debts by way of wasting, the creditors cannot have or recover their just and due debts.

STAT. 43 ELIZ.
c. 8.

Fraud practised in taking of administrations to deceive others of their lawful debts.

31 Edw. 3,
c. 11.
21 Hen. 8,
c. 5.

arrears as had not accrued during the time he had been in possession, and from costs decreed by the commissioners. *Wharton v. Charles*, C. T. F. 81.

(1) *Determining*:—It was resolved in *Thomas Windsor & the Inhabitants of Farnham*, (Cro. Car. 40,) and in *Saul v. Wilson*, (2 Vern. 118,) that such determination once made, may not be re-examined upon a bill of review, as is usual in other cases in Chancery; but that here the decree is conclusive, because it takes its authority by the act of parliament, which mentions but one examination; and it is not like the case, where the chancellor makes a decree by his ordinary authority. But, in the year 1643, (Duke's Charitable Uses, 634,) it was resolved by the judges and king's council, assistants in the House of Peers, that in such case the party grieved may petition the king in parliament, and have his complaint examined there; and so the decree may be confirmed, altered, or annulled; and then be final. All which was actually done, in the aforesaid year, and pursuant to the aforesaid resolution, on occasion of the decree of the Lord Keeper Coventry, in the case of *East Ham in Essex*.

(2) *Equity and good conscience*:—Courts

of equity will discourage long and expensive litigation in charity cases for matters of small value. Thus, in *Attorney-General v. Shearman*, (2 Beav. 104,) Lord Langdale observed: "I am of opinion, that a prosecution of the accounts and inquiries which are sought by this information would be prejudicial and not beneficial to the charity, unless more effectual means than the court possesses could be found, of altogether relieving the charity from costs and other prejudice to arise from the *prolonged litigation* in a matter of such *small value*; it consequently appears to me, that I ought not to disturb the decree, which has been made. I think it quite proper to *discourage long and expensive litigation* in charity cases for matters of such small value, and commenced under such circumstances as appear in this instance. On the whole, I am of opinion, that the decree ought to be confirmed, and that the relators ought to pay the costs of the rehearing."

(3) *Intestate's Goods*:—Assets are of two sorts, the one assets *by descent*, the other assets *in hand*. Assets *by descent* are, where a man is bound in an obligation, and dies seised of lands in fee simple, which descend

STAT. 43 ELIZ.
c. 8.

By fraudulent administration of intestate's goods, the party shall be charged as executor of his own wrong. Allowance of just debts and other lawful payments. Farther provisions respecting administration, see 22 & 23 Car. 2, c. 10; 29 Car. 2, c. 3; 1 Jac. 2, c. 17; and 14 Geo. 2, c. 20.

"II. Be it enacted by the authority of this present parliament, that every person and persons that hereafter shall obtain, receive, and have any goods or debts of any person dying intestate, or a release or other discharge of any debt or duty that belonged to the intestate, upon any fraud, as is aforesaid, or without such valuable consideration as shall amount to the value of the same goods or debts, or near thereabouts, (except it be in or towards satisfaction of *some* just and *principal debt, of the value* (1) of the same goods or debts to him owing by the intestate at the time of his decease,) shall be charged and chargeable as *executor of his own wrong* (2); and so far only as all such goods and debts coming to his hands, or whereof he is released or discharged by such administrator, will satisfy, deducting nevertheless to and for himself allowance of all just, due, and principal debts upon good consideration, without fraud, owing to him by the intestate at the time of his decease, and of all other payments made by him, which lawful executors or administrators may and ought to have and pay by the laws and statutes of this realm."

STAT. 43 ELIZ.
c. 9.

LVI. STAT. 43 ELIZABETHÆ, c. 9. A.D. 1601.

"An Act for continuance (3) of divers Statutes, and for repeal of some others."

to his heir, then his land shall be called assets, (*assez satis*;) that is, enough, or sufficient to pay the same debt; and by that means the heir shall be charged as far as the land so to him descended will stretch. Assets *in hand* are, when a man in like manner indebted makes executors, and leaves them sufficient to pay, or some commodity or profit is come unto them in right of their testator; this is called assets in their hands.

There is likewise another division of assets, into *legal* and *equitable* assets. *Legal* assets are such as are liable to debts and legacies by the course of the law; *equitable* assets are such as are only liable by the help of a court of equity.

So also there are *real* and *personal* assets. *Real* assets, are such as concern the land; *personal* are such as concern the personal estate only.

(1) *Some . . . principal debt, of the value*:—This clause will not authorize an executor of his own wrong, to give in evidence his own debt under *plene administravit*, or to specially plead a retainer for his own debt; (*Coulter's case*, 5 Co. 30(a); Cro. Eliz. 630;) although his debt may be superior to that of the creditor bringing the action, (*Vernon v. Carter*, 2 Black. Hen.) and that the rightful executor or administrator may have assented to such retainer. *Vide* Stephens on Nisi Prius, tit. EXECUTORS AND ADMINISTRATORS.

(2) *Executor of his own wrong*:—Respecting the acts which a stranger may commit without being responsible as an executor *de son tort*, vide *Ibid*.

(3) *Continuance*:—Stat. 13 Eliz. c. 20. Stat. 14 Eliz. c. 11. Stat. 18 Eliz. c. 11. Stat. 35 Eliz. c. 1.

STATUTA JACOBI I.

A.D. 1603—1625.

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I. STAT. 2 [*vulgo* 1] JACOBI 1, c. 3 (1). A.D. 1604.STAT. 2 JAC.
1, c. 3.

"An Act against the Diminution of the Possessions of Archbishopricks and Bishopricks, and for avoiding of Dilapidations of the same."

"Whereas all the archbishopricks and bishopricks within this realm of England, were in ancient times founded by his majesty's most noble progenitors, kings of this realm, and in respect thereof, his majesty is lawful and rightful patron of all and every of the same: and where also by the laws and statutes of this realm, no archbishop or bishop can make any conveyance, assurance, or estate whatsoever, of any honours, castles, manors, lands, tenements, or hereditaments, parcel of the possessions of his archbishoprick or bishoprick, or united, appertaining or belonging to any of the same, to any subject whatsoever, whereby any estate should or might pass from any archbishop or bishop, other than for term of one and twenty years, or three lives, with such reservations of rent, and in such manner and form, as by the laws and statutes are provided: his most excellent majesty understanding that divers persons have, with great suit and importunity, sought to *frustrate the true end* (2) and intent of the said good laws and statutes in that behalf, of his Christian and princely piety and care, minding so to patronize and protect the said possessions from alienation or diminution, as that the same may, according to the true intent of the founders, remain and continue in succession to the archbishops and bishops of this realm, and their successors, for the better maintenance of God's true religion, keeping of hospitality, and avoiding of dilapidations, and thereby for ever hereafter to avoid all suits and importunities for or concerning any of the said possessions, hath, out of his own mere and godly motion, and of his blessed disposition for the public good, without all regard of any private respect, vouchsafed and is pleased, that it may be enacted and established by his majesty, by and with the assent of the lords spiritual and temporal, and the commons, in this present parliament assembled:

All assurances made to the king of the lands of bishops shall be void. By the statute of 1 Eliz. c. 19, no bishop can make any lease of his land but for twenty-one years, or three lives, to a subject.

(1) *Vide* Stat. 5 & 6 Vict. cc. 26, 27, & 108.

(2) *Frustrate the true end*:—This was done by an artifice of the courtiers; first, in using means to induce bishops to pass over such proportions of land to the crown, as were subject to the reservation in Stat. 39 Eliz. c. 7; [An Act intituled, for the more speedy payment of the Queen's Majesty's Debts, the eighth section of which contained the following proviso: "And be it enacted, that this act, or anything therein contained,

shall not extend to give any power or authority to make any sale, conveyance, or assurance, of any manors, lands, tenements, or hereditaments of any archbishop, bishop, dean and chapter, or of any other ecclesiastical person; whereof he or they, or any of them, be, or hereafter shall be, seised in the right of his or their bishopric, church, or other corporation ecclesiastical whatsoever;"] and then immediately begging it of the crown, for them and their heirs for ever.

STAT. 2 JAC.
1, c. 3.

No bishop shall
assure his land
to the king.
10 Co. 62.
11 Co. 71.

Co. Lit. 44.

"II. And be it enacted and established by authority of the same, that every archbishop and bishop within this realm, and their and every of their successors, shall be, from and after the end of this present session of parliament, for ever wholly and utterly disabled in law, to make, do, levy, or suffer any act or acts, thing or things, whereby or by means whereof, any of the said honours, castles, manors, lands, tenements, or hereditaments, or any part of them, or any of them, shall or may be aliened, assured, given, granted, demised, charged, or in any sort conveyed to our said sovereign lord the king, his heirs or successors: and that all alienations, assurances, gifts, grants, leases, charges, and conveyances whatsoever, from and after the end of this present session of parliament, to be done, suffered, or made to our sovereign lord the king, his heirs or successors, by any archbishop or bishop, or their or any of their successors, of or out of any of the said possessions, or of or out of any part or parcel of them, or any of them, and all and every confirmation and confirmations of the same, shall be from and after the end of this present session of parliament utterly void and of none effect, to all intents, constructions, and purposes; any former law, statute, act, ordinance, or other matter or thing to the contrary notwithstanding."

STAT. 2 JAC.
1, c. 4.

II. STAT. 2 [vulgo 1] JACOBI 1, c. 4 (1). A.D. 1604.

"An Act for the due Execution of the Statutes against Jesuits, Seminary Priests, Recusants, &c."

Statutes made
in the reign of
Elizabeth shall
be put in
execution.
Going into
seminaries.
3 Inst. 178.
1 Eliz. c. 1.
5 Eliz. c. 1.
13 Eliz. c. 2.
23 Eliz. c. 1.
27 Eliz. c. 2.
29 Eliz. c. 6.
35 Eliz. cc. 1,
2.
2 Bulstr. 324.
A recusant
conforming
himself shall
be discharged.
Raym. 465,
466.

"For the better and more due execution of the statutes heretofore made, as well against Jesuits, seminary priests, and other such like priests, as also against all manner of recusants, be it ordained and enacted by authority of this present parliament, that all and every the statutes heretofore made in the reign of the late queen of famous memory, Elizabeth, as well against Jesuits, seminary priests, and other priests, deacons, religious and ecclesiastical persons whatsoever, made, ordained, or professed, or to be made, ordained, or professed, by any authority or jurisdiction derived, challenged, or pretended from the see of Rome, as those which do in anywise concern the withdrawing of the king's subjects from their due obedience, and the religion now professed, and the taking of the oath of obedience unto the king's majesty, his heirs and successors, together with all those made in the said late queen's time, against any manner of recusants, shall be put in due and exact execution."

"II. Provided nevertheless, and be it enacted by the authority of this present parliament, that if any that is or shall be a recusant shall submit or reform him or herself, and become obedient to the laws and ordinances of the church of England, and repair to the church, and continue there during the time of the divine service and sermons, according to the true meaning of the statutes in that behalf, in the said late queen's time made and provided, that then every such person for and during such time as he or she shall so continue in such conformity and obedience, shall from thenceforth be freed and discharged of and from any the penalties and losses which the same person might otherwise sustain and bear in respect or by reason of such person's recusancy.

In what case a
recusant's heir
shall be
charged, and
what not.

"III. And if any recusant shall hereafter die, his heir being no recusant, that in every such case, every such heir shall be freed and discharged of all and singular the penalties, charges, and incumbrances happening upon him or her in respect or by reason of his or her ancestor's recusancy: and if at the decease of any such recusant, his heir shall happen to be a recusant, and after shall become conformable and obedient to the laws and ordinances of the church of England, and repair to the church, and continue there during the time of the divine service and sermons, according to the intent and true meaning of the said statutes and ordinances in that behalf made as is aforesaid, and also shall take the oath of supremacy in such sort as that oath is expressed in one act of parliament made in the first

(1) *Vide* Stat. 3 Car. 1, c. 2. Stat. 3 43 Geo. 3, c. 30. Stat. 6 Geo. 4, c. 50. Geo. 1, c. 18. Stat. 31 Geo. 3, c. 32. Stat. Stat. 10 Geo. 4, c. 7.

year of the reign of our late sovereign lady Queen Elizabeth, before the archbishop or bishop of the diocese; that in every such case, every such heir shall be freed and discharged of all and singular the penalties, charges, and incumbrances, happening upon him or her in respect or by reason of any of his or her ancestor's recusancy.

"IV. Provided always, and be it enacted by authority of this present parliament, that if the heir of any recusant shall happen to be within the age of sixteen years at the time of the decease of his or her ancestor, and shall, after his or her said age of sixteen years, become or be a recusant, that in every such case, any such heir shall not be freed or discharged of all or any of the penalties, charges, or incumbrances happening upon him or her in respect or by reason of any of his or her ancestor's recusancy, until he or she shall submit or reform him or herself, and become obedient to the laws and ordinances of the church of England, and repair to the church, and continue there during the time of the divine service and sermons, according to the intent and true meaning of the said statutes and ordinances in that behalf as is aforesaid, and shall take the said oath of supremacy in manner and form afore expressed; and yet nevertheless, from and after such submission and oath had and taken, every such heir shall be freed and discharged of all and singular the penalties, charges, and incumbrances happening upon him or her in respect or by reason of any of his or her ancestor's recusancy.

"V. And be it further enacted by authority of this present parliament, that where any *seizure shall be had* (1) of the two parts of any lands, tenements, hereditaments, leases, or farms, for the not payment of the twenty pounds, due and payable for each month, according to the statute in that case lately made and provided; that in every such case, every such two parts shall, according to the extent thereof, go towards the satisfaction and payment of the twenty pounds due and payable for each month, and unpaid by any such recusant: and that the third part thereof shall not be extended or seized by the king's majesty, his heirs or successors, for not payment of the said twenty pounds payable for each month forfeited or lost by any such recusant: and where any such seizure shall be had of the two parts of the lands, tenements, hereditaments, leases, or farms of any such recusant as is aforesaid, and such recusant shall die, (the debt or duty, by reason of his recusancy, not paid, satisfied, or discharged,) that in every such case, the same two parts shall continue in his majesty's possession, until the residue or remainder of the said debt or duty be thereby or otherwise paid, satisfied, or discharged: and that his majesty, his heirs or successors, shall not seize or extend any third part descending to any such heirs or any part thereof, either by reason of the recusancy of his or her ancestor, or of the recusancy of any such heir.

"VI. And be it further enacted by the authority of this present parliament, that all and every person and persons under the king's obedience, which at any time (after the end of this session of parliament) shall pass or go, or shall send or cause to be sent, any child, or other person under their or any of their government, into any the parts beyond the seas, out of the king's obedience, to the intent to enter into, or to be resident in any college, seminary, or house of Jesuits, priests, or any other popish order, profession, or calling whatsoever, or repair in or to any the same, to be instructed, persuaded, or strengthened in the popish religion, or in any sort to profess the same; every such person so sending or causing to be sent, any child or other person, beyond the seas, to any such purpose or intent, shall, for every such offence, forfeit to his majesty, his heirs and successors, the sum of one hundred pounds: and every such person so passing or being sent beyond the seas to any such intent or purpose as is aforesaid, shall by authority of this present act, as in respect of him or herself only, and not to or in respect of any of his heirs or posterity, be disabled and made incapable to inherit, purchase, take,

STAT. 2 JAC.
1, c. 4.

1 Eliz. c. 1.

A recusant's heir within age at the time of his ancestor's death.

A third part of his living shall remain clear to a recusant.
29 Eliz. c. 6.

The two parts of a recusant's lands, after his death, shall remain in the king's hands until he be satisfied of the arrearages.

None shall go or send any other to any seminary, &c.
3 Jac. 1, c. 5.

Farther provisions relating hereto, 3 Car 1, c. 2, s. 1.

(1) *Seizure shall be had*:—In *Parker & Webb's case*, (2 Roll. 25,) it was resolved, that if a recusant be convicted, and die before

the king be satisfied, and also before seizure made; the lands shall not be seized after his death.

STAT. 2 JAC.
1, c. 4.

have, or enjoy any manors, lands, tenements, annuities, profits, commodities, hereditaments, goods, chattels, debts, duties, legacies, or sums of money, within this realm of England, or any other his majesty's dominions: And that all and singular estates, terms, and other interests whatsoever hereafter to be made, suffered, or done, to or for the use or behoof of any such person or persons, or upon any trust or confidence, mediately or immediately, to or for the benefit or relief of any such person or persons, shall be utterly void and of none effect, to all intents, constructions, and purposes.

They who be
in seminaries
shall return.
27 Eliz. c. 2.

"VII. And be it further enacted by the authority aforesaid, that if any person born within this realm, or any the king's majesty's dominions, be at this present in any college, seminary, house, or place in any parts beyond the seas, to the end to be instructed or strengthened in the popish religion, which shall not make return into this realm, or some of his majesty's dominions, within one year next coming after the end of this session of parliament, and submit himself as is aforesaid, shall be in respect of himself only, and not to or in respect of any of his heirs or posterity, utterly disabled and incapable to inherit, have, or enjoy any manors, lands, tenements, hereditaments, goods, chattels, debts, or other things aforesaid, within this realm, or any other his majesty's dominions. Provided always, that if any such person or child so passing, sent, sending, or now being, beyond the seas as aforesaid, to such intent as is before-mentioned, shall after become conformable, and obedient unto the laws and ordinances of the church of England, and shall repair to the church, and there remain and be as is aforesaid, and continue in such conformity, according to the true intent and meaning of the said statutes and ordinances; that in every such case every such person and child, for and during such time as he or she shall so continue in such conformity and obedience, shall be freed and discharged of all and every such disability and incapacity as is before mentioned.

Explained by
3 Geo. 1,
c. 18, s. 4.

A remedy for
such as do
return into the
realm, and
become conformable to
the laws.

"VIII. And be it further enacted by the authority of this present parliament, that no woman, nor any child under the age of one and twenty years (except sailors or ship-boys, or the apprentice or factor of some merchant in trade of merchandize) shall be permitted to pass over the seas, (except the same shall be by licence of the king, his heirs or successors, or of some six or more of the king's privy council, thereunto first had under their hands,) upon pain that the officer of the port that shall willingly or negligently suffer any such so to pass, or shall not enter the names of such passengers licensed, shall forfeit his office, and all his goods and chattels; and upon pain that the owner of any ship or vessel that shall wittingly or willingly carry any such over the seas without licence as is aforesaid, shall forfeit his ship or vessel, and all the tackle. And every master or mariner of or in any such ship or vessel offending as aforesaid, shall forfeit all their goods, and suffer imprisonment by the space of twelve months, without bail or mainprise.

No woman or
child shall pass
over the seas
without
licence.

3 Jac 1, c. 5.
The forfeiture
of those who
suffer them to
pass.
Altered by 11
& 12 Gul. 3,
c. 4.

The forfeiture
for being or
keeping a
schoolmaster
contrary to
this act.
Carth. 464.
1 Ventr. 41.
Farther provisions relating
hereto, 1 Jac.
1, c. 4;

"IX. And be it further enacted by the authority aforesaid, that no person after the feast of St. Michael the Archangel next shall keep any school, or be a school-master, out of any of the universities or colleges of this realm, except it be in some public or free grammar-school, or in some such nobleman's or noblewoman's or gentleman's or gentlewoman's house, as are not recusants, or where the same school-master shall be specially *licensed thereunto* (1) by the archbishop, bishop, or guardian of the spiritualities of that diocese; upon pain that as well the schoolmaster, as also the party that shall retain or maintain any such schoolmaster contrary to the true intent and meaning of this act, *shall forfeit* (2)

(1) *Licensed thereunto*:—In *Rex v. Douse*, (1 Ld. Raym. 672,) the defendant was indicted for having kept a school without licence of the bishop, &c. "contra formam statuti." The principal exceptions taken against the indictment, were: i. That there was no statute, that prohibited keeping school without licence, but Stat. 1 Jac. 1, c. 4, s.

9, and that such statute prescribed a particular punishment, *viz.* forfeiture of, &c.; ii. That the indictment was only against a school for writing and reading, and therefore not within this statute: upon such facts the indictment was quashed.

(2) *Shall forfeit*:—When the spiritual court proceeded against a schoolmaster for

each of them for every day so wittingly offending, forty shillings. The one half of all the penalties and sums of money before-mentioned to be forfeited, to be to the king, his heirs and successors, the other to him or them that shall or will sue for the same, in any the courts of record in Westminster, by action of debt, bill, plaint, or information, in which no essoin, protection, or wager of law, shall be allowed."

STAT. 2 JAC.
1, c. 4.
3 JAC. 1, cc. 4,
5; 7 JAC. 1, c. 6;
25 CAR. 2, c. 2.
And see 16
Geo. 2, c. 30.

III. STAT. 2 [*vulgo* 1] JACOBI 1, c. 11 (1). A.D. 1604.

"An Act to restrain all Persons from Marriage until their former Wives and former Husbands be dead."

STAT. 2 JAC.
1, c. 11.

IV. STAT. 2 [*vulgo* 1] JACOBI 1, c. 12 (2). A.D. 1604.

"An Act against Conjuraton, Witchcraft, and dealing with evil and wicked Spirits."

STAT. 2 JAC.
1, c. 12.

V. STAT. 2 [*vulgo* 1] JACOBI 1, c. 22 (3). A.D. 1604.

"An Act concerning Tanners, Curriers, Shoemakers, and other Artificers occupying the cutting of Leather."

STAT. 2 JAC.
1, c. 22.

"XXVIII. . . . No person shall shew, to the intent to put to sale, any shoes, boots, buskins, startops, slippers or pantoffles, upon the Sunday, upon pain of forfeiture for every pair of shoes, boots, buskins, startops, slippers, and pantoffles, made, sold, shewed, or put to sale, contrary to the true meaning of this act, three shillings and four pence, and the just and full value of the same."

No sale or
shewing of
boots, shoes,
&c. upon
Sunday.

VI. STAT. 2 [*vulgo* 1] JACOBI 1, c. 25 (4). A.D. 1604.

"An Act for continuing (5) and reviving (6) of divers Statutes, and for repealing of some others."

STAT. 2 JAC.
1, c. 25.

"XXXIV. And be it also enacted by the authority of this present parliament, that so much of all statutes as concerneth abjured persons and sanctuaries, or ordering or governing of persons abjured, or in sanctuaries, made before the five and thirtieth year of the late Queen Elizabeth's reign, shall also stand repealed and be void.

Sanctuaries
extinct.

"L. And an act made in the session of parliament holden upon prorogation at Westminster, the three and twentieth day of January, in the fifth year of the reign of the said King Edward the Sixth, and there continued and kept until the fifteenth day of April, in the sixth year of his reign, intituled, 'An Act made for Declaration of a Statute made for the Marriage of Priests, and for the Legitimation of their Children;' shall stand revived, and be in force for ever, the said act of repeal notwithstanding: and the children of ecclesiastical persons in the said act mentioned, shall be and continue legitimate and inheritable to all intents and pur-

Ecclesiastical
persons.
5 & 6 Edw. 6,
c. 12, made
perpetual.
The children of
ecclesiastical
persons shall
be legitimate
and inheritable.

keeping a school without licence, pursuant to this statute; prohibition was prayed, upon this suggestion, that the statute gives a penalty, and that none ought to be punished twice for the same fault; and the court granted it. *Chedwick v. Hughes*, Carth. 464.

But in *Coz's case*, (1 P. Wms. 29,) where that argument was urged upon the prosecution of a schoolmaster, for teaching without licence, as a reason for granting a prohibition; the lord keeper said, "Both courts may have a concurrent jurisdiction; and a crime may be punishable both in the one and the other. The canons of a convocation do not bind the laity without an act of parliament; but I always was, and still am of opinion, that keeping of school is by the old laws of Eng-

land of ecclesiastical cognizance; and therefore let the order for a prohibition be discharged." But his lordship added, that if it was for the teaching of any school, except a grammar school, prohibition was to be granted.

- (1) Repealed by Stat. 9 Geo. 4, c. 31.
- (2) Repealed by Stat. 9 Geo. 2, c. 5.
- (3) Repealed by Stat. 48 Geo. 3, c. 60, s. 1.
- (4) Expired.
- (5) *Continuing*:—of Stat. 13 Eliz. c. 10; Stat. 13 Eliz. c. 20; Stat. 14 Eliz. c. 11; Stat. 18 Eliz. c. 11; Stat. 35 Eliz. c. 1; Stat. 43 Eliz. c. 9; until the end of the first session of the then next parliament.
- (6) *Reviving*:—of Stat. 14 Eliz. c. 7.

STAT. 2 JAC. 1, c. 25. poses, in such sort as children of lay persons do enjoy and may inherit; any canon or constitution to the contrary notwithstanding."

STAT. 2 JAC. 1, c. 29. VII. STAT. 2 [*vulgo* 1] JACOBI 1, c. 29 (1). A.D. 1604.

"To what sorts of *Flesh Licences* to eat *Flesh* in *Lent* shall not extend. What sort of *Flesh* shall not be killed in *Lent* to be put to sale."

STAT. 2 JAC. 1, c. 30. [PR.] VIII. STAT. 2 [*vulgo* 1] JACOBI 1, c. 30. [PRIVATE.] A.D. 1604.

"*The Inhabitants of Melcomb-Regis in the County of Dorset, within the Diocese of Bristol, may, at their own Costs, build a Church upon the Ground where the Chapel now standeth, and the Grounds adjoining, convenient to receive the Inhabitants of Radipol, and inclose the waste Grounds adjoining, to make a Church-yard for a place of Burial; after which Church is builded it shall be called the Parochial Church of Radipol; and the new Parson of Radipol, and his Successors, shall be Parsons thereof: and the old Parish Church of Radipol shall be but a Chapel of Ease: and the Patron of the old Parish Church of Radipol shall be Patron of the new. And a new Mansion-house in Melcomb-Regis assigned to the said Parson and his Successors for ever.*"

STAT. 2 JAC. 1, c. 31. IX. STAT. 2 [*vulgo* 1] JACOBI 1, c. 31. A.D. 1604.

"*An Act for the charitable Relief and ordering of Persons infected with the Plague.*"

STAT. 3 JAC. 1, c. 1. X. STAT. 3 JACOBI 1, c. 1. A.D. 1605.

"*An Act for a Public Thanksgiving to Almighty God every Year on the Fifth Day of November.*"

"Forasmuch as Almighty God hath in all ages showed his power and mercy in the miraculous and gracious deliverance of his church, and in the protection of religious kings and states; and that no nation of the earth hath been blessed with greater benefits than this kingdom now enjoyeth, having the true and free profession of the gospel under our most gracious sovereign lord King James, the most great, learned, and religious king that ever reigned therein, enriched with a most hopeful and plentiful progeny, proceeding out of his royal loins, promising continuance of this happiness and profession to all posterity: the which many malignant and devilish papists, Jesuits, and seminary priests, much envying and fearing, conspired most horribly, when the king's most excellent majesty, the queen, the prince, and all the lords spiritual and temporal, and commons, should have been assembled in the upper house of parliament, upon the fifth day of November, in the year of our Lord one thousand six hundred and five, suddenly to have blown up the said whole house with gunpowder: an invention so inhumane, barbarous, and cruel, as the like was never before heard of, and was (as some of the principal conspirators thereof confess) purposely devised and concluded to be done in the said house, that where sundry necessary and religious laws for preservation of the church and state were made, which they falsely and slanderously term cruel laws, enacted against them and their religion, both place and persons should be all destroyed and blown up at once; which would have turned to the utter ruin of this whole kingdom, had it not pleased Almighty God, by inspiring the king's most excellent majesty with a divine spirit, to interpret some dark phrases of a letter showed to his majesty, above and beyond all ordinary construction, thereby miraculously discovering this hidden treason not many hours before the appointed time for the execution thereof: therefore the king's most excellent majesty, the lords spiritual and temporal, and all his majesty's faithful and loving subjects, do most justly acknowledge this great and infinite blessing to have proceeded merely from God his great mercy, and to his most holy name do ascribe all the honour, glory, and praise: and to the end this unfeigned thankfulness may never

be forgotten, but he had in a perpetual remembrance, that all ages to come may yield praise to his Divine Majesty for the same, and have in memory THIS JOYFUL

STAT. 3 JAC.
1, c. 1.

DAY OF DELIVERANCE:

“II. Be it therefore enacted by the king's most excellent majesty, the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, that all and singular ministers in every cathedral and parish church, or other usual place for common prayer, within this realm of England and the dominions of the same, shall always upon the fifth day of November say morning prayer, and *give unto Almighty God thanks* (1) for this most happy deliverance: and that all and every person and persons inhabiting within this realm of England and the dominions of the same, shall always upon that day diligently and faithfully resort to the parish church or chapel accustomed, or to some usual church or chapel where the said morning prayer, preaching, or other service of God shall be used, and then and there to abide orderly and soberly during the time of the said prayers, preaching, or other service of God there to be used and ministered.

Thanks shall be given to God in every church yearly upon the fifth day of November.

“III. And because all and every person may be put in mind of this duty, and be then better prepared to the said holy service, be it enacted by authority aforesaid, that every minister shall give warning to his parishioners publickly in the church at morning prayer, the Sunday before every such fifth day of November, for the due observation of the said day: and that after morning prayer or preaching upon the said fifth day of November, they read publickly, distinctly, and plainly, this present act.”

The minister shall give warning of the day the Sunday before.

XI. STAT. 3 JACOBI 1, c. 2 (2). A.D. 1605.

STAT. 3 JAC.
1, c. 2.

“An Act for the Attainder of divers Offenders in the late most barbarous, monstrous, detestable, and damnable Treasons.”

(1) *Give unto Almighty God thanks*:—It should seem by the tenour of this act, that the form or manner of giving thanks was left to the discretion of every minister; but that there was a standing form for this day, in the sixteenth of Charles 1, appears from the following order of the House of Lords: “Ordered, that the title before the prayers for the deliverance from the Gunpowder Plot, shall be altered and printed hereafter in *hæc verba*, viz.: *A Thanksgiving for the delivery from the Gunpowder Treason*; and the printer is to be sent for to appear before the house, to be asked how this title that is now prefixed, viz., *A Thanksgiving for Peace and Victory*, came to be introduced.” Gibson's Codex, 249. Dom. Proc. Aug. 24.

This “Thanksgiving” was revised by the convocation, in the year 1662: “Dominus episcopus London' de et cum consensu confratrum suorum, &c. Curam et revisionem libri publicarum precum concernent' 5 diem Novembris reverendo patri Domino Episcopo Dunelm' commisit.” And afterwards, “Forma precum pro 5 Novembris, introduct' et publicè perfect' et unanimi consensu approbat' ;” in which form some few additions and alterations were made, upon a new revisal, in the 2nd year of Gul. & Mar. Dom. Proc. Apr. 21, 26.

And although the due observance of this day, as also of the thirtieth of January, and the twenty-ninth of May, are enjoined by act of parliament, yet the particular forms to be used on those days are not previously directed, nor subsequently confirmed

by any act of parliament; but they are specially authorized (as is also that of the king's inauguration) by the following order from the crown.

“George R.

“Our will and pleasure is, that these four forms of prayer, made for the fifth of November, the thirtieth of January, the twenty-ninth of May, and the twenty-fifth of October, be forthwith printed and published, and annexed to the Book of Common Prayer and Liturgy of the Church of England, to be used yearly on the said days, in all cathedral and collegiate churches and chapels, in all chapels of colleges and halls, within both our universities; and of all our colleges of Eton and Winchester, and in all parish churches and chapels, within that part of our kingdom of Great Britain called England, the dominion of Wales, and town of Berwick upon Tweed. Given at our court at St. James's, the seventh day of October, 1761, in the first year of our reign.

“By His Majesty's command,

“BUTE.”

Dr. Watson has questioned the ordinary's power to punish for the neglect of keeping the solemn days enjoined by acts of parliament, where such acts do not expressly give to the ordinary such power. Watson's Clergyman's Law, c. 32, p. 334.

But it does not seem to have been doubted, that, so far as the several offences fell within the words of such statutes, the offenders might have been thereupon indicted, fined, and imprisoned for the contempt.

(2) Expired.

STAT. 3 JAC.
1, c. 4.

XII. STAT. 3 JACOBI 1, c. 4 (1). A.D. 1605.

"An Act for the better discovering and repressing of Popish Recusants."

"Forasmuch as it is found by daily experience, that many his majesty's subjects that adhere in their hearts to the popish religion, by the infection drawn from thence, and by the wicked and devilish counsel of Jesuits, seminaries, and other like persons dangerous to the church and state, are so far perverted in the point of their loyalties and due allegiance unto the king's majesty, and the crown of England, as they are ready to entertain and execute any treasonable conspiracies and practices, as evidently appears by that more than barbarous and horrible attempt to have blown up with gunpowder the king, queen, prince, lords, and commons in the house of parliament assembled, tending to the utter subversion of the whole state, lately undertaken by the instigation of Jesuits and seminaries, and in advancement of their religion, by their scholars taught and instructed by them to that purpose, which attempt by the only goodness of Almighty God was discovered and defeated: and where divers persons popishly affected, do nevertheless, the better to cover and hide their false hearts, and with the more safety to attend the opportunity to execute their mischievous designs, repair sometimes to church, to escape the penalty of the laws in that behalf provided.

1 Haw. P. C.

"II. For the better discovery, therefore, of such persons, and their evil affections to the king's majesty, and the state of this his realm, to the end that being known, their evil purposes may be the better prevented; be it enacted by the king's most excellent majesty, the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, that every popish recusant convicted, or hereafter to be convicted, which heretofore hath conformed him or herself, or which shall hereafter conform him or herself, and repair to the church, and continue there during the time of divine service, according to the laws and statutes in that behalf made and provided, shall within the first year next after the end of this session of parliament (if he or she be conformed, as aforesaid, before the end of this session of parliament) or within the first year next after that he or she shall after this session of parliament so conform him or herself, and repair to church, as aforesaid, and after the said first year, shall once in every year following, at the least, receive the blessed sacrament of the Lord's supper in the church of that parish where he or she shall most usually abide or be within the said year, wherein by the true meaning of this statute he or she ought so to receive.

The forfeiture
of a conformed
recusant which
doth not re-
ceive the
sacrament
yearly.
Cro. Jac. 365.

"III. And if there be no such parish church, then in the church next adjoining to the place of his or her such most usual abode: and if any recusant so conformed shall not receive the said sacrament of the Lord's supper accordingly, he or she shall for such not receiving lose and forfeit for the first year twenty pounds, and for the second year for such not receiving forty pounds, and for every year after for such not receiving threescore pounds, until he or she shall have received the said sacrament, as is aforesaid: and if after he or she shall have received the said sacrament as is aforesaid, and after shall eftsoons at any time offend in not receiving the said sacrament, as is aforesaid, by the space of one whole year, that in every such case such person so offending shall for every such offence lose and forfeit threescore pounds of lawful English money; the one moiety to be to our sovereign lord the king's majesty, his heirs and successors, and the other moiety to him that will sue for the same; and to be recovered in any of the king's courts of record at Westminster, or before justices of assize or general gaol-delivery, or before justices of the peace at their general quarter sessions, by action of debt, bill, plaint, or information, wherein no essoin, protection, or wager of law shall be allowed.

Presenting the
monthly
absence from

"IV. And be it further enacted by the authority of this present parliament, that the churchwardens and constables of every town, parish, or chapel, for the time being, or some one of them, or if there be none such, then the chief consta-

(1) *Vide* Stat 7 Jac. 1, c. 6. Stat. 31 Stat. 6 Geo. 4, c. 50. Stat. 10 Geo. 4, Geo. 3, c. 32. Stat. 43 Geo. 3, c. 30. c. 7.

bles of the hundred where such town, parish, or chapel is or shall be, or one of them, as well in places exempt as not exempt, shall once in every year present the monthly absence from church of all and all manner of popish recusants within such towns and parishes; and shall present the names of every of the children of the said recusants, being of the age of nine years and upwards, abiding with their said parents, and as near as they can the age of every of the said children, as also the names of the servants of such recusants, at the general or quarter sessions of that shire, limit, division, or liberty.

STAT. 3 JAC.
1, c. 4.
church of a
recusant.
1 Show. 309.
Cro. Car. 504.

“V. And be it further enacted by the authority aforesaid, that all such presentments shall be accepted, entered, and recorded in the said sessions by the clerk of the peace, or town-clerk for the time being, or his deputy, without any fee to be had, asked, or taken for the same: and in default of such presentment to be made, the said churchwardens, constables, or high constables respectively, shall for every such default forfeit twenty shillings; and in default of such accepting, entering, and recording without fee, as aforesaid, the said clerk of the peace or town clerk shall for every such offence forfeit and lose forty shillings.

Presentments
recorded.

“VI. And that upon every presentment of such monthly absence as aforesaid, whereupon such party so presented shall after happen to be indicted and convicted, (not being for the same absence before presented,) then the said churchwardens, constables, or high constables respectively so making such presentments, shall have a reward of forty shillings; to be levied out of the recusant's goods and estate, in such manner and form as by the more part of the said justices shall be by warrant under their hands and seals then and there ordered and appointed.

The reward of
the church-
wardens and
constables.

“VII. And be it further enacted by the authority aforesaid, that the justices of assize and gaol-delivery at their assizes, and the said justices of peace at any of their said sessions, shall have power and authority by virtue of this act to inquire, hear, and determine of all recusants and offences, as well for not receiving the sacrament aforesaid, according to the meaning of this law, as for not repairing to church, according to the meaning of former laws, in such manner and form as the said justices of assize and gaol-delivery do or may now do by former laws, in the case of recusancy for not repairing to church; and also shall have power at their said assizes and gaol-delivery, and at the sessions, (in which any indictment against any person, either for not repairing to church according to former laws, or not receiving the said sacrament according to this law, shall be taken,) to make proclamation, by which it shall be commanded, that the body of every such offender shall be rendered to the sheriff of the same county, or bailiff, or other keeper of the gaol of the liberty, before the next assizes and general gaol-delivery, or before the next general or quarter sessions respectively to be holden for the said shire, limit, division, or liberty: and if at the said next assizes and general gaol-delivery or sessions, the same offender so proclaimed shall not make appearance of record, that then upon every such default recorded, the same shall be as sufficient a conviction in law of the said offence whereof the party shall stand indicted as aforesaid, as if upon the same indictment a trial by verdict thereupon had proceeded, and been found against him or her, and recorded.

What officers
shall inquire of
offenders.

Effect of the
proclamation.

Conviction of
a recusant.

“VIII. And be it further enacted, that every offender in not repairing to divine service, but forbearing the same, contrary to the statutes in that behalf made and provided, that hereafter shall fortune to be thereof once convicted, shall in such of the terms of Easter and Michaelmas as shall be next after such conviction, pay into the receipt of the Exchequer after the rate of twenty pounds for every month which shall be contained in the indictment whereupon such conviction shall be; and shall also for every month after such conviction, without any other indictment or conviction, forfeit twenty pounds, and pay into the receipt of Exchequer aforesaid, at two times in the year, that is to say, in every Easter and Michaelmas term, as much as then shall remain unpaid, after the rate of twenty pounds for every month after such conviction; except in such cases where the king shall and may by force of this act refuse the same, and take two parts of the lands, tenements, hereditaments, leases, and farms of such offender, till the said party being indicted for not coming to church, contrary to former laws, shall con-

Penalty of a
convicted
recusant.

29 Eliz. c. 6.

STAT. 3 JAC.
1, c. 4.

Conviction
shall be certi-
fied into the
Exchequer.

The statute of
23 Eliz. c. 1,
touching a
recusant's
monthly
forfeiture.

1 Eliz. c. 2.

How by the
statute of
29 Eliz. c. 6,
the queen
should recover
forfeitures due
to her by
recusants.

The king may
refuse 20*l*. a
month, and
take two parts
of a recusant's
lands.
Lane, 106.
Godb. 216.
pl. 309.

form himself and come to church, according to the meaning of the statute in that behalf made and provided.

“IX. And that every conviction recorded for any offence before mentioned, shall, from the justices before whom the record of such conviction shall be remaining, be certified into the king's majesty's court of Exchequer, before the end of the term following such conviction, in such convenient certainty for the time and other circumstances, as the court of Exchequer may thereupon award of process for the seizure of the lands and goods of every such offender, as the case shall require: and if default shall be made in any part of any payment aforesaid, contrary to the form herein-before limited, that then and so often the king's majesty, his heirs and successors, shall and may, by process out of the said Exchequer, take, seize, and enjoy, all the goods, and two parts as well of all the lands, tenements, and hereditaments, leases and farms of such offender, as of all other the lands, tenements, and hereditaments liable to such seizure, or to the penalties aforesaid, by the true meaning of this act, leaving the third part only of the same lands, tenements, and hereditaments, leases and farms, to and for the maintenance and relief of the said offender, his wife, children, and family.

“X. And whereas by an act made in the session of parliament holden by pro-rogation at Westminster in the three and twentieth year of the reign of the late Queen Elizabeth, intituled, ‘An Act to retain the Subjects of the said late Queen in their due Obedience,’ it was amongst other things enacted by authority of the said parliament, that every person above the age of sixteen years, which should not repair to some church, chapel, or usual place of common prayer, but forbear the same contrary to the tenour of a statute made in the first year of the reign of the said late queen, for uniformity of common prayer, and being thereof lawfully convicted, should forfeit to the said queen, for every month after the end of the session of parliament which he or she should so forbear, twenty pounds of lawful English money, as in and by the said act of parliament more at large appeareth.

“XI. And whereas afterward, by another act of parliament of the said queen, it was further enacted by the authority of the said parliament (amongst other things) how and when the said payments of the said twenty pounds should be made, and that if default should be made in any part of any payment of the said twenty pounds, contrary to the form in the said last specified statute limited, that then and so often the said queen should and might, by process out of her highness' Exchequer, take, seize, and enjoy, all the goods, and two parts as well of all the lands, tenements, and hereditaments, leases, and farms of such offender, as of all other the lands, tenements, and hereditaments, liable to such seizure or to the penalties aforesaid by the true meaning of the said act of parliament, leaving the third part only of the same lands, tenements, and hereditaments, leases, and farms, to and for the maintenance and relief of the same offender, his wife, children, and family, as in and by the last specified statute more at large also may appear: now forasmuch as the said penalty of twenty pounds monthly is a greater burden unto men of small living, than unto such as are of better ability, and do refuse to come unto divine service, as aforesaid, who, rather than they will have two parts of their lands to be seized, will be ready always to pay the said twenty pounds according to the limitation of the said statutes, and yet retain the residue of their livings and inheritance in their own hands, being of great yearly value, which they do for the most part employ (as experience hath taught) to the maintenance of superstition and popish religion, and to the relief of Jesuits, seminaries, popish priests, and other dangerous persons to the state; therefore to the intent that hereafter the penalty for not repairing to divine service might be inflicted in better proportion upon men of great ability; be it enacted by the authority of this present parliament, that the king's majesty, his heirs and successors, shall, from and after the feast of Saint Michael the archangel next coming after the end of this session of parliament, have full power and liberty to refuse the penalty of twenty pounds a month, though it be tendered ready to be paid according to the law, and thereupon to seize and take to his own use, and the uses, intents, and purposes, hereafter limited, two parts in three parts to be divided, as

well of all the lands, tenements, and hereditaments, leases and farms, that at the time of such seizure shall be, or afterwards shall come to any of the said offenders in not coming to church, or any other to his or her use, or in trust for him or her, or at his or her disposition, or whereby or wherewith, or in consideration whereof, such offender or his family, or any of them, shall be relieved, maintained, or kept, as of all other lands, tenements, and hereditaments, in anywise or at any time liable to such seizure, or to the penalties aforesaid, and the same to retain to his own and other uses, intents, and purposes hereafter in this act appointed, till every such offender shall conform him or herself respectively, as aforesaid, in lieu and full recompence of the twenty pounds monthly, that, during his such seizure and retainer, shall incur: any thing in the said statutes, or any of them, or any other statute, to the contrary in anywise notwithstanding: saving to our sovereign lord the king's majesty, his heirs and successors, and all and every person and persons, bodies politick and corporate, their heirs and successors, (other than the said offender, his or her heirs, and all claiming to his or their use, or in trust for him or them, or at his or their will or disposition,) all and all manner of leases, rents, conditions, and other rights and titles whatsoever had, made, and done, *bonâ fide*, and without fraud and covin, before such seizure.

STAT. 3 JAC.
1, c. 4.

Saving the
right of others.

“XII. Provided always, and be it enacted by the authority aforesaid, that the king's majesty, his heirs and successors, shall not take into his two parts, but leave to such offender his chief mansion-house, as part of his third part, and shall not demise, lease, nor put over the said two parts, nor any part thereof, to any recusant, nor to or for the use of any recusant: and that whosoever shall take the same in lease, or otherwise, of his majesty, his heirs and successors, shall give such security not to commit, nor suffer waste to be committed, in or upon any the said premises, as by the court of Exchequer shall be allowed sufficient.

A recusant's
mansion-house
shall be re-
served to him.
The king's two
parts shall not
be demised to
a recusant.

“XIII. And for the better trial how his majesty's subjects stand affected in point of their loyalty and due obedience; be it also enacted by the authority aforesaid, that from and after the end of this present session of parliament, it shall be lawful to and for any bishop in his diocese, or any two justices of peace, whereof one of them to be of the quorum, within the limits of their jurisdiction, out of the sessions, to require any person of the age of eighteen years or above, being or which shall be convict or indicted of or for any recusancy, other than noblemen or noblewomen, for not repairing to divine service, according to the laws of this realm; or which shall not have received the said sacrament twice within the year then next past, noblemen and noblewomen excepted; or any person passing in or through the country, shire, or liberty, and unknown, except as is last before excepted, that being examined by them upon oath shall confess or not deny himself or herself to be a recusant, or shall confess or not deny that he or she had not received the said sacrament twice within the year then last past, to take the oath hereafter following upon the holy Evangelists: which said bishop or two justices of the peace, shall certify in writing subscribed with his or their hands at the next general or quarter sessions for that shire, limit, division, or liberty, within which the said oath shall be so taken, the Christian name, surname, and place of abode of every person which shall so take the said oath; which certificate shall be there recorded by the clerk of the peace or town clerk, and kept amongst the records of the said sessions.

Who are com-
pellable to take
the oath.

Certificate of
the name of
him who taketh
the oath.

“XIV. And be it further enacted, that if any such person or persons, other than noblemen or noblewomen, shall refuse to answer upon oath to such bishop or justices of peace examining him or her, as aforesaid, or to take the said oath so duly tendered unto him or her by such bishop, or two such justices of peace, out of sessions, that then the said bishop or justices of peace shall and may commit the same person to the common gaol, there to remain without bail or mainprize, until the next assize or general or quarter sessions to be holden for the said shire, division, limit, or liberty; where the said oath shall be again in the said open assizes or sessions required of such person, by the said justices of assize or justices of peace then and there present, or the greater number of them: And if the said person or persons, or any other person whatsoever, other than noblemen or noblewomen, of

Refusal of the
oath.
1 Bulst. 199.

STAT. 3 JAC.
1, c. 4.

The penalty of
præmunire.

16 Rich. 2,
c. 5.

Women covert.

the age of eighteen years or above, shall refuse to take the said oath, being tendered unto him or her by the justices of assize and gaol-delivery in their open assizes, or the justices of peace, or the greater part of them, in their said general or quarter sessions, every person so refusing shall incur the danger and penalty of *præmunire* (1), mentioned in the Statute of *Præmunire*, made in the sixteenth year of the reign of King Richard the Second; except women covert, who, upon refusal of the said oath, shall be by the said justices of assize in their open assize, or justices of peace in their general or quarter sessions, for the said offence committed only to the common gaol, there to remain without bail or mainprize, till they will take the said oath.

“*The tenour of which Oath hereafter followeth:*

Form of the
oath of obe-
dience.

Abolished by
1 G. & M.
sess. 1, c. 8,
s. 2.

“XV. ‘I, A. B., do truly and sincerely acknowledge, profess, testify, and declare in my conscience before God and the world, that our sovereign lord *King James* (2) is lawful and rightful king of this realm, and of all other his majesty’s dominions and countries; and that the pope, neither of himself nor by any authority of the church or see of Rome, or by any other means with any other, hath any power or authority to depose the king, or to dispose any of his majesty’s kingdoms or dominions, or to authorize any foreign prince to invade or annoy him or his countries, or to discharge any of his subjects of their allegiance and obedience to his majesty, or to give licence or leave to any of them to bear arms, raise tumults, or to offer any violence or hurt to his majesty’s royal person, state, or government, or to any of his majesty’s subjects within his majesty’s dominions.

“Also I do swear from my heart, that notwithstanding any declaration or sentence of excommunication, or deprivation made or granted, or to be made or granted, by the pope or his successors, or by any authority derived, or pretended to be derived, from him or his see against the said king, his heirs or successors, or any absolution of the said subjects from their obedience; I will bear faith and true allegiance to his majesty, his heirs and successors, and him and them will defend to the uttermost of my power, against all conspiracies and attempts whatsoever which shall be made against his or their persons, their crown and dignity, by reason or colour of any such sentence or declaration, or otherwise, and will do my best endeavour to disclose and make known unto his majesty, his heirs and successors, all treasons and traitorous conspiracies which I shall know or hear of to be against him or any of them.

“And I do further swear, that I do from my heart abhor, detest, and abjure, as impious and heretical, this damnable doctrine and position, that princes which be excommunicated or deprived by the pope may be deposed or murdered by their subjects, or any other whatsoever.

“And I do believe, and in my conscience am resolved, that neither the pope nor any other person whatsoever, hath power to absolve me of this oath, or any part thereof, which I acknowledge by good and full authority to be lawfully ministered unto me, and do renounce all pardons and dispensations to the contrary.

“And all these things I do plainly and sincerely acknowledge and swear, according to these express words by me spoken, and according to the plain and common sense and understanding of the same words, without any equivocation or mental evasion, or secret reservation whatsoever: and I do make this recognition and acknowledgment heartily, willingly, and truly, upon the true faith of a Christian.

‘So help me God.’

(1) *Præmunire*:—Which judgment, (*viz.* to be out of the king’s protection, his lands, tenements, goods, and chattels, to be perpetually forfeited to the king, and to be imprisoned during life,) was solemnly pronounced against the Lord Vaux, (1 Bulst. 199,) for refusal of this oath, in the tenth year of King James I.

(2) *King James*:—A person named *Green* (Raym. (Sir T.), 212; 1 Vent. 171,) being indicted in the twenty-third of Charles 2, for refusing the oaths, pleaded, that the sta-

tute was not in force, but expired with the death of King James, since no mention was made of his heirs and successors. But Chief Justice *Hale* observed: “The constant practice hath been otherwise, and the same objection may be made to the Oath [of Supremacy], in Stat. 1 Eliz. c. 1; and the word *tenour* is as much, as that it were verbatim; and the name of the person is only an instance of the thing intended, and the word *king* extends to his successors.”

“Unto which oath so taken, the said person shall subscribe his or her name or mark.

“XVI. And be it further enacted by the authority aforesaid, that no indictment or indictments had or found, or hereafter to be had or found, against any person or persons for not repairing to some church or chapel, or usual place of common prayer, but absenting him or herself by the space of one month, contrary to the laws and statutes in that behalf provided, or for not receiving the said sacrament, contrary to this present law, nor any proclamation, outlawry, or other proceeding thereupon, shall at any time hereafter be avoided, discharged, or reversed, by reason of *any default* (1) in form, or lack of form or other defect whatsoever, (other than by direct traverse to the point of not coming to church or not receiving the said sacrament, whereof such person or persons hath been or shall be indicted,) but the same indictment shall stand in force and be proceeded upon; any such default of form, or other defect whatsoever notwithstanding.

“XVII. Provided always, that if any person or persons so indicted, or to be indicted, shall at any time hereafter submit and conform him or herself, and become obedient to the laws of the church of England, and repair to the parish church of his or her most abiding, and if there be no such, then to the church next adjoining to his or her such dwelling, and there hear divine service according to the true meaning of the statute in that behalf made and provided, and there publicly receive the said sacrament according to the laws of this realm of England now established; that then every such person and persons so indicted shall and may from thenceforth be admitted and allowed to avoid, discharge, reverse, and undo the said indictment and indictments, and all proceedings thereupon, in such manner and form, as if this present act had not been had nor made; any thing herein contained to the contrary in anywise notwithstanding.

“XVIII. And forasmuch as it is found by late experience, that such as go voluntarily out of this realm of England to serve foreign princes, states, or potentates, are for the most part perverted in their religion and loyalty by Jesuits and fugitives, with whom they do there converse; be it therefore enacted by the authority aforesaid, that every subject of this realm that, after the tenth day of June next coming, shall go or pass out of this realm to serve any foreign prince, state, or potentate, or shall, after the said tenth day of June, pass over the seas and there shall voluntarily serve any such foreign prince, state, or potentate, not having before his or their going or passing as aforesaid, taken the oath aforesaid, before the officer hereafter appointed, shall be a felon.

“XIX. And that if any gentleman or person of higher degree, or any person or persons which hath borne or shall bear any office or place of captain, lieutenant, or any other place, charge, or office in camp, army, or company of soldiers, or conductor of soldiers, shall after go or pass voluntarily out of this realm, to serve any such foreign prince, state, or potentate, or shall voluntarily serve any such prince, state, or potentate, before that he and they shall become bound by obligation, with two such sureties as shall be allowed of by the officers which are hereafter by this act limited to take the same bond, unto our sovereign lord the king's majesty, his heirs and successors, in the sum of twenty pounds of current English money at the least, with condition to the effect following, shall be a felon.

“*The tenour of which Condition hereafter followeth, viz.:*

“XX. ‘That if the within bounden, &c. shall not at any time then after be reconciled to the pope or see of Rome, nor shall enter into or consent unto any practice, plot, or conspiracy whatsoever against the king's majesty, his heirs and successors, or any his and their estate and estates, realms or dominions; but shall within convenient time after knowledge thereof had, reveal and disclose to the

STAT. 3 JAC.
1, c. 4.

No indictment of a recusant shall be reversed for default of form. Palmer, 41. 12 Co. 132.

He that conformeth himself may reverse indictment.

He shall take the oath who goeth out of the realm to serve foreign princes. 3 Inst. 80.

A gentleman, captain, or lieutenant, serving a foreign prince, shall be bound to the king, &c.

(1) *Of any default*:—By reason of this clause, it was doubted by the court, in *The Marquis of Winchester's case*, (Cro. Car. 504,) whether any exception whatsoever be good, upon conviction of recusancy. But though an indictment or information for

recusancy cannot be quashed for form, yet on traverse of the fact, and bail given, the outlawry may be reversed for form. *Rex v. Hill*, 5 Mod. 141. *Rex v. Dominam Oneby*, alias *Truder*, Show. (Sir B.), 309.

STAT. 3 JAC. 1, c. 4. king's majesty, his heirs and successors, or some of the lords of his or their honourable privy council, all such practices, plots, and conspiracies; that then the said obligation to be void.'

Who shall take the obligation and administer oath. "XXI. And that for the due execution of this branch of this present law, it shall and may be lawful to and for the customer and comptroller of every port, haven, or creek, or one of them, and their or either of their deputy or deputies, and none other, to receive and accept all and every such bond and obligation to and for the uses aforesaid, and to minister and give the oath aforesaid, according to the true intent of this statute (taking for such bond sixpence, and no more, and for the said oath no fee at all): which said customer and comptroller shall register and certify all and every such bond and oath so taken, into the court of Exchequer at Westminster once every year, upon pain of five pounds for every bond not so certified, and twenty shillings for every oath not so certified. Provided always, that this last-mentioned branch shall not extend to any person or persons which are already gone or shall go beyond the seas to serve any foreign prince, state, or potentate, before the tenth day of June next coming, for his said going or passing before the said tenth day of June.

Forfeiture for not registering and certifying.

Treason to absolve or withdraw any from obedience, or to reconcile them to the Pope. 23 Eliz. c. 1.

"XXII. And further be it enacted by the authority aforesaid, that if any person or persons at any time after the said tenth day of June, shall either upon the seas or beyond the seas, or in any other place within the dominions of the king's majesty, his heirs and successors, put in practice to absolve, persuade, or withdraw any of the subjects of the king's majesty, or of his heirs and successors, of this realm of England, from their natural obedience to his majesty, his heirs and successors, or to reconcile them to the pope or see of Rome, or to move them or any of them to promise obedience to any pretended authority of the see of Rome, or to any other prince, state, or potentate; that then every such person, their procurers, counsellors, aiders, and maintainers, knowing the same, shall be to all intents adjudged traitors, and being thereof lawfully convicted shall have judgment, suffer, and forfeit, as in cases of high treason.

Being withdrawn or reconciled, treason.

"XXIII. And if any person as aforesaid, at any time after the said tenth day of June, shall be either upon the seas or beyond the seas, or in any other place within the dominions of the king's majesty, his heirs or successors, willingly absolved or withdrawn as aforesaid, or willingly reconciled, or shall promise obedience to any such pretended authority, prince, state, or potentate as aforesaid: that every such person or persons, *their procurers* (1) and counsellors, aiders, and maintainers, knowing the same, shall be to all intents adjudged traitors; and being thereof lawfully convicted, shall have judgment, suffer, and forfeit, as in cases of high treason.

A reconciled person taking the oath.

"XXIV. Provided nevertheless, that the last mentioned clause of this branch, or any thing therein contained, shall not extend, or be taken to extend to any person or persons whatsoever, which shall hereafter be reconciled to the pope or see of Rome as aforesaid, (for and touching the point of so being reconciled only,) shall return into this realm, and thereupon within six days next after such return, before the bishop of the diocese, or two justices of the peace jointly and severally of the county where he shall arrive, submit himself to his majesty and his laws, and take the oath set forth by act in the first year of the reign of the late Queen Elizabeth, (commonly called the oath of supremacy,) as also the oath before set down in this present act; which said oaths the said bishop and justices respectively shall have power and authority by this present act to minister to such persons as aforesaid: and the said oaths so taken, the said bishop and justices before whom such

1 Eliz. c. 1, which is repealed by 1 G. & M. sess. 1, c. 8, s. 2.

(1) *Their procurers*:—By comparing the penalties of this statute, with Stat. 13 Eliz. c. 2, ss. 3, 4, & 5, and Stat. 23 Eliz. c. 1, it will appear, that by the present statute they were made somewhat higher and more severe than they had been during the reign of Queen Elizabeth. "And to warrant the nation in laying on heavier penalties and discouragements, it need only be remem-

bered, what the occasion of them was, *viz.* an attempt, just then discovered, the most execrable and barbarous that we read of in any age or nation, *i.e.* the Gunpowder Plot: which was carried on, and brought to the point of execution, as by other methods surprisingly wicked, so particularly by the practices that are provided against, in this branch of the statute." Gibson's Codex, 537.

oaths shall be so taken respectively, shall certify at the next general or quarter sessions of the peace to be holden within the said shire, limit, division, or liberty, wherein such person as aforesaid shall submit himself and take the said oath as aforesaid, upon pain of every one neglecting to certify the same as aforesaid, the sum of forty pounds.

STAT. 3 JAC.
1, c. 4.

“XXV. And be it further enacted, that all and every person and persons that shall offend contrary to this present branch of this statute, shall be indicted, tried, and proceeded against by and before the justices of assize and gaol delivery of that county for the time being, or before the justices of the court of King’s Bench, and be there proceeded against according to the laws and statutes of this realm against traitors, as if the said offence had been committed in the same county where such person or persons shall be so taken; any law, custom, or statute to the contrary in any wise notwithstanding.

Where the
trial shall be.

“XXVI. Provided always, that if any peer of this realm shall happen to be indicted of any offence made treason by this act, he shall have his trial by his peers as in other like cases of treason is accustomed.

Peers.

“XXVII. And be it further enacted, that if any subject of this realm at any time after one month next after the end of this present session of parliament, shall not resort or repair every Sunday to some church, chapel, or some other usual place appointed for common prayer, and there hear divine service according to the statute made in that behalf, in the first year of the reign of the late Queen Elizabeth, that then it shall and may be lawful to and for any one justice of peace of that limit, division, or liberty, wherein the said party shall dwell, upon proof unto him made of such default by confession of the party or oath of witness, to call the said party before him; and if he or she shall not make a sufficient excuse and due proof thereof, to the satisfaction of the said justice of peace, that it shall be lawful for the said justice of peace to give warrant to the churchwarden of the said parish wherein the said party shall dwell, under his hand and seal, to levy twelve pence for every such default by distress and sale of the goods of every such offender, rendering to the said offender the overplus of the money raised of the said goods so to be sold: and that in default of such distress, it shall and may be lawful for the said justice of peace to commit every such offender to some prison within the said shire, division, limit, or liberty, wherein such offender shall be inhabiting, until payment be made of the said sum or sums so to be forfeited; which forfeiture shall be employed to and for the use of the poor of that parish wherein the offender shall be resident or abiding at the time of such offence committed.

1 Eliz. c.

Forfeiture for
not repairing
to church
weekly.

“XXVIII. Provided, that no man be impeached upon this clause, except he be called in question for his said default within one month next after the said default made.

“XXIX. And that no man being punished according to this branch, shall for the same offence be punished by the forfeiture of twelve pence, upon the law made in the first year of the late Queen Elizabeth.

“XXX. And because in one act of parliament begun and holden at Westminster in the five and thirtieth year of the late Queen Elizabeth, intituled, ‘An Act to retain the Queen’s Majesty’s Subjects in their due Obedience,’ there are two branches contained, the first beginning thus: ‘and for that every person having a house or family, is in duty bounden to have especial regard of the good government and ordering of the same,’ and so forth to the next clause beginning thus: ‘provided nevertheless, that this act shall not in any wise extend to punish or impeach any persons for relieving,’ &c., ending with these words: ‘any thing in this act contained to the contrary notwithstanding,’ which said two branches or clauses are found defective:

Repeal of two
branches of the
statute of 35
Eliz. c. 1, s. 8.

“XXXI. Be it therefore enacted, that the said two branches or clauses of the said act, and no more, shall be by the authority of this present parliament utterly repealed and made void.

“XXXII. And in lieu thereof be it enacted, that every person and persons, which after one month next after the end of this present session of parliament shall willingly maintain, retain, relieve, keep, or harbour, in his or their house

Relieving or
keeping a
recusant.

STAT. 3 JAC.
I, c. 4.

any servant, sojourner, or stranger, who shall not go to, or repair to some church or chapel, or usual place of common prayer, to hear divine service, but shall forbear the same by the space of one month together, not having a reasonable excuse, contrary to the laws and statutes of this realm, shall forfeit ten pounds for every month that he, she, or they shall so relieve, maintain, retain, keep, or harbour any such servant, sojourner, or stranger, in his or their house, so forbearing as aforesaid.

Retaining a
recusant in his
service, fee, or
livery.

“XXXIII. And that every person which shall, within the time aforesaid, retain or keep in his, her, or their service, fee, or livery, any person or persons, which shall not go to or repair to some church, chapel, or usual place of common prayer to hear divine service, but shall forbear the same by the space of one month together, shall forfeit for every month he, she, or they shall so retain, keep, or continue in his, her, or their service, fee, or livery, any such person or persons so forbearing as aforesaid, knowing the same, ten pounds; the same penalties to be recovered and employed in manner and form hereafter following.

Father, mother,
ward, &c.

“XXXIV. Provided nevertheless, that this act shall not in any wise extend to punish or impeach any person or persons for maintaining, retaining, relieving, keeping, or harbouring his, her, or their father or mother, wanting, without fraud or covin, other habitation, or sufficient maintenance, or the ward of any such person, or any person that shall be committed by authority to the custody of any by whom they shall be so relieved, maintained, or kept; any thing in this act contained to the contrary notwithstanding.

Person com-
mitted by
authority.

Breaking house
to take a
recusant ex-
communicate.

“XXXV. And be it further enacted by authority of this present parliament, that upon any lawful writ, warrant, or process, awarded to any sheriff or other officer, for the taking or apprehending of any popish recusant standing excommunicated for such recusancy, it shall be lawful for such sheriff or other officer authorized in that behalf, if need be, to break open any house wherein such person excommunicate shall be, or to raise the power of the county, for the apprehending of such person, and the better execution of such warrant, writ, or process.

In what courts
offences shall
be heard and
determined.

“XXXVI. And be it further enacted, that all and every offence to be committed or done against this present act, shall and may be inquired of, heard, and determined, before the justices of the King's Bench, justices of assize, and gaol delivery, in their several assizes and gaol deliveries; and all offences other than treason, shall be inquired, heard, and determined, before the justices of peace in their general quarter sessions to be holden within the shire, division, limit, or liberty, wherein such offence shall happen.

Attainder of
felony no
forfeiture of
dower, or
corruption of
blood.

“XXXVII. Provided always, and be it enacted by the authority aforesaid, that any attainder of felony made felony by this act as is aforesaid, shall not in any wise extend to take away the dower of the wife of any such person attainted, or be any bar for the recovery of the same, nor shall make or work any corruption of blood, or disherison of any the heir or heirs of any such person or persons so attainted; this act or any thing therein contained to the contrary in any wise notwithstanding.

General issue.

“XXXVIII. And be it further enacted, that if any action or actions shall at any time hereafter be commenced or brought against any person or persons doing, committing, or commanding any act or thing, for or concerning the execution of this present statute, or any article or clause therein contained; that then every defendant in such action or actions, may plead the general issue, and be received to maintain the same by any evidence that shall prove his doings and proceedings warrantable by this law.

Authority of
the ecclesias-
tical court
reserved.

“XXXIX. Provided always, that neither this act, nor any thing therein contained, shall extend to take away or abridge the authority or jurisdiction of the ecclesiastical censures, for any cause or matter, but that the commissioners of his majesty, his heirs and successors, in causes ecclesiastical, for the time being, and the archbishops, bishops, and other ecclesiastical judges, may do and proceed, as before the making of this act they lawfully did or might have done; any thing in this act to the contrary in any wise notwithstanding.

No forfeiture

“XL. Provided always, and be it enacted, that no person shall be charged or

chargeable with any penalty or forfeiture by force of this act, which shall happen for his wife's offence in not receiving the said sacrament during her marriage, nor that any woman shall be charged or chargeable with any penalty or forfeiture by force of this act, for any such offence of not receiving, which shall happen during her marriage.

“XLI. Provided also, and be it enacted by the authority of this present parliament, that in all causes where any bishop or justices of the peace may by force of this act require and take of any subject the oath above mentioned, that the lords of the privy council for the time being, or any six of them, whereof the lord chancellor, lord treasurer, or the principal secretary for the time, to be one, shall have full power and authority, by force of this act, at any time or times, to require and take the said oaths before mentioned, of any nobleman or noblewoman, (then being above the age of eighteen years;) and if any such nobleman or noblewoman (other than women married) shall refuse to take such oath or oaths, that, in every such case, such nobleman or noblewoman shall incur the pain and danger of a *premunire*.

“XLII. Provided also, and be it enacted by the authority of this parliament, that where any person or persons shall go or pass out of the Cinque Ports, or any member thereof, to any parts beyond the seas, to serve any foreign prince, state, or potentate, that in every such case the lord warden of the Cinque Ports for the time being, or any person by him in that behalf appointed or to be appointed, shall have full power and authority, by virtue hereof, to take the bond, and minister the oath to such passengers as is above mentioned.”

XIII. STAT. 3 JACOBI 1, c. 5(1). A.D. 1605.

“An Act to prevent and avoid Dangers which grow by Popish Recusants (2).”

“Whereas divers Jesuits, seminaries, and popish priests, daily do withdraw many of his majesty's subjects from the true service of Almighty God, and the religion established within this realm, to the Romish religion, and from their loyal obedience to his majesty, and have of late secretly persuaded divers recusants and papists, and encouraged and emboldened them to commit most damnable treasons, tending to the overthrow of God's true religion, the destruction of his majesty and his royal issue, and the overthrow of the whole state and commonwealth, if God of his goodness and mercy had not within few hours before the intended time of the execution thereof, revealed and disclosed the same; wherefore, to discover and prevent such secret damnable conspiracies and treasons as hereafter may be put in use by such evil-disposed persons, if remedy be not therefore provided; be it enacted by the king's most excellent majesty, the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, that such person as shall first discover to any justice of peace, any recusant or other person which shall entertain or relieve any Jesuit, seminary or popish priest, or shall discover any mass to have been said, and the persons that were present at such mass, and the priest that said the same, or any of them, within three days next after the offence committed, and that by reason of such discovery any of the said offenders be taken and convicted or attainted, that then the person which hath made such discovery, shall not only be freed from the danger and penalty of any law for such offence, if he be an offender therein, but also shall have the third part of the forfeiture of all such sums of money, goods, chattels, and debts, which shall be forfeited by such offence, (so as the same total forfeiture exceed not the sum of one hundred and fifty pounds; and if it exceed the sum of one hundred and fifty pounds, the said person so discovering the said offence, shall

STAT. 3 JAC.
1, c. 4.
for the wife's
offence.

Who may take
the oath of a
nobleman or
woman.

16 Rich. 2,
c. 5.

Who shall take
the oath in the
Cinque Ports.
Farther pro-
visions con-
cerning recu-
sants, see the
chapter
following.

STAT. 3 JAC.
1, c. 5.

1 Haw. P. C.
c. 12.
2 Burn, 309,
&c.

The reward of
him who dis-
covereth a
priest or mass.
2 Roll. 437.

(1) *Vide* Stat. 12 Ann. St. II. c. 14. Stat. 26 Geo. 2, c. 33. Stat. 31 Geo. 3, c. 32. Stat. 43 Geo. 3, c. 30. Stat. 10 Geo. 4, c. 7. Stat. 2 & 3 Gul. 4, c. 115.

(2) *Recusants*:—A *recusant*, in general, signifyeth any person, whether papist or

other, who refuseth to go to church and to worship God after the manner of the church of England; a *popish recusant*, is a papist who so refuseth; and a *popish recusant convict*, is a papist legally convicted of such offence.

STAT. 3 JAC.
1, c. 5.

have the sum of fifty pounds only for every such discovery;) and such person so discovering the same, after conviction of the offender, shall have a certificate from the judges or justices of the peace before whom such conviction shall happen, to be directed to the sheriff or other officer of the same county, limit, or place, that shall seize the goods, or levy the said forfeiture, commanding the said sheriff or other officer to pay the same accordingly to him that so discovered the same, out of the monies to be levied by virtue of the said forfeitures, which warrant and payment shall be effectual in the law for that purpose, and a sufficient discharge in that behalf for the sheriff or other officer upon his account.

A recusant
shall not come
to the court.

“II. And whereas the repair of such evil-affected persons to the court, or to the city of London, may be very dangerous to his majesty’s person, and may give them more liberty to meet, consult, and plot their treasons and practices against the state, than if they should be restrained and confined unto their private houses in the country: for remedy hereof, be it enacted by the authority aforesaid, that no popish recusant convicted or to be convicted shall come into the court or house where the king’s majesty, or his heir apparent to the crown of England shall be, unless he be commanded so to do by the king’s majesty, his heirs and successors, or by warrant in writing from the lords and others of the most honourable privy council of the king’s majesty, his heirs and successors, or any of them; upon pain to forfeit, for every time so offending, one hundred pounds; the one moiety to the king’s majesty, his heirs and successors; the other moiety to him that will discover and sue for the same, by action of debt, bill, plaint, or information, in any of his majesty’s courts of record, wherein no essoin, protection, or wager of law, shall be allowed.

Recusants shall
depart from
London.

“III. And that all popish recusants indicted or convicted, and all other persons which have not repaired to some usual church or chapel, and there heard divine service, but have forborn the same by the space of three months last past, contrary to the laws and statutes of this realm, dwelling, abiding, or remaining within the city of London, or the liberties thereof, or within ten miles of the said city, shall within three months next after the end of this session of parliament, depart from the said city of London, and ten miles compass of the same; and also shall deliver up their names to the lord mayor of London, in case such recusant do dwell or remain within the said city of London, or the liberties thereof: and in case the said recusant shall dwell or remain in any other county within ten miles of the same city, then the said recusant shall deliver up his or her name to the next justice of peace within such county where the said resusant shall so dwell or remain, within forty days after the end of this session of parliament; upon pain that every person offending herein shall forfeit to our sovereign lord the king’s majesty, his heirs and successors, the sum of one hundred pounds; the one moiety whereof shall be to the king’s majesty, his heirs and successors; the other moiety to him or them that will sue for the same by action of debt, bill, plaint, or information, in any of the king’s majesty’s courts of record, wherein no essoin, protection, or wager of law, shall be admitted or allowed.

“IV. And that all popish recusants which shall hereafter come, dwell, or remain within the said city of London, or the liberties thereof, or within ten miles of the said city, which now are or hereafter shall be indicted or convicted of such recusancy, or which shall at any time hereafter not repair unto some usual church or chapel, and there hear divine service, but shall forbear the same by the space of three months, contrary to the laws and statutes of this realm, shall within ten days after such indictment or conviction depart from the said city of London, and ten miles compass of the same, and also shall deliver up their names to the lord mayor of London for the time being, in case such recusant shall dwell or remain within the said city of London, or the liberties thereof; and in case the said recusant shall dwell or remain in any other county within ten miles of the said city, then the said recusant shall deliver up his or her name to the next justice of peace within such county where the said recusant shall so dwell or remain, within the said ten days next after such indictment or conviction; upon pain that every person offending herein shall likewise forfeit to our said sovereign

lord the king's majesty, his heirs and successors, the like sum of one hundred pounds: the one moiety whereof shall be to the king's majesty, his heirs and successors, and the other to him or them that will sue for the same by action of debt, bill, plaint, or information, in any of the king's majesty's courts of record, wherein no essoin, protection, or wager of law, shall be admitted or allowed.

STAT. 3 JAC.
1, c. 5.

"V. Provided always, that such person or persons as now use any trade, mystery, or manual occupation within the said city of London, or within ten miles of the same, and such as have or shall have their only dwelling within the said city, or ten miles compass of the same, not having any other dwelling or place of abode elsewhere, shall or may remain and continue in such place within the said city, or ten miles of the same, as they have dwelled, inhabited, or remained in by the space of three months next before this present session of parliament; any thing herein contained to the contrary notwithstanding.

Tradesmen and
dwellers in
London.

"VI. And whereas by a statute made at Westminster in the five and thirtieth year of the reign of Queen Elizabeth, intituled, 'An Act for the restraining of Popish Recusants to some certain place of abode,' it was, amongst other things, ordained and enacted, that every popish recusant then or after convicted for not repairing to church, chapel, or usual place of common prayer, having any certain place of dwelling and abode within this realm, should within the time limited by the said statute repair to their place of usual dwelling and abode, or not having any certain place of dwelling or abode within this realm, should likewise within the time limited by the said statute repair to the place where such person was born, or where the father or mother of such person should be dwelling, and not at any time remove or pass above five miles from thence, under the pains in the said statute limited and provided; which statute, by reason of sundry licences given unto such recusants, under colour of a proviso in the said statute contained, hath not wrought that good effect in the commonwealth as was hoped: be it therefore enacted and ordained by this present parliament, and by the authority of the same, that the said statute, made in the said five and thirtieth year of the said Queen Elizabeth, for and concerning the confining of the said recusants under the pains and penalties therein contained, shall by this act, and by the authority of the same, be confirmed, and be hereafter put in due execution, according to the tenour, true intent and meaning of the said statute in that behalf made: and that the said proviso in the said statute contained, giving power to grant licence or licences unto the said recusants, to go and travel from or out of the compass of the said five miles, shall be, from and after the end of this present session of parliament, utterly repealed and void; any thing in the said statute to the contrary in any-wise notwithstanding.

35 Eliz. c. 2.

A recusant
confined.

A repeal of a
proviso con-
tained in the
statute of
35 Eliz. c. 2,
touching
licence to
recusants.

"VII. Provided nevertheless, and be it further enacted by this present parliament, and by the authority of the same, that it shall and may be lawful for the king's most excellent majesty, his heirs and successors, or for three or more of his majesty's most honourable privy council, or for three or more of the privy council of his heirs and successors, in writing under the hands of the said privy councilors, to give licence to every such recusant to go and travel out of the compass of the said five miles, for such time as in the said licence shall be contained, for their travelling, attending, and returning, and without any other cause to be expressed within the said licence: and if any of the persons which are so confined by virtue of the said statute, as is aforesaid, shall have necessary occasion or business to go and travel out of the compass of the said five miles, that then and in every such case, upon licence in writing in that behalf to be gotten, under the *hands and seals* (1) of four of the justices of peace of the same county, limit, division, or place next adjoining to the place of abode of such recusant, with the privy and assent in writing of the bishop of the diocese, or of the lieutenant, or of any *deputy lieutenant* (2) of the same county residing within the said county or liberty,

Licence to a
recusant
confined.
Cro. Jac. 352.

(1) *Hands and seals*:—In the case of *Maxfield*, (Gibson's Codex, 593,) the licence was found to be ill, because under seals only, and not under hands.

(2) *Deputy lieutenant*:—It was not enough that there were three justices, and a fourth, who was both deputy-lieutenant and justice; but it ought to have been by four justices,

STAT. 3 JAC.
1, c. 5.

The effect of a
licence to be
granted by
four justices of
peace.

35 Eliz. c. 2.

A recusant
disabled to
practise certain
offices and
functions.

No recusant
shall be a pub-
lic officer.

A woman
married
recusant.
7 Jac. 1, c. 6.

under their hands and seals: in every of which licence or licenses in writing so to be had and made, shall be specified and contained both the *particular cause* (1) of the said licence, and the time how long the said party licensed shall be absent, in travelling, attending, and returning: it shall and may thereupon be lawful for every such person so licensed, to go and travel about such their necessary business, and for such time only for their travelling, attending, and returning, as shall be comprised in the said licence, the said party so licensed first taking his corporal oath before the said four justices of the peace, or any of them, (who shall have authority by virtue of this act to minister the same,) that he hath truly informed them of the cause of his journey, and that he shall not make any causeless stays; and that all and every licence hereafter to be made in this behalf, contrary to the tenour, effect, and true meaning of this statute, shall be utterly void, frustrate, and of none effect; any thing in the said former act, or in this act, to the contrary notwithstanding. And every person so confined, which shall depart or go above five miles from the place whereunto he is or shall be confined, not having such licence, and not having taken such oath as aforesaid, shall incur the pain and penalty, and forfeit as a recusant convicted, and passing or going above five miles from the said place whereunto he is or shall be confined, by the said statute of *tricesimo quinto Elizabethæ*, should do.

“VIII. And be it further enacted by the authority aforesaid, that no recusant convict shall at any time after the end of this session of parliament practise the common law of this realm as a councillor, clerk, attorney, or solicitor in the same, nor shall practise the civil law as advocate or proctor; nor practise physic, nor use or exercise the trade or art of an apothecary; nor shall be judge, minister, clerk, or steward of or in any court, or keep any court, nor shall be register or town-clerk, or other minister or officer in any court; nor shall bear any office or charge as captain, lieutenant, corporal, serjeant, ancient bearer, or other office in camp, troop, band, or company of soldiers; nor shall be captain, master, governor, or bear any office or charge of or in any ship, castle, or fortress of the king’s majesty, his heirs and successors; but be utterly disabled for the same: and every person offending herein shall also forfeit for every such offence one hundred pounds; the one moiety whereof shall be to the king’s majesty, his heirs and successors, and the other moiety to him that will sue for the same by action of debt, bill, plaint, or information, in any of the king’s majesty’s courts of record, wherein no essoin, protection, or wager of law, shall be admitted or allowed.

“IX. And be it also enacted by the authority aforesaid, that no popish recusant convict, nor any having a wife being a popish recusant convict, shall at any time after the end of this session of parliament, or any popish recusant hereafter to be convict, or having a wife which hereafter shall be a popish recusant convict, at any time after his or her conviction, shall exercise any public office or charge in the commonwealth, but shall be utterly disabled to exercise the same by himself, or by his deputy; except such husband himself, and his children which shall be above the age of nine years abiding with him, and his servants in household, shall once every month at the least, not having any reasonable excuse to the contrary, repair to some church or chapel usual for divine service, and there hear divine service; and the said husband, and such his children and servants as are of meet age, receive the sacrament of the Lord’s supper at such times as are limited by the laws of this realm, and do bring up his said children in true religion.

“X. And be it also enacted by the authority aforesaid, that every married woman, being or that shall be a Popish recusant convicted, (her husband not standing convicted of Popish recusancy,) which shall not conform herself and remain conformed, but shall forbear to repair to some church or usual place of common

besides the deputy-lieutenant, whose assent also ought to have been by itself, and not with the other four. Gibson’s Codex, 593.

(1) *Particular cause*:—Another fault in

the afore-mentioned licence for which it was adjudged to be ill, was, that the cause ought not to have been shown in a general manner, as, for urgent causes. Ibid. 594.

prayer, and there to hear divine service and sermon, if any then be, and within the said year receive the sacrament of the Lord's supper, according to the laws of this realm, by the space of one whole year next after the death of her said husband, shall forfeit and lose to the king's majesty, his heirs, and successors, the issues and profits of two parts of her jointure, and two parts of her dower, in three parts to be divided, during her life, of or out of any the lands, tenements, and hereditaments, which are or were her said husband's, and also be disabled to be executrix or administratrix of her said husband, and to have or demand any part or portion of her said late husband's goods or chattels, by any law, custom, or usage whatsoever.

STAT. 3 JAC.
1, c. 5.

"XI. And be it further enacted by the authority aforesaid, that every Popish recusant which is or shall be convicted of Popish recusancy, shall stand and be reputed to all intents and purposes *disabled* (1), as a person lawfully and duly excommunicated, and as if he or she had been so denounced and excommunicated according to the laws of this realm, until he or she so disabled shall conform him and herself, and come to church, and hear divine service, and receive the sacrament of the Lord's supper, according to the laws of this realm, and also take the oath appointed and prescribed in one other act made this present session of parliament, intituled, 'An Act for the better discovering and repressing of Popish Recusants:' and that every person and persons *sued, or to be sued* (2), by such person so dis-

A recusant
shall be as ex-
communicated.
2 Bulst. 155.

(1) *Disabled*.—In *Rex v. Griffith*, (2 Bulst. 155,) Lord Chief Justice *Coke* stated: "By the Stat. 3 Jac. 1, c. 5, every recusant convict is to be excommunicated; and therefore, in my circuit, I do not admit of them for witnesses between party and party, they being no competent witnesses; and therefore you, (the recusants at the bar,) being to find sureties for your good behaviour, we will not take popish recusants for your sureties."

(2) *Sued, or to be sued*.—This is the ancient law of England, as appears by *Bracton*, l. 5, f. 426 (b); and *Fleta*, l. 6, c. 38; where it is not only said, "Cum excommunicato nec orare, nec loqui, nec palam, nec absconditè, nec vesci licet, exceptis quibusdam personis;" but also, "Excommunicato interdicitur omnis actus legitimus; ita quod agere non potest, nec aliquem convenire, licet ipse ab illis possit conveniri." And, that *actus legitimus* was understood in a larger sense, than suing, appears from the letters written by the bishops to the temporal courts, not only "Ne excommunicatum in curiis vel judiciis admittant," (Reg. Court. 174 (b); Arund. 439 (a),) but more expressly to repel them "Ab agendo, testificando, et aliis actibus legitimis;" (Chich. 116 (b);) and elsewhere, "à patrocinando coram eis." Arund. 415 (a).

Upon this subject the *Reformatio Legum* states, "Nec excommunicatis ad ecclesiastica beneficia sumi fas est; quos ad mensam vel ad colloquium adhibere, nefas existimatur;" which, (as well as the disability to sue, (Caus. 4, q. 1, c. 1,) and be an advocate,) (Extra. l. 2, t. 19, c. 7; Extra. l. 5, t. 27, c. 7,) is agreeable to the rule of the canon law: "Consultationi tue taliter respondemus, quod cum excommunicatis communicari non debeat, clericis excommunicationis vinculo innodatis ecclesiastica beneficia conferri non possunt, nec illi valent ea licitè retinere, nisi forsitan cum eis fuerit misericorditer dispensatum: cum ea non fuerint canonicè consecuta."

"Illi verò, qui scienter illa beneficia talibus contulerunt tamdiu debent à beneficiorum collatione suspendi, donec super hoc veniam consequi mereantur: ut puniantur in hoc, in quo delinquere præsumpserunt."

In the Register of Archbishop Peccham, (f. 52 (a),) upon his collation to the vicarage of Hadleigh, the entry is: "Spectant ad collationem suam, pro eo quod rector ejusdem, qui alium præsentavit ad eandem, fuit excommunicationis sententiâ innodatus."

Under the same disability are executors and administrators, as well as others, being excommunicate; but where one of the executors of Lord Petre, (*Petre* (Lord) v. *Cambridge* (University of), 3 Lev. 332,) was a recusant convict, and therefore as excommunicate, (and being one of the plaintiffs,) that disability was pleaded against him, and against the rest also as *conversing* with him; the court adjudged, that it only suspended the action, and did not abate it. But it should be observed, that, in *Trollop's case*, (8 Co. 69 (a),) Lord *Coke* lays it down for a general rule, that when a plea of excommunication is allowed, the writ shall not abate, but the entry is, "quod remaneat loquela sine die quousque," &c.

"But if bailiffs and commons, or any other corporation aggregate of many, bring an action; *excommunication* in the bailiffs shall not disable them, for that they sue and answer by attorney." 1 Inst. 134.

In *Tharsby v. Warn*, (Noy, 88,) it appeared in "the bill," that the plaintiff was a recusant convict, and so a person excommunicate, notwithstanding which, the defendant had answered him, and then prayed a prohibition; but the court told him, that by answering, he admitted him a person able, and it was too late for that plea, and prohibition was denied.

Nor, where a bishop is defendant, can an excommunication by the same bishop, (although for another cause than that in question,) disable the plaintiff.

STAT. 3 JAC.
1, c. 5.

3 Jac. 1, c. 4.

What actions a
recusant may
prosecute.
Litch, 172,
177.

Recusants'
marriages by
priests, &c.

abled, shall and may *plead the same* (1) in disabling of such plaintiff, as if he or she were excommunicated by sentence in the ecclesiastical court.

"XII. Provided nevertheless, that it shall and may be lawful for any such person so disabled, for and notwithstanding any thing in this law contained, to sue or prosecute any action or suit for or concerning only such of his or her lands, tenements, leases, rents, annuities, and hereditaments, or for the issues and profits thereof, which are not to be seized or taken into the king's hands, his heirs, or successors, by force of any law, for or concerning his or her recusancy, or any part thereof.

"XIII. And for that Popish recusants are not usually married, nor their children christened, nor themselves buried according to the law of the church of England, but the same are done superstitiously by Popish persons in secret, whereby the days of their marriages, births, and burials cannot be certainly known: be it further enacted by authority of this present parliament, that every

(1) *Plead the same*:—The manner of pleading this, is described by *Bracton*, (f. 426 (b).) as follows: "Oportebit eum qui exipit in hoc casu, habere literas ordinarii, (sicut archiepiscopi, vel episcopi, vel alterius judicis ordinarii, vel delegati,) rei veritatem testificantes, quòd talis *nominatim* excommunicatus sit, et ex tali causâ; vel si ordinarius præsens sit, et hoc testificetur vivâ voce." *Littleton*, (1 Inst. 133 (b).) states, of the excommunication, it behoves him to show the bishop's letters under his seal, and ask judgment if the plaintiff shall be answered. But *Bracton* intimateth, that a commissary or official may testify excommunication; *Littleton*, however, names the bishop only; because therein the law was changed, and that none could certify it but the bishop, or the vicar-general, *episcopo in remotis agente*, or the guardian of the spiritualities, *vacante sede*; who might do it, either by direct certificate that the person was excommunicate, or by letters testimonial reciting the entry thereof in the register, and attesting that such entry was to be there found. F. N. B. tit. *Writ de Excommunicato capiendò*, 144. *Jay v. Bond*, 3 Keb. 60. 1 Vent. 122.

Of this power, as *restrained* to the bishop, *Lyndwood* (De Sen. Ex. c. Præterea v. Prelatorum, 350,) writeth thus: "Ad rogatum prelatorum inferiorum rex non consuevit scribere pro captione excommunicatorum. Unde, si aliquis fuerit excommunicatus ab inferiori episcopo, viz. decano vel archidiacono, invocato regie majestatis fieri debet per episcopum; nam inferiores episcopo non possunt invocare brachium seculare: sed episcopi exequuntur eorum sententias. Quòd si episcopi hoc facere noluerint, ad hoc compelli possunt per archiepiscopum."

The reason then why none but the bishop might certify, was, because none who were inferior to a bishop could call in the secular arm, by the laws of the church; (*Lyndw. de Cohab. Cler. et Mul. c. Ut Cler. v. Brach.* 127;) but my Lord *Coke*, (*Trollop's case*, 8 Co. 68(a).) has found another reason, because no certificate of excommunication by any shall disable one, but the certificate of him to whom the court may write to absolve the party excommunicated. However, be the reason what it will, when a certificate was from the official or commissary of the bishop, it was held, that it did not disable the person. *Gibson's Codex*, 1050. And

in the same case, (viz. *Trollop's case*.) it is affirmed, that the certificate ought to be directed either to the court, or at least, "universis Sanctæ Matris ecclesiæ filiis;" and that it ought in special to contain the cause of the excommunication, in order that the temporal judges may see, whether the spiritual court have cognizance of the original cause, or whether the excommunication be according to law: and thus, they would be enabled, if it be otherwise, to communicate with the spiritual court, to absolve the party.

But although, when the proceeding is upon any of the ten crimes mentioned in Stat. 5 Eliz. c. 23, (*antè* 408,) the particular original cause must be expressed in the certificate; it hath been doubted, whether that be required in other cases, or according to the common law. The notion in *Lyndwood's* time, (De Sen. Ex. c. Præterea, v. *Dari debet*.) concerning this matter, was: "Judex secularis non habet cognitionem, sed meram executionem;" and there are divers writs in the Register, which only say in general, that the party was excommunicated "propter suam manifestam contumaciam," (Reg. 65 (a), 66 (a), 69 (a).) and "propter suam manifestam contumaciam in non parendo certis mandatis lictis sibi factis," (Ibid. 65 (b).) and "propter manifestas offensas suas." Ibid. 66 (b).

But though the bishop may not only certify an excommunication made by himself, but also by his commissary or official, who doth it in his right; and by his archdeacon, (*Trollop's case*, 8 Co. 68(a); *Starling's case*, 1 Roll. 434.) whose jurisdiction is derived from him; in which case, the rule in the Register, (f. 65.) is: "Quando episcopus significat aliquem esse excommunicatum auctoritate archidiaconi vel officialis, &c. semper dicendum est in brevi (auctoritate illius episcopi, vel illius qui sic certificavit):" yet he cannot certify that, which hath been done in another court; and therefore a certificate, that another bishop hath certified him, or that he hath seen a sentence of excommunication made by another bishop, is of no force. Neither is any other certificate, (though duly made,) of force, if the bishop die before it be received; as Lord *Coke* affirms in the aforementioned case: which seems to be contrary to what he lays down in his First Institute, (134(a).) viz. "If the bishop certifieth the excommunication under seal, albeit he dieth, yet the certificate shall serve."

man being or which shall be a Popish recusant convicted, and who shall be hereafter married otherwise than in some open church or chapel, and otherwise than according to the orders of the church of England, by a minister lawfully authorized, shall be utterly disabled and excluded to have any estate of freehold into any of the lands, tenements, and hereditaments of his wife, as tenant by the courtesy of England: and that every woman being, or which shall be, a Popish recusant convicted, and who shall be hereafter married in other form than as aforesaid, shall be utterly excluded and disabled, not only to claim any dower of the inheritance of her husband, whereof she may be endowable, or any jointure of the lands and hereditaments of her husband, or any of his ancestors, but also of her widow's estate and frank-bank in any customary lands whereof her husband died seised, and likewise be disabled and excluded to have or enjoy any part or portion of the goods of her said husband, by virtue of any custom of any county, city, or place where the same shall lie or be; and if any such man shall be married with any woman contrary to the intent and true meaning of this act, which woman hath or shall have no lands, tenements, or hereditaments, whereof he may be entitled to be tenant by the courtesy, then such man so marrying as aforesaid, shall forfeit and lose one hundred pounds, the one half thereof to be to the king's majesty, his heirs, and successors, and the other moiety to such person or persons as shall sue for the same by action of debt, bill, plaint, or information, in any of the king's majesty's courts of record, wherein no essoin, protection, or wager of law shall be admitted or allowed.

STAT. 3 JAC.
1, c. 5.

"XIV. And that every Popish recusant which shall hereafter have any child born, shall within one month next after the birth thereof cause the same child to be baptized by a lawful minister according to the laws of this realm, in the open church of the same parish where the child shall be born, or in some other church near adjoining, or chapel where baptism is usually administered; or if by infirmity of the child it cannot be brought to such place, then the same shall within the time aforesaid be baptized by the lawful minister of any of the said parishes or places aforesaid; upon pain that the father of such child, if he be living by the space of one month next after the birth of such child, or if he be dead within the said month, then the mother of such child, shall for every such offence forfeit one hundred pounds of lawful money of England; one third part whereof to be to the king's majesty, his heirs, and successors; one other third part to the informer, or him that will sue for the same; and the other third part to the poor of the said parish, to be recovered by action of debt, bill, plaint, or information, in any of the king's majesty's courts of record, wherein no essoin, protection, or wager of law, shall be admitted or allowed.

The baptism
of recusants'
children.

"XV. And if any Popish recusant, man or woman, not being excommunicate, shall be buried in any place other than in the church or church-yard, or not according to the ecclesiastical laws of this realm, that the executors or administrators of every such person so buried, knowing the same, or the party that causeth him to be so buried, shall forfeit the sum of twenty pounds; the one third part whereof shall be to our sovereign lord the king; the other third part to the informer, or him or them that will sue for the same; and the other third part to the poor of the parish where such person died; to be recovered by action of debt, bill, plaint, or information, in any of the king's majesty's courts of record, wherein no essoin, protection, or wager of law, shall be admitted or allowed.

The forfeiture
for burying
recusants, not
excommuni-
cate, out of the
church or
churchyard.

"XVI. And be it further enacted by this present parliament, that if the children of any subject within this realm, (the said children not being soldiers, mariners, merchants, or their apprentices or factors,) to prevent their good education in England, or for any other cause, shall hereafter be sent or go beyond seas, without licence of the king's majesty, or six of his honourable privy council, (whereof the principal secretary to be one,) under their hands and seals, that then all and every such child and children so sent, or which shall go beyond the seas, shall take no benefit by any gift, conveyance, descent, devise, or otherwise, of or to any lands, tenements, hereditaments, leases, goods, or chattels, until he or they, being of the age of eighteen years or above, take the oath mentioned in an act of

The forfeiture
of children
departing the
realm.
3 Jac. 1, c. 4.
Hob. 73.
1 Roll. 108.

STAT. 3 JAC.
1, c. 5.

The forfeiture
of him who
sendeth his
child beyond
the sea.

1 Jac. 1, c. 4.
3 Car. 1, c. 2.
Altered by
11 & 12 Gul. 3,
c. 4, s. 6.

The forfeiture
of the persons
gone beyond
sea.

A recusant
shall not pre-
sent to a bene-
fice, nor grant
an advowson.

parliament made this present session, intituled, 'An Act for the better discovering and repressing of Popish Recusants,' before some justice of peace of the county, liberty, or limit, where such parents of such children as shall be so sent, did and shall inhabit or dwell; and that in the mean time the next of his or her kin, which shall be no Popish recusant, shall have and enjoy the said lands, tenements, hereditaments, leases, goods, and chattles so given, conveyed, descended, or devised until such time as the person so sent or gone beyond the seas, shall conform him or herself, and take the aforesaid oath, and receive the sacrament of the Lord's supper: and after such oath taken, and conforming of himself, and receiving the sacrament of the supper of the Lord, he or they which have so received the profits of the said lands, tenements, hereditaments, goods, and chattels, or any of them, shall make account of the profits so received, and in reasonable time make payment thereof, and restore the value of the said goods to such person as shall so conform him or herself as aforesaid; and that all such persons as shall send the said child or children over seas, without licence as aforesaid, (unless the said child or children be merchants, or their apprentices or factors, mariners or soldiers,) shall forfeit one hundred pounds, to be divided, had, and recovered in three equal parts, whereof the one third part shall be to the king, his heirs, and successors, the other third part to such as shall sue for the same, and the other third part to the poor of such parish where such offender doth inhabit or remain, by action of debt, bill, plaint, or information, in any the king's majesty's courts of record, wherein no essoin, protection, or wager of law, shall be admitted or allowed.

"XVII. And for that many subjects of this realm, being neither merchants, nor their factors, nor apprentices, soldiers, or mariners, are of late gone beyond the seas without licence, and are not as yet returned, be it further enacted by the authority of this present parliament, that if any of the said persons so gone beyond the seas without licence, which are not yet returned, shall not within six months next after their return into this realm, then being of the age of eighteen years or more, take the oath above specified before some justice of peace of the county, liberty, or limit, where such person shall inhabit or remain, that then every such offender shall take no benefit by any gift, conveyance, descent, devise, or otherwise, of or to any lands, tenements, hereditaments, goods, or chattels, until he or they, being of the said age of eighteen years or above, take the said oath: and that likewise in the mean time the next of kin to the person so offending, which shall be no Popish recusant, shall have and enjoy the said lands, tenements, hereditaments, goods, and chattels so given, conveyed, descended, or devised, until such time as the person so offending shall conform himself, and take the aforesaid oath, and receive the said sacrament of the Lord's supper; and after such conforming, taking of the said oath, and receiving of the said sacrament, he or they that shall have so received the profits of the said lands, tenements, hereditaments, goods, and chattels, shall make account of the profits so received, and in reasonable time make payment thereof, and of the value of such goods and chattels, to such person as shall so conform him or herself as aforesaid.

"XVIII. And be it further enacted by the authority of this present parliament, that every person or persons that is or shall be a Popish recusant(1) convict, during the time that he shall be or remain a recusant, shall from and after the end of this present session of parliament be *utterly disabled*(2) to pre-

(1) *A . . . recusant*:—*i. e.* a recusant convict; which, though not expressed, is understood, as was resolved in *Petre (Lord) v. Cambridge (University of)*, (3 Lev. 333,) where the case was, that King James the Second had pardoned all judgments and convictions for not coming to church; and the court held, that such pardon did not only pardon the conviction, but also restore the party to his ability, though he did not conform; the word *convict* being intended throughout the whole statute, and no con-

viction appearing after the pardon, *i. e.* after the first conviction was removed.

(2) *Utterly disabled*:—They were utterly disabled by being made excommunicate in sect. 2, as was observed by *Finch* (Solicitor), in *Knight v. Dauncer*, (1 Keb. 311,) and therefore of what force soever institution or induction, when given upon such a presentation, may be against strangers, there is no doubt, but the bishop may refuse to give it, and take the benefit of the lapse, in case no other presents, who hath the right, and is

sent(1) to any benefice with cure or without cure, prebend or any other ecclesiastical living, or to collate or nominate to any free school, hospital, or donative whatsoever, and from the beginning(2) of this present session of parliament shall likewise be disabled to grant any avoidance(3) to any benefice, prebend, or other ecclesiastical living.

“XIX. And that the chancellor(4) and scholars of the university of Oxford, so often as(5) any of them shall be void(6), shall have the presentation, nomination, collation, and donation of and to every such benefice(7), prebend, or ecclesiastical

STAT. 3 JAC.
I, c. 5.

Enlarged by
1 G. & M.
Sess. I, c. 26,
and 12 Ann.
St. II. c. 14.

The chancellor
and scholars of

capable of presenting. The right of the bishop to the lapse, in this case, as in others, appears from the fact, that the statute intended no more than to put the university in the place of the patron; all rights which belonged to others, remaining as they were before. *Oxford (University of) v. Lincoln (Bishop of)*, Lit. 192.

(1) *To present*:—Or nominate, where the nomination belongs to one, and the presentation to another; as in the very next section is expressly mentioned.

(2) *From the beginning*:—So that although such grant be made by a recusant, before conviction, yet if he be afterwards convicted, the previous grant shall be void. *Le case del Chancellor &c. del University de Oxford*, 10 Co. 55 (a) (b).

(3) *Any avoidance*:—*Mountague* (Serjeant) demanded the opinion of the justices in behalf of the University of Oxford, (4 Leon. 245; Godb. 216,) upon this point: if a recusant convict, to avoid this statute, grant his patronage for years to one of his friends in trust; whether such grant be within the statute? The justices refused to deliver any opinion upon the case, because it might perhaps come judicially before them; but yet, *facile*, they seemed to agree, that such a lease of the patronage was void by this statute; and they said, “that they would not have the university to be discouraged in the case,” which implied their opinions to be for the university. But now that point seems to be cleared by Stat. 1 G. & M. Sess. 1, c. 26, s. 3.

(4) *And that the chancellor*:—The two clauses which give this benefit to the universities, respectively, are private clauses, whereof the judges, without pleading of them, cannot take notice. *Le case del Chancellor, &c. del University de Oxford*, 10 Co. 57(b).

(5) *So often as*:—There is one case wherein the crown claims the right of presenting; and it is this: by Stat. 29 Eliz. c. 6, and Stat. 3 Jac. I, c. 4, the king is empowered, upon default of payment of 20l. per month, to seize two parts of the lands, tenements, &c. belonging to recusants convict. And seizures being accordingly made, first, of two parts of a manor to which an advowson was appendant; and, after that, of the advowson, as part of the king's two parts; these cases were considered, and argued, within twenty years after the making of this statute. In the first case, viz. *Cambridge (University of) v. Walgrave*, (Hob. 127,) the court conceived plainly, that the title to two turns was in the king; and upon confession thereof by the university, a writ to the bishop for the king was accordingly awarded. In the second case, (viz. *Standen v. Oxford (University of)*, Jon.

(Sir W.), 17,) it was pleaded in behalf of the claim of the university, that during the recusancy, by the tenour of the act, the university had in it the whole advowson in trust: that if a grant of the next avoidance should be made to the king by a recusant convict, this law would make such grant null, and then there was no reason why a seizure should entitle him to it: that the statute, intending only to punish the recusant, could not be supposed to give the king anything, but what the recusant himself should have had and enjoyed if no such seizure had been made. But in favour of the king's title, it was said, among other things, that as in law the right to present might pass, as part of the two parts, being an hereditament, by which means the advowson was in the king; so the equity and intention of the statute was clearly on the side of the crown; inasmuch as the evil designed to be remedied thereby, was, that the church might not be supplied by incumbents who were popish or popishly affected; against which the law could not suppose a greater security, than when the right of presenting was in the hands of the person whom itself makes supreme ordinary and defender of the faith. After hearing the arguments on both sides, one of the plaintiffs caused the suit to be discontinued, and so no judgment was given; only Sir *William Jones*, one of the justices, (who also reports the case, and argued for the King against Justice *Hutton*), says, that the Lord *Hobart* declared his opinion for the king, and that *Winch* (another of the justices) declared to him in private, that he was of the same mind.

(6) *Void*:—In *Fitzherbert v. Oxford (University of)*, (Com. 182,) it was said by Chief Justice *Trevor*, “that this statute extends to all avoidances, as well before as after conviction; for the words of the act are general, and the subsequent words, *when it shall become void*, &c. are words of enlargement, and extend the gift of the avoidances of recusants to the university, *toties quoties*, the advowson becomes void, and words which were intended to enlarge shall never be construed to restrain the former words. Avoidances before conviction are also within the same mischief as the avoidances after; and it would be a hard construction, that general words shall not be extended to remedy all cases, which are within equal mischief.”

(7) *Presentation, nomination, collation, and donation of and to every such benefice*:—When a protestant and a Roman catholic are co-patrons of an advowson, the right of presentation is in the protestant alone: thus, in *Edwards v. Exeter (Bishop*

STAT. 3 JAC.
1, c. 5.

tical living, school, hospital, and donative, set, lying, and being in the counties of Oxford, Kent, Middlesex, Sussex, Surrey, Hampshire, Berkshire, Buckingham-

of), (5 Bing. N. C. 652,) Chief Justice *Tindal* observed: "The first count of the declaration in this case, after showing, by the deduction of title, that at the time of the last avoidance, the plaintiff and one William Knight were seised of the advowson therein mentioned, as of fee and right, in equal moieties, proceeds to allege, that the church became vacant by the death of the last incumbent, 'by reason whereof, and because the said William Knight, at the time when the said last-mentioned church so became vacant as last aforesaid, was, and from thence continually has been, and still is, a person professing the Roman catholic religion, it did, and doth belong to the plaintiff to present a fit person to the said last mentioned church at this vacancy,' and then avers the disturbance of the plaintiff's right to present by the defendants. The two defendants, namely, the ordinary and the clerk collated by him, join in pleading; and in their plea to this count justify the refusal of the ordinary to admit or institute the clerk who had been presented by the plaintiff, and the rejection of such presentation, 'because the said William Knight had not joined nor in any manner concurred in the said presentation; and that he, the bishop, on that occasion, declared and assigned his reason and ground for so declining and refusing to accept, and for so rejecting such presentation, to be the neglect and omission of the said William Knight to concur or join in the said presentation;' and after proceeding to state the collation of the said church to the defendant Todd, the plea alleges, 'that no notice whatever was given to the said bishop until long after the right of collating the said church so vacant to the defendant Todd, had devolved to the said bishop as such ordinary.' Upon which latter allegation, the plaintiff in his replication takes a precise issue in the terms of the plea, alleging, 'that notice had been given to the bishop before any right of collating the said church so vacant to the other defendant had devolved to him.' To which replication the defendants demur. And, so far as relates to the replication, we can see no objection in point of form to the issue taken by the plaintiff. The defendants have rested their justification on the ground of the absence of notice that Knight was a Roman catholic before the lapse incurred. If it was incumbent on the plaintiff to have given such notice at the time of the presentation of his clerk; (for which, however, we can see no reason or authority;) the defendants themselves should have alleged and relied upon the absence of such notice in their plea. But they have not so done; and the plaintiff has only followed the defendants in denying their allegation as it stands, as he, the plaintiff, had a right to do. But the objection to the replication has been, in effect, abandoned; and the argument on the part of the defendants has been entirely confined to the insufficiency of the plaintiff's title to present, as set forth in the declara-

tion; the objection amounting simply to this, that the presentation was made by the plaintiff alone, whereas at the time of the presentation there was, as it is contended, a tenant in common of such right of presentation with the plaintiff, who ought to have joined with him; and that, by reason of such tenant in common not joining, a lapse incurred. The point at issue between the parties, therefore, comes to this: whether the right of presentation is given to the universities by the statutes 3 Jac. 1, c. 5, 1 G. & M. c. 26, and 12 Ann. St. II. c. 14, in the case of the disability of one co-patron only out of many; or whether it is so given only in the case where a sole patron, or all who have the right of patronage, is or are disabled by professing the Roman catholic religion. And the first observation that arises is, that as the words of the disabling clause in the statute of James are general, clearly extending to and comprising every person that is a popish recusant convict, that is, as enlarged and explained by the subsequent statutes, every person professing the Roman catholic religion, it follows, that all which was intended to be effected by the legislature is completely accomplished, where there are several joint tenants or tenants in common of the right of patronage, by holding the statute in those cases to affect no more than the simple disability of all the co-patrons who are Roman catholics. For if the right of presentation, by the operation of the disabling clause, becomes limited to the protestant co-patrons only, the avoiding of any popish bias or influence in the selection of an incumbent, which is the real object of the statute, is attained as completely as if the right of presentation as to the share or portion of the Roman catholic co-patron is given over to the universities. There is, therefore, no necessity, in order to effectuate the object of the legislature, that the presentation in such case should be held to vest in the universities; and the question, therefore, becomes this, whether the words of the statute require that interpretation. And upon this point it appears to us there is a marked distinction between those words of the clause which confer the presentation on the university, and those of the disabling clause. The clause in the statute of James, which gives the presentation to the university, enacts, that that university shall have the presentation 'when it shall happen to be void during such time as the patron thereof shall be and remain a recusant convict as aforesaid;' and although these words are not repeated in the statutes of William and Mary, and of Anne, still we consider them as virtually incorporated therein, as a direct reference is made in both the latter statutes to the statute of James, and they are declared to have been passed in order to carry into effect the intention of the former law. And we cannot but think, that it will give full force and effect to this transferring or vesting clause of the statute, if it is considered as extending no

shire, Gloucestershire, Worcestershire, Staffordshire, Warwickshire, Wiltshire, Somersetshire, Devonshire, Cornwall, Dorsetshire, Herefordshire, Northamptonshire, Pembrokehire, Caermarthenshire, Brecknockshire, Monmouthshire, Cardiganshire, Montgomeryshire, the city of London, and in every city and town, being a county of itself, lying and being within any of the limits or precincts of any of the counties aforesaid, or in, or within any of them, as shall happen to be void during such time as a patron thereof shall be and remain a recusant convict as aforesaid.

STAT. 3 JAC.
1, c. 5.

Oxford shall present to a recusant's benefice in certain counties. Jones, 17.

“XX. And that the chancellor and scholars of the university of Cambridge shall have the presentation, nomination, collation, and donation of and to every such benefice, prebend, or ecclesiastical living, school, hospital, and donative, set, lying and being in the counties of Essex, Hertfordshire, Bedfordshire, Cambridgeshire, Huntingdonshire, Suffolk, Norfolk, Lincolnshire, Rutlandshire, Leicestershire, Derbyshire, Nottinghamshire, Shropshire, Cheshire, Lancashire, Yorkshire, the county of Durham, Northumberland, Cumberland, Westmoreland, Radnorshire, Denbighshire, Flintshire, Carnarvonshire, Angleseyshire, Merionethshire, Glamorganshire, and in every city and town, being a county of itself, lying within any of the limits or precincts of any of the counties last before mentioned, or in or within any of them, as shall happen to be void *during such time* (1) as the patron thereof shall be and remain a recusant convict as aforesaid.

The chancellor and scholars of Cambridge.

“XXI. Provided, that neither of the said chancellors and scholars of either of the said universities, shall present or nominate to any benefice with cure, prebend

None shall be presented who

further than to the case where the patron, if a sole patron, is a Roman catholic, or where all the patrons, if there are several claiming under the same title, are of the same persuasion. And this observation is entitled to more weight, when it is considered, that the statute of James gives no interest, but a power only, to the universities, as it is observed by *Hobart* (Chief Justice), in the case of *Duncombe v. Oxford (The University of)*; (Winch's Rep. 11;) and it is well established, that the words creating a power must be strictly interpreted: and undoubtedly it will be found, in all the cases and precedents which have occurred in courts of law, that the claim of the universities has been made only where there has been a sole patron, who was a recusant convict. *Vide* Winch's Entries, 771; *Lutw.* 1100, in a *quare impedit* against the Chancellor, &c. of the University of Cambridge; the case in *Hob.* 126; and that in *Winch's Rep.* 11. And, so far as we have been able to search, no precedent is found of a claim by the university under a joint right to present with a protestant co-patron.

“But, still further, the interpretation contended for on the part of the defendants would work an injury to the patronage of the protestant co-patron. For, by sect. 5 of Stat. 1 G. & M., the chancellor and scholars shall not present or nominate any person who shall then have any other benefice with cure of souls, under pain of the presentation being utterly void. And again, by sect. 6, it is enacted that no person so presented to any benefice with cure of souls, shall be absent from the same above the space of sixty days in any one year, under the penalty that the benefice shall become void. And these two restrictions, which are very properly placed upon the power of presentation, when the university takes the whole, throw a burden upon the

right of presenting belonging to the protestant co-patron, which did not exist before. And as there could be no possible reason for an enactment, which should operate against the rights of a protestant co-patron, we think these clauses afford a key to the meaning of the statute, and show that the legislature had nothing in view beyond giving the power to the universities to present, where, by the recusancy of the patron, or all the patrons, under the same title, the whole power of the presentation would devolve to them.

“Upon the whole, therefore, we think that the case of the transfer to the universities of the power to present, when one or some only of the co-patrons are disabled, is either a *casus omissus* in the statute, and then we cannot extend the statute to comprehend it; or that the legislature designedly excluded it, and confined the vesting of the power of presentation in the universities to a vesting of the entire right; in either of which cases the judgment must be for the plaintiff.

“And by this construction no injury can be occasioned in any case to the ordinary, who at all times has a clear course to follow, perfectly free from all doubt, whereby he can never be treated as a disturber, *viz.* the admitting and instituting the presentee of the one protestant co-patron; for according to *Co. Lit.* 186(b), ‘if one joint tenant, or tenant in common, present severally, the ordinary may either admit, or refuse to admit, such a presentee, unless they join in presentation; and after the six months he may in that case present by lapse.’”

(1) *During such time*:—When the presentation *hâc vice* is vested in the university, although afterwards the recusant conformeth himself, or dieth, yet the university shall present. *Le case del Chancellor, &c. del University de Oxford*, 10 *Co.* 57(b).

STAT. 3 JAC.
I, c. 5.

hath another
benefice.

Recusant shall
not be executor
or adminis-
trator.

Recusant
shall be no
guardian.

Who shall
have the
wardship.

The king's
wards.

Popish books.

Justices may
search for
books printed,
&c.

or other ecclesiastical living, any such person as shall then have any other benefice with cure of souls; and if any such presentation or nomination shall be had or made of any such person so beneficed, the said presentation or nomination shall be utterly void; any thing in this act to the contrary notwithstanding.

“XXII. Moreover, because recusants convict are not thought meet to be *executors* (1) or administrators to any person or persons whatsoever, nor to have the education of their own children, much less of the children of any other of the king's subjects, nor to have the marriage of them; be it therefore enacted by the authority aforesaid, that such recusants convicted, or which shall be convicted at the time of the death of any testator, or at the time of the granting of any administration, shall be disabled to be executor or administrator by force of any testament hereafter to be made, or letters of administration hereafter to be granted, nor shall have the custody of any child, as guardian in chivalry, guardian in socage, or guardian in nurture, of any lands, tenements, or hereditaments, being freehold or copyhold, but shall be adjudged disabled to have any such wardship or custody of any such child, or of their lands, tenements or hereditaments, being freehold or copyhold as aforesaid.

“XXIII. And that for the better education and preservation of the said children, and of their estates, the next of the kin to such child or children, to whom the said lands, tenements or hereditaments of such child or children cannot lawfully descend, who shall usually resort to some church or chapel, and there hear divine service, and receive the holy sacrament of the Lord's supper thrice in the year next before, according to the laws of this realm, shall have the custody and education of the same child, and of his said lands and tenements, being holden in knight's service, until the full age of the said ward of one and twenty years, and of his said lands, tenements, and hereditaments, being holden in socage, as a guardian in socage, and of the said lands, tenements, and hereditaments holden by copy of court-roll of any manor, so long as the custom of the said manor shall permit and allow the same; and in every of the said cases shall yield an account of the profits thereof to the said ward, as the case shall require.

“XXIV. And that if, at any time hereafter, any of the wards of the king's majesty, or of any other, shall be granted or sold to any popish recusant convict, such grant or sale shall be utterly void and of none effect.

“XXV. And be it further enacted by the authority of this present parliament, that no person or persons shall bring from beyond the seas, nor shall print, sell, or buy any popish primers, ladies' psalters, manuals, rosaries, popish catechisms, missals, breviaries, portals, legends and lives of saints, containing superstitious matter printed or written in any language whatsoever, nor any other superstitious books printed or written in the English tongue; upon pain of forfeiture of forty shillings for every such book; one third part thereof to be to the king's majesty, his heirs and successors, one other third part to him that shall sue for the same, and the other third part to the poor of the parish where such book or books shall be found, to be recovered by action of debt, bill, plaint or information, in any of the king's majesty's courts of record, wherein no essoin, protection, or wager of law shall be admitted or allowed, and the said books to be burned.

“XXVI. And that it shall be lawful for any two justices of peace within the limits of their jurisdiction or authority, and to all mayors, bailiffs and chief officers of cities and towns corporate in their liberties from time to time, to search the houses and lodgings of every popish recusant convict, or of every person whose wife is or shall be a popish recusant convict, for popish books and relicts of popery: and that if any altar, pix, beads, pictures, or such like popish relicts, or any popish book or books shall be found in their or any of their custody, as in the opinion of the said justices, mayor, bailiff or chief officer, as aforesaid, shall be thought unmeet for such recusant, as aforesaid, to have or use the same, shall be

(1) *Executors*.—A popish recusant convict made his wife, another popish recusant, his executrix, and she being suffered to prove the will in the spiritual court; a prohibition

was granted, because the court conceived, that she was disabled by the general clause, and not enabled by the proviso. Gibson's Codex, 582.

presently defaced and burnt, if it be meet to be burned : and if it be a crucifix, or other relict of any price, the same to be defaced at the general quarter sessions of the peace in the county where the same shall be found, and the same so defaced to be restored to the owner again. STAT. 3 JAC. 1, c. 5.

“XXVII. And be it also enacted by the authority aforesaid, that all such armour, gunpowder and munition, of whatsoever kinds, as any popish recusant convict within this realm of England, hath or shall have in his house or houses, or elsewhere, or in the hands or possession of any other at his or their disposition, shall be taken from such popish recusants or others which have or shall have the same to the use of such popish recusant, by warrant of four justices of peace at their general or quarter sessions, to be holden in the same county where such popish recusant shall be resident (other than such necessary weapons as shall be thought fit by the said four justices of peace to remain and be allowed for the defence of the person or persons of such recusants, or for the defence of his, her, or their house or houses) ; and that the said armour and munition so taken, shall be kept and maintained at the costs of such recusants, in such places as the said four justices of peace at their said sessions of the peace shall set down and appoint. Crucifix defaced.
Recusant's armour.

“XXVIII. And be it further enacted by the authority aforesaid, that if any such recusant having or which shall have any such armour, gunpowder and munition, or any of them, or if any other person or persons which shall have any such armour, gunpowder and munition, or any of them, to the use of any such recusant, shall refuse to declare or manifest unto the said justices of the peace, or any of them, what armour he, she, or they have, or shall have, or shall let, hinder, or disturb the delivery thereof, to any of the said justices, or to any other person or persons authorized by their warrant to take and seize the same ; then every such person so offending contrary to this statute in this behalf, shall forfeit and lose to the king's majesty, his heirs and successors, his and their said armour, gunpowder and munition, and shall also be imprisoned by warrant of or from any justices of peace of such county, by the space of three months, without bail or mainprize. The forfeiture of a recusant not delivering his armour.

“XXIX. And yet nevertheless, be it enacted by the authority aforesaid, that notwithstanding the taking away of such armour, gunpowder, and munition, the said popish recusant shall and may be charged with the maintaining of the same, and with the buying, providing, and maintaining of horse, and other armour and munition, in such sort as other his majesty's subjects from time to time shall be appointed and commanded, according to their several abilities and qualities, and that the said armour and munition, at the charge of such popish recusant, for them, and as their own provision of armour and munition, shall be shewed at every muster, shew, or use of armour, to be had or made within the said county. Recusant shall maintain his armour.

“XXX. Provided always, that neither this act, nor any thing therein contained, shall extend to take away or abridge the authority or jurisdiction of the ecclesiastical censures, for any cause or matter ; but that the commissioners of his majesty, his heirs and successors, in causes ecclesiastical, for the time being, archbishops, bishops, and other ecclesiastical judges, may do and proceed as before the making of this act they lawfully did or might have done ; any thing in this act to the contrary in any wise notwithstanding.” Ecclesiastical censures.

XIV. STAT. 3 JACOBI 1, c. 21 (1). A.D. 1605.

“*An Act to restrain the Abuses of Players.*”

STAT. 3 JAC. 1, c. 21.

“For the preventing and avoiding of the great abuse of the holy name of God, in *stage plays* (2), interludes, May-games, shows, and such like ; be it enacted by The penalty of players on the

(1) *Vide* Stat. 9 & 10 Gul. 3, c. 32. Stat. 22 Geo. 2, c. 33, Art. 2. Stat. 53 Geo. 3, c. 160. Stat. 60 Geo. 3 & 1 Geo. 4, c. 8. Stat. 11 Geo. 4 & 1 Gul. 4, c. 73.

In the year 1656, *James Nailer*, (3 Burn's E. L. by Phillimore, 385,) for personating our Saviour, and suffering his followers to

worship him, and pay him divine honours, was sentenced to be set in the pillory, and to have his tongue bored through with a red-hot iron, and to be whipped, and to be stigmatized in the forehead, with the letter B.

(2) *Stage plays* :—The reformation of stage plays was under debate in convocation,

STAT. 3 JAC.
1, c. 21.

stage, &c.
profanely
abusing the
name of God.

Farther pro-
visions relating
hereto, 10 Geo.
2, c. 19; 12
Geo. 2, c. 28;
and 25 Geo. 2,
c. 36.

our sovereign lord the king's majesty, and by the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, that if at any time or times after the end of this present session of parliament, any person or persons do or shall in any stage play, interlude, show, May-game, or pageant, jestingly or profanely speak or use the holy name of God, or of Christ Jesus, or of the Holy Ghost, or of the Trinity, which are not to be spoken but with fear and reverence, shall forfeit for every such offence by him or them committed ten pounds: the one moiety thereof to the king's majesty, his heirs and successors, the other moiety thereof to him or them that will sue for the same in any court of record at Westminster, wherein no essoin, protection, or wager of law, shall be allowed."

STAT. 3 JAC.
1, c. 25.

XV. STAT. 3 JACOBI 1, c. 25 (1). A.D. 1605.

"A Confirmation of four Subsidies, of four Shillings in the Pound, granted to the King by the Clergy."

STAT. 3 JAC.
1, c. 27.

XVI. STAT. 3 JACOBI 1, c. 27. A.D. 1605.

"A Confirmation of the King's General and Free Pardon."

[Offences against the ecclesiastical state; disturbers of divine service; bigamists; heretics; schismatics; acts committed by Jesuits or Romish priests; incest; adultery; fornication; and simony:—excepted from pardon (2).]

STAT. 4 JAC.
1, c. 5.

XVII. STAT. 4 JACOBI 1, c. 5 (3). A.D. 1606.

"An Act for repressing the odious and loathsome Sin of Drunkenness."

[Ecclesiastical power and jurisdiction for the punishment of drunkards preserved.]

STAT. 4 JAC.
1, c. 7.

XVIII. STAT. 4 JACOBI 1, c. 7. A.D. 1606.

"An Act for the founding and incorporating of a Free Grammar School in the Town of Northleach, in the County of Gloucester."

STAT. 7 JAC.
1, c. 2.

XIX. STAT. 7 JACOBI 1, c. 2 (4). A.D. 1609.

"An Act that all such as are to be naturalized, or restored in Blood, shall first receive the Sacrament of the Lord's Supper, and the Oath of Allegiance, and the Oath of Supremacy."

"Forasmuch as the naturalizing of strangers, and restoring to blood persons attainted, have been ever reputed matters of mere grace and favour, which are not fit to be bestowed upon any others than such as are of the religion now established in this realm; be it therefore enacted by the king's most excellent majesty, the lords spiritual and temporal, and the commons, in this present parliament assembled, that no person or persons of what quality, condition, or place soever, being of the age of eighteen years or above, shall be naturalized or restored in blood, unless the said person or persons have received the sacrament of the Lord's supper within one month next before any bill exhibited for that purpose, and also shall take the oath of supremacy, and the oath of allegiance, in the parliament-house, before his or her bill be twice read: and for the better effecting of the premisses, be it further enacted by the authority aforesaid, that the lord chancellor of England, or lord keeper of the great seal for the time being, if the bill begin in the upper house, and the speaker of the commons house of parliament for the time being, if the bill begin there, shall have authority at all times during the

Farther pro-
visions relating
hereto, 11 &
12 Gul. 3, c. 6;
7 Ann. c. 5;
1 Geo. 1, c. 4;
4 Geo. 2, c. 21;
13 Geo. 2, c. 7;
20 Geo. 2, c. 44;
22 Geo. 2, c. 45;
and 25 Geo. 2,
c. 39.

as appears by a short entry in the extracts of A.D. 1541, "Ibidem episcopi consultant de publicis comediis."

(1) Expired.

(2) Expired.

(3) Repealed by Stat. 9 Geo. 4, c. 61.

(4) Amended by Stat. 6 Geo. 4, c. 67.

session of parliament, to minister such oath and oaths, and to such person and persons, as by the true intent of this statute is to be ministered. This act to take place from and after the end of this present session of parliament.” STAT. 7 JAC. 1, c. 2.

XX. STAT. 7 JACOBI 1, c. 3. A.D. 1609.

STAT. 7 JAC. 1, c. 3.

“An Act for the continuing and better Maintenance of Husbandry, and other Manual Occupations, by the true employment of Monies given and to be given for the binding out of Apprentices.”

XXI. STAT. 7 JACOBI 1, c. 6 (1). A.D. 1609.

STAT. 7 JAC. 1, c. 6.

“An Act for administering the Oath of Allegiance, and Reformation of married Women Recusants (2).”

XXII. STAT. 7 JACOBI 1, c. 24 (3). A.D. 1609.

STAT. 7 JAC. 1, c. 24.

“A Confirmation of the King's General and Free Pardon.”

XXIII. STAT. 21 JACOBI 1, c. 1. A.D. 1623.

STAT. 21 JAC. 1, c. 1.

“An Act for the reviving and making perpetual of one Act made in the nine and thirtieth Year of the late Queen Elizabeth, intituled, An Act for erecting of Hospitals and Abiding and Working Houses for the Poor.”

“Whereas in the parliament held in the nine and thirtieth year of the reign of the late Queen Elizabeth of happy memory, a good law was made, intituled, ‘An Act for erecting of Hospitals, or Abiding and Working Houses for the Poor;’ but the power, licence, and authority given by the said statute, to erect, found, and establish such houses and abiding places, as are therein mentioned, was confined to the space of twenty years then next ensuing, which said time is now expired:

The statute of 39 Eliz. c. 5, made perpetual. 16 Vin. 414, et seq.

“II. Be it therefore enacted by the authority of this present parliament, that the said act, and all things therein contained, shall from henceforth be revived and made perpetual, to have continuance for ever.

“III. And be it also enacted, that all hospitals, *maisons de Dieu*, and abiding places for poor, lame, maimed, and impotent people, or for houses of correction, at any time since the said twenty years expired, erected, founded, or made, or at any time hereafter to be erected, founded, or made, according to the purport of the said statute, shall be incorporated, and have perpetual succession, and capacity to have, take, and enjoy all other privileges, benefits, and immunities, to all intents and purposes, according to the provisions, tenour, purport, and true meaning of the said act, as if the same had been made, founded, or endowed within the space of twenty years next ensuing the said statute.”

The erection of all hospitals, &c. since the expiration of 39 Eliz. c. 5, confirmed. See farther, 13 & 14 Car. 2, c. 12; 7 & 8 Gul. 3, c. 37; and 9 Geo. 2, c. 36.

XXIV. STAT. 21 JACOBI 1, c. 4. A.D. 1623.

STAT. 21 JAC. 1, c. 4.

“An Act for the Ease of the Subject, concerning Informations upon Penal Statutes.”

[V. Actions against persons for not frequenting church and hearing divine service, may be tried in any county, at the pleasure of the informer.]

XXV. STAT. 21 JACOBI 1, c. 17. A.D. 1623.

STAT. 21 JAC. 1, c. 17.

“An Act against Usury.”

“V. Provided, that no words in this law contained, shall be construed, or expounded to allow the practice of usury in point of religion or conscience.”

(1) Vide Stat. 31 Geo. 3, c. 32. Stat. 43 Geo. 3, c. 30. Stat. 10 Geo. 4, c. 7. Stat. 1 & 2 Gul. 4, c. 9.

(2) Vide 12 Co. 130 tit. Oath before Justices.

(3) Expired. Exceptions occur in this statute, similar to those which are contained in Stat. 3 Jac. 1, c. 27. Vide ante 534.

STAT. 21 JAC.
1, c. 20.

XXVI. STAT. 21 JACOBI 1, c. 20 (1). A.D. 1623.

"An Act to prevent and reform profane Swearing and Cursing."

STAT. 21 JAC.
1, c. 28.

XXVII. STAT. 21 JACOBI 1, c. 28. A.D. 1623.

"An Act for continuing and reviving of divers Statutes, and repeal (2) of divers others."

All statutes
that concern
the taking
away of sanc-
tuaries, revived.
1 Jac. 1, c. 25.

"VI. And be it further enacted by the authority aforesaid, that all statutes heretofore made, that take away sanctuary for any offence, shall for so much as concerneth the taking away of such sanctuary be revived, and shall be and stand in force and power; any words of repeal contained in the statute made in the first session of parliament held in the first year of his majesty's reign of England, intituled, 'An Act for continuing and reviving divers Statutes, and for repealing of some others,' or in this present act to the contrary notwithstanding.

All sanctuaries
taken away.

"VII. And be it also enacted by the authority of this present parliament, that no sanctuary or privilege of sanctuary shall be hereafter admitted or allowed in any case."

STAT. 21 JAC.
1, c. 35.

XXVIII. STAT. 21 JACOBI 1, c. 35 (3). A.D. 1623.

"A Confirmation of the King's General and Free Pardon, &c."

[Offences against the ecclesiastical state; disturbers of divine service; bigamists; heretics; schismatics; acts committed by Jesuits or Romish priests; incest; adultery; fornication; and simony:—excepted from pardon.]

- (1) Repealed by Stat. 19 Geo. 2, c. 21. 2 Hen. 5, St. II. c. 2. Stat. 35 Eliz. c. 1.
(2) *Repeal*:—Stat. 36 Edw. 3, c. 8. Stat. (3) Expired.

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I. STAT. 1 CAROLI 1, c. 1 (1). A.D. 1625.

STAT. 1 CAR.
1, c. 1.

"An Act for punishing divers Abuses committed on the Lord's Day, called Sunday."

"Forasmuch as there is nothing more acceptable to God than the true and sincere service and worship of him according to his holy will, and that *the holy keeping* (2) of the Lord's day is a principal part of the true service of God, which in very many places of this realm hath been and now is profaned and neglected by a disorderly sort of people, in exercising and frequenting bear-baiting, bull-baiting, interludes, common plays, and other unlawful exercises and pastimes upon the Lord's day; and for that many quarrels, bloodsheds, and other great inconveniences have grown by the resort and concourse of people going out of their own parishes to such disordered and unlawful exercises and pastimes, neglecting divine service both in their own parishes and elsewhere; be it enacted by the king's most excellent majesty, the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, that from and after forty days next after the end of this session of parliament, there shall be no meetings, assemblies, or concourse of people *out of their own*

There shall be no assemblies for unlawful pastimes upon the Lord's day.
1 Haw. P. C. c. 6.

(1) Stat. 3 Car. 1, c. 1, (*post*. 538.) Stat. 29 Car. 2, c. 7, (*post*. 614.) Stat. 21 Geo. 3, c. 49.

(2) *The holy keeping*:—Which duty, Lyndwood, in his Gloss, upon one of Peccham's Constitutions, thus describes, on the word *Sanctifices*, i.e., "Sanctum et mundum venerando serves; generaliter, scilicet, illo die à vitiis cessando; specialiter, ab operibus corporalibus, quæ impediunt vacationem ad Deum, abstinendo; specialissimè, contemplationi divinorum totaliter inhærendo." And elsewhere, "Diebus dominicis totaliter est Deo vacandum." From such passages, and from the many laws, that were made in the times of our Saxon ancestors, against profaning the Lord's day, Bishop Stillingfleet, (1 Eccles. Ca. 138,) draws this conclusion, "that the religious observation of the Lord's day is no novelty, started by some late sects and parties among us; but that it hath been the general sense of the best part of the Christian world, and is particularly enforced upon us of the church of England, not only by the Homilies, but by the most ancient ecclesiastical law among us." Accordingly, (before the Book of Sports had been set forth by King James the First,) not only the injunctions of

Edward the Sixth and Queen Elizabeth had specially enforced this duty; but a bill had been provided by the bishops, in the 12th year of Queen Elizabeth, for enforcing the observation of it; and divers bills for that end had also been actually brought into parliament: (D'Ewes, 322.) one, in the 27th of Elizabeth, (Dec. 7,) intituled, "A Bill for the better and more reverend observing of the Sabbath day;" which having passed both houses, after great disputation, was denied the royal assent, probably upon the dislike the queen had of the parliament's intermeddling in matters of religion. "Three attempts of the like nature were also made in the reign of King James 1, (ann. 3, 12, & 21.) as appears by the Journals of Parliament in the several years; and (after what had been done in the 1st and 3rd years of King Charles 1,) we find a bill in parliament, in the 16th of Charles 2, for punishing divers abuses committed on the Lord's day; and in the same year, when a bill for the better observation of the Lord's day was prepared for the royal assent, and ready to be passed, it was stolen, and could not be recovered, upon a strict examination made by the House of Lords." Gibson's Codex, 236.

STAT. 1 CAR.
1, c. 1.

Every person using any unlawful pastimes on the Lord's day shall forfeit 3s. 4d. to the poor of the parish. After conviction by warrant from a justice, &c. the constables may levy the penalty, &c.

General issue. Limitation of the action. The ecclesiastical jurisdiction not abridged.

parishes (1) on the Lord's day, within this realm of England or any the dominions thereof, for any sports and pastimes whatsoever, nor any *bear-baiting* (2), bull-baiting, interludes, common plays, or other unlawful exercises and pastimes, used by any person or persons within their own parishes; and that every person or persons offending in any the premises, shall forfeit for every offence three shillings four-pence, the same to be employed and converted to the use of the poor of the parish where such offence shall be committed; and that any one justice of the peace of the county, or the chief officer or officers of any city, borough, or town corporate, where such offence shall be committed, upon his or their view or confession of the party, or proof of any one or more witness by oath, which the said justice or chief officer or officers shall by virtue of this act have authority to minister, shall find any person offending in the premises, the said justice or chief officer or officers shall give warrant under his or their hand and seal, to the constables and church-wardens of the parish or parishes where such offence shall be committed, to levy the said penalty so to be assessed, by way of distress and sale of the goods of every such offender, rendering to the said offender the overplus of the money raised of the said goods so to be sold; and in default of such distress, that the party offending be set publicly in the stocks by the space of three hours; and that if any man be sued or impeached for execution of this law, he shall and may plead the general issue, and give the said matter of justification in evidence: provided, that no man be impeached by this act except he be called in question within one month next after the said offence committed: provided also, that the ecclesiastical jurisdiction within this realm or any the dominions thereof, by virtue of this act or any thing therein contained, shall not be abridged, but that the ecclesiastical court may punish the said offences as if this act had not been made. This act to continue until the end of the first session of the next parliament and no longer."

STAT. 3 CAR.
1, c. 1.

II. STAT. 3 CAROLI 1, c. 1[2]. A.D. 1627.

"An Act for the further Reformation of sundry Abuses committed on the Lord's Day, commonly called Sunday."

A carrier, &c. that travels on the Lord's day shall forfeit 20s.
1 Car. 1, c. 1.
Butchers that

"Forasmuch as the Lord's day, commonly called Sunday, is much broken and profaned by carriers, waggoners, carters, wain-men, butchers, and drovers of cattle, to the great dishonour of God, and reproach of religion; be it therefore enacted by the king's most excellent majesty, and lords spiritual and temporal, and by the commons, in this present parliament assembled, and by the authority of the same, that no carrier with any horse or horses, nor waggon-men with any waggon or waggons, nor carman with any cart or carts, nor wainman with any wain or wains, nor drovers with any cattle, shall, after forty days next after the end of this present session of parliament, by themselves, or any other, travel upon the said day, upon pain that every person and persons so offending shall lose and forfeit twenty shillings for every such offence: or *if any butcher* (3), by himself or

(1) *Out of their own parishes*:—This also was provided against in King James's Book of Sports: "We likewise do straightly command that every person shall resort to his own parish church, to hear divine service, and each parish by itself to use the said recreation after divine service."

(2) *Bear-baiting, &c.*:—These were the exercises, which had been specially excepted, in the order for allowance of divers sports on Sundays; published by King James 1, in the 16th year of his reign, and renewed by King Charles 1, in the 9th year of his reign; commonly called "The Book of Sports." And the other diversions and exercises allowed therein, were under two limitations, *viz.* that they should not begin until the termination of divine service; and, that

they should be allowed to none, but to those, who had previously been present at such service.

(3) *If any butcher*:—To an indictment for exercising the trade of a butcher on a Sunday, an exception was taken, that it was not laid to be against the form of the statute, and that it was no offence at common law;—upon demurrer, judgment was given for the defendant. *Rea v. Brotherton*, Str. 702.

In *Exp. Middleton*, (3 B. & C. 164,) it was holden, that the driver of a van travelling to and from London and York, is a carrier within the meaning of Stat. 3 Car. 1, c. 4, and liable to be convicted in the penalty of 20s. for travelling on the Lord's day, the court observing, "We are clearly

any other for him, by his privity or consent, shall, after the end of the said forty days, kill or sell any victual upon the said day, that then every such butcher shall forfeit and lose for every such offence the sum of six shillings and eightpence; the said offences, and every of them, being done in view of any justice of peace, mayor, or other head officer, of any city or town corporate within their limits respectively, or being proved upon oath by two or more witnesses, or by the confession of the party offending, before any such justice, mayor, or head officer, within their several limits respectively, wherein such offence shall be committed: to which end, every such justice, mayor, or head officer, shall have power by this act to minister an oath to such witness or witnesses: all which sums or penalties shall or may be levied by any constable or churchwarden, by warrant from any such justice or justices of the peace, mayor, or other head officer, as aforesaid, within their several limits where such offence shall be committed or done, by distress and sale of the offender's goods, rendering to the party the overplus, or shall be recovered by any person or persons that will sue for the same, by bill, plaint, or information, in any of his majesty's courts of record, in any city or town corporate, before his majesty's justices of the peace in their general sessions of the peace: all which forfeitures shall be employed to and for the use of the poor of the parishes where the said offences shall be committed or done, saving only that it shall be lawful to and for any such justice, mayor, or head officer, out of the said forfeitures, to reward any such person or persons that shall inform or otherwise prosecute any person or persons offending against this present act, according to their discretions, so that such reward exceed not the third part of the forfeiture: provided that such bill, plaint, or information, shall be commenced, sued, and prosecuted, in the county, city, or town corporate, where such offence shall be committed and done, and not elsewhere; wherein no essoin, protection, or wager of law, shall be allowed to the defendant: provided always, that it shall be lawful for any constable or churchwarden, that shall have any suit or action brought against them for any distress by them or any of them to be taken by force of this present act, to plead the general issue, and to give the special matter in evidence: provided likewise, that no person or persons whatsoever shall be impeached by this act, unless he be thereof questioned within six months after the offence committed: provided further, that this act shall not in any sort abridge or take away the authority of the courts ecclesiastical. This act to continue to the end of the first session of the next parliament."

STAT. 3 CAR. 1, c. 1.

sell or kill victual upon that day shall forfeit 6s. 8d.

After conviction, and by warrant from a justice, &c. the constables, &c. may levy the said forfeitures to the use of the poor, or they may be recovered by suit.

III. STAT. 3 CAROLI 1, c. 2[3](1). A.D. 1627.

"An Act to restrain the passing or sending of any to be popishly bred beyond the Seas."

STAT. 3 CAR. 1, c. 2.

IV. STAT. 3 CAROLI 1, c. 4[5]. A.D. 1627.

"An Act for Continuance (2) and Repeal of divers Statutes."

STAT. 3 CAR. 1, c. 4.

V. STAT. 10 CAROLI 1, c. 1, SESS. 2. [IRELAND.] A.D. 1634.

"An Act expressing an Order for Uses, Wills, and Enrolments."

STAT. 10 CAR. 1, c. 1, SESS. 2. [Ir.]

"Where by the common laws of this realm, lands, tenements, and hereditaments, be not devisable by testament, nor ought to be transferred from one to another, but by solemn livery and seisin, matter of record, or writing, sufficiently made, *bonâ fide*, without covin or fraud; yet nevertheless, divers and sundry imaginations, subtle inventions and practices have been used, whereby the hereditaments of this realm have been conveyed from one to another, by fraudulent

Eng. 27 Hen. 8, c. 10. How by the common law lands transferred.

of opinion, that a person who has the care of a van, is a carrier within the terms of this act of parliament, which ought to receive a liberal construction, being for the better observance of the Lord's day."

(1) Obsolete. Vide Stat. 31 Geo. 3, c. 32.

Stat. 43 Geo. 3, c. 30. Stat. 10 Geo. 4, c. 7. Stat. 1 Gul. 4, c. 26. Stat. 2 & 3 Gul. 4, c. 115.

(2) Continuance:—Stat. 13 Eliz. c. 20, made perpetual. Sed vide *antè* 432, n. (4).

STAT. 10 CAR.
1, c. 1, SESS.
2. [I.R.]

Several inconveniences, by secret fraudulent conveyances to uses, and by wills.

The remedy.

The possession of lands, &c. shall be in them that have the use, confidence, or trust, in the same form and condition.

Where divers jointly seised to the use of any of them, they only who have the use shall be ad-

feoffments, fines, recoveries, and other assurances, craftily made, to secret uses, intents, and trusts, and also by wills and testaments sometimes made by *nude parole* and words, sometimes by signs and tokens, and sometimes by writing, and by the most part made by such persons as be visited with sickness in their extreme agonies and pains, or at such time as they have had scantily any good memory or remembrance, at which times they being provoked by greedy and covetous persons, lying in wait about them, do many times dispose indiscreetly and unadvisedly, their lands and hereditaments, by reason whereof, and by occasion of which, fraudulent feoffments, fines, recoveries, and other like assurances to uses, confidences, and trusts, divers and many heirs have been unjustly at sundry times disinherited, the lords lost their wards, marriages, reliefs, heriots, escheats, aides *pur faire fitz chivaler, et pur file marier*, and scantily any person can be certainly assured of any lands by them purchased, nor known surely against whom they shall use their actions or execution for their rights, title, and duties: also men married have lost their tenancies by the courtesy, women their dowries, and manifest perjuries, by trial of such secret wills and uses, have been committed; the king's highness hath lost the profits and advantages of the lands of persons attainted, and the lands craftily put in feoffment to the uses of aliens born, and also the profits of wastes for a year and a day of lands of felons attainted, and the lords their escheats thereof, and many other inconveniences have happened, and daily do increase among the king's subjects, to their great trouble and unquietness, and to the utter subversion of the ancient common laws of this realm. For the extirping and extinguishment of all such subtle practised feoffments, fines, recoveries, abuses, and errors heretofore used and accustomed in this realm, to the subversion of the good and ancient laws of the same, and to the intent that the king's highness, or any other his subjects of this realm, shall not in any wise hereafter, by any means or inventions, be deceived, damaged, or hurt, by reason of such trusts, uses, or confidences. It may please the king's most royal majesty, that it may be enacted by his highness, by the assent of the lords spiritual and temporal, and the commons in this present parliament assembled, and by authority of the same, in manner and form following, that is to say: that where any person or persons stand or be seised, or at any time hereafter shall happen to be seised, of and in any honours, castles, manors, lands, tenements, rents, services, reversions, remainders, or other hereditaments, to the use, confidence, or trust of any other person or persons, or of any body politic, by reason of any bargain, sale, feoffment, fine, recovery, covenant, contract, agreement, will, or otherwise, by any manner means whatsoever it be, that in every such case, all and every such person and persons, and bodies politic, that have, or hereafter shall have, any such use, confidence, or trust, in fee simple, fee tail, for term of life or years, or otherwise; or any use, confidence, or trust, in remainder or reverter, shall from henceforth stand and be seised, deemed, and adjudged in lawful seisin, estate, and possession, of and in the same honours, castles, manors, lands, tenements, rents, services, reversions, remainders, and hereditaments, with their appurtenances, to all intents, constructions, and purposes in the law, of and in such like estates, as they had or shall have, in use, trust, or confidence, of or in the same. And that the estate, title, right, and possession, that was in such person or persons that were, or hereafter shall be seised, of any lands, tenements, or hereditaments, to the use, confidence, or trust, of any such person or persons, or of any body politic, be from henceforth clearly deemed and adjudged to be in him or them that have, or hereafter shall have, such use, confidence, or trust, after such quality, manner, form, and condition, as they had before, in or to the use, confidence, or trust that was in them.

"II. And be it further enacted by the authority aforesaid, that where divers and many persons be, or hereafter shall happen to be jointly seised of and in any lands, tenements, rents, reversions, remainders, or other hereditaments, to the use, confidence, or trust of any of them that be so jointly seised, that in every such case that those person or persons, which have, or hereafter shall have, any such uses, confidence, or trust, in any such lands, tenements, rents, reversions,

remainders, or hereditaments, shall from henceforth have, and be deemed and adjudged to have, only to him or them that have, or hereafter shall have such use, confidence, or trust, such estate, possession, and seisin, of and in the same lands, tenements, rents, reversions, remainders, or other hereditaments, in like nature, manner, form, condition and course, as he or they had before in the use, confidence, or trust of the same lands, tenements, or hereditaments. Saving and reserving to all and singular persons, and bodies politic, their heirs and successors, other than those person or persons which be seised, or hereafter shall be seised, of any lands, tenements, or hereditaments, to any use, confidence, or trust, all such right, title, entry, interest, possession, rents, and action, as they or any of them had, or might have had, before the making of this act.

“III. And also saving to all and singular those persons, and to their heirs, which be, or hereafter shall be seised to any use, all such former right, title, entry, interest, possession, rents, customs, services, and actions, as they or any of them might have had, to his or their own proper use, in or to any manors, lands, tenements, rents, or hereditaments, whereof they be, or hereafter shall be seised to any other use, as if this present act had never been had or made; any thing contained in this act to the contrary notwithstanding.

“IV. And where also divers persons stand and be seised of and in any lands, tenements, or hereditaments, in fee simple, or otherwise, to the use or intent that some other person or persons shall have and perceive yearly to them and to his or their heirs, one annual rent of ten pounds, or more or less, out of the same lands and tenements, and some other person, one annual rent to him and his assigns, for term of life or years, or for some other special time, according to such intent and use as hath been heretofore declared, limited, and made thereof. Be it therefore enacted by the authority aforesaid, that in every such case, the same persons, their heirs and assigns, that have such use and interest, to have and perceive any such annual rents out of any lands, tenements, or hereditaments, that they and every of them, their heirs and assigns, be adjudged and deemed to be in possession and seisin of the same rent, of and in such like estate, as they had in the title, interest, or use of the said rent or profit, and as if a sufficient grant, or other lawful conveyance had been made and executed to them by such as were or shall be seised to the use or intent of any such rent to be had, made, or paid, according to the very trust and intent thereof; and that all and every such person or persons as have, or hereafter shall have any title, use, and interest, in or to any such rent or profit, shall lawfully distrain for non-payment of the said rent, and in their own names make advowries, or by their bailiffs or servants, make recognizances and justifications, and have all other suits, entries, and remedies, for such rents, as if the same rents had been actually and really granted to them, with sufficient clauses of distress, re-entry, or otherwise, according to such conditions, pains, or other things limited and appointed upon the trust and intent for payment or surety of such rent.

“V. And be it further enacted by the authority aforesaid, that whereas divers persons have purchased or have estate, made and conveyed, of and in divers lands, tenements, or hereditaments, unto them and to their wives, and to the heir of the husband, or to the husband, and to the wife, and to the heirs of their two bodies begotten, or to the heirs of one of their bodies begotten, or to the husband and to the wife, for term of their lives, or for term of life of the said wife; or where any such estate or purchase of any lands, tenements, or hereditaments, hath been, or hereafter shall be made to any husband and to his wife, in manner and form above expressed, or to any other person or persons, and to their heirs and assigns, to the use and behoof of the said husband and wife, or to the use of the wife, as is before rehearsed, for the jointure of the wife; that then in every such case, every woman married having such jointure made, or hereafter to be made, shall not claim nor have title to have any dower of the residue of the lands, tenements, or hereditaments, that at any time were her said husband's, by whom she hath any such jointure, nor shall demand nor claim her dower, of and against them that have the lands and inheritances of her said husband; but if she have no such jointure, then she shall be admitted and enabled to pursue, have, and demand her dower by writ

STAT. 10 CAR.
1, c. 1, SESS.
2. [IR.]

judged to have the possession in like manner. Saving the right of others.

And saving to those seised to use all former right.

Cest que use of rent shall be adjudged in possession and seisin thereof, in like manner as if granted to them;

and may distrain avow,&c.

A woman having a jointure made shall not claim dower of the residue of husband's lands.

STAT. 10 CAR.
1, c. 1, SESS.
2. [1R.]

But if lawfully
evicted, shall
be endowed of
as much.

Jointure made
after marriage,
unless by act
of parliament,
may be refused
after husband's
death, and
dower de-
manded.

This act not to
extinguish, &c.
any statute,
recognizance,
or other bond.

Wills made
before or
shortly after
this statute,
how to be
taken.

Fines for alie-
nation, reliefs,
heriots, &c.

of dower, after the due course and order of the common laws of this realm; this act, or any law or provision made to the contrary thereof notwithstanding.

"VI. Provided alway, that if any such woman be lawfully expelled or evicted from her said jointure, or from any part thereof, without any fraud or covin, by lawful entry or action, or by discontinuance of her husband, then every such woman shall be endowed of as much of the residue of her husband's tenements or hereditaments, whereof she was before dowable, as the same lands and tenements so evicted and expelled, shall amount or extend unto.

"VII. Provided also, that this act, nor any thing therein contained or expressed, extend not or be in any wise hurtful or prejudicial to any woman or women, heretofore being married, of, for, or concerning such right, title, use, interest, or possession, as they or any of them have, claim, or pretend to have, for her or their jointure or dower, of, in, or to any manors, lands, tenements, or other hereditaments, of any of their late husbands, being now dead or deceased; any thing contained in this act to the contrary notwithstanding.

"VIII. Provided also, that if any wife have, or hereafter shall have any manors, lands, tenements, or hereditaments, unto her given or assigned after the marriage, for term of her life, or otherwise in jointure, except the same assurance be to her made by act of parliament, and the said wife, after that fortune to overlive the same her husband, and in whose time the said jointure was made or assured unto her, that then the same wife so overliving, shall and may at her liberty, after the death of her said late husband, refuse to have and take the lands and tenements so to her given, appointed, or assured during the coverture for term of her life, or otherwise in jointure; except the same assurance be to her made by act of parliament, as is aforesaid, and thereupon to have, ask, demand, and take her dower by writ of dower, or otherwise, according to the common law, of and in all such lands, tenements, and hereditaments, as her husband was and stood seised of any estate of inheritance, at any time during the coverture; any thing contained in this act to the contrary in any wise notwithstanding.

"IX. Provided also, that this present act, nor any thing therein contained, extend not, or be at any time hereafter interpreted, expounded, or taken to extinct, release, discharge, or suspend any statute, recognizance, or other bond, by the execution of any estate, of or in any lands, tenements, or hereditaments, by the authority of this act, to any person or persons, or bodies politic; any thing contained in this act to the contrary notwithstanding.

"X. And for as much as great ambiguities and doubts may arise by the validity and invalidity of wills heretofore made of any lands, tenements, and hereditaments, to the great trouble of the king's subjects; the king's most royal majesty, minding the tranquillity and rest of his loving subjects, of his most excellent and accustomed goodness, is pleased and contented, that it be enacted by the authority of this present parliament, that all manner of true and just wills and testaments heretofore made by any person or persons deceased, or that shall decease before the first day of May, which shall be in the year of our Lord, one thousand six hundred thirty and five, of any lands, tenements, or other hereditaments, shall be taken and accepted good and effectual in the law, after such fashion, manner, and form, as they were commonly taken and used, at any time within forty years next before the making of this act; any thing contained in this act, or in the preamble thereof, or any opinion of the common law, to the contrary thereof notwithstanding.

"XI. Provided always, that the king's highness shall not have, demand, or take any advantage or profit, for or by occasion of executing of any estate only by authority of this act, to any person or persons, or bodies politic, which now have, or on this side the said first day of May, which shall be in the year of our Lord, one thousand six hundred thirty and five, shall have any use or uses, trusts, or confidences, in any manors, lands, tenements, or hereditaments, holden of the king's highness, by reason of primer seisin, livery *ouster le main*, fine for alienation, relief, or heriots; but that fines for alienations, reliefs, and heriots, shall be paid to the king's highness, and also liveries and *ouster le maines*, shall be sued for

uses, trusts, and confidences, to be made and executed in possession, by authority of this act, after and from the said first day of May, of lands and tenements, and other hereditaments, holden of the king, in such like manner and form, to all intents, constructions, and purposes, as hath heretofore been used or accustomed by the order of the laws of this realm.

“XII. Provided also, that no other person or persons or bodies politic, of whom any lands, tenements, or hereditaments, be, or hereafter shall be holden, mediate or immediate, shall in any wise demand or take any fine, relief, heriot, for or by occasion of the executing of any estate, by the authority of this act, to any person or persons, or bodies politic, before the said first day of May.

“XIII. And be it enacted by the authority aforesaid, that all and singular person and persons, and bodies politic, which at any time on this side the said first day of May, shall have any estate unto them executed, of and in any lands, tenements, or hereditaments, by the authority of this act, shall and may have and take the same or like advantage, benefit, voucher, aid, prayer, remedy, commodity, and profit, by action, entry, condition, or otherwise, to all intents, constructions, and purposes, as the person or persons seised unto their use, of or in any such lands, tenements, or hereditaments so executed, had, should, might, or ought to have had, at the time of the execution of the estate thereof, by the authority of this act, against any other person or persons, of or for any waste, disseising, trespass, condition broken, or any other offence, cause, or thing, concerning or touching the said lands or tenements, so executed by the authority of this act.

“XIV. Provided also, and be it enacted by the authority aforesaid, that actions now depending against any person or persons, seised of or in any lands, tenements, or hereditaments, to any use, trust, or confidence, shall not abate nor be discharged, for or by reason of executing any estate thereof, by authority of this act, before the said first day of May; any thing contained in this act to the contrary notwithstanding.

“XV. Provided also, that this, nor any thing therein contained, shall not be prejudicial to the king's highness, for wardships of heirs, now being within age, nor for liveries, nor for *ouster le maines*, to be sued by any person or persons, now being within age, or of full age, of any lands or tenements, unto the same heir or heirs now already descended; any thing in this act contained to the contrary notwithstanding.

“XVI. Provided also, and be it enacted by the authority aforesaid, that all and singular recognizances heretofore knowledged, taken, or made to the king's use, for or concerning any recoveries of any lands, tenements, or hereditaments, heretofore used, or had by writ or writs of entry, upon disseising, in *le post*, shall from henceforth be utterly void and of none effect, to all intents, constructions, and purposes.

“XVII. And be it further enacted by the authority of this present parliament, that from the first day of May, which shall be in the year of our Lord God one thousand six hundred thirty and five, no manors, lands, tenements, or other hereditaments, shall pass, alter, or change, from one to another, whereby any state of inheritance of freehold shall be made or take effect in any person or persons, or any use thereof to be made, by reason only of any bargain and sale thereof, except the same bargain and sale be made by writing indented, sealed, and enrolled, in any of the king's courts of record at Dublin, or else within the same county or counties, where the same manors, lands, or tenements, so bargained and sold, lie or be, before the *custos rotulorum*, and two justices of the peace, and the clerk of the peace of the same county or counties, or two of them at the least, whereof the clerk of the peace to be one; and the same enrolment to be had and made within six months next after the date of the same writings indented; the same *custos rotulorum*, or justices of the peace, and clerk, taking for the enrolment of every such writing indented before them, where the lands comprised in the same writings exceed not the yearly value of forty shillings, two shillings, that is to say, twelve pence to the justices, and twelve pence to the clerk; and for the enrolment of every such writing indented before them, wherein the lands comprised

STAT. 10 CAR.
1, c. 1, SESS.
2. [IR.]

Cest que use may take all such advantages as his feoffees might.

Actions now depending not to abate.

Not to prejudice the king's wardship of heirs now within age, livery, or *ouster le main*, of lands now already descended.

Recognizances to the king's use for recoveries heretofore had, void.

Eng. 27 Hen. 8, c. 16. Lands, &c. shall not pass by bargain and sale, unless by writing indented, sealed, and inrolled.

Inrolment before *custos rot.*, &c.

within six months after date of the writing. Fees for inrolment.

STAT. 10 CAR.
1, c. 1, SESS.
2. [Ir.]

Clerk of the
peace to
ingross and
deliver to
custos rot.

Not to extend
to boroughs or
towns corpo-
rate, the offi-
cers whereof
used to inrol
evidences.

exceed the sum of forty shillings in yearly value, five shillings, that is to say, two shillings sixpence to the justices, and two shillings sixpence to the said clerk for the enrolling of the same: and that the clerk of the peace for the time being, within every such county, shall sufficiently inrol and ingross in parchment, the same deeds or writings indented, as is aforesaid, and the rolls thereof at the end of every year, shall deliver unto the said *custos rotulorum* of the same county for the time being, there to remain in the custody of the said *custos rotulorum* for the time being, amongst other records of the same counties, where any such inrolments shall be so made, to the intent that every party that hath to do therewith, may resort and see the effect and tenour of every such writing so inrolled.

“XVIII. Provided always, that this act, nor any thing therein contained, extend to any manor, lands, tenements, or hereditaments, lying or being within any city, borough, or town corporate within this realm, wherein the mayors, recorders, chamberlains, bailiffs, or other officer or officers have authority, or have lawfully used to inrol any evidences, deeds, or other writings within their precincts or limits; any thing in this act contained to the contrary notwithstanding.”

STAT. 10 CAR.
1, c. 2, SESS.
2. [Ir.]

VI. STAT. 10 CAROLI 1, c. 2, SESS. 2(1). [IRELAND.] A.D. 1634.

“An Act how Lands, Tenements, &c. may be disposed of Will or otherwise, and concerning Wards and Primer Seisin.”

STAT. 10 CAR.
1, c. 5, SESS.
2. [Ir.]

VII. STAT. 10 CAROLI 1, c. 5, SESS. 2. [IRELAND.] A.D. 1634.

“An Act for the Recovery of Arrearages of Rents by Executors of Tenant in Fee Simple.”

Eng. 32 Hen.
8, c. 37.

No remedy for
arrears of rents
by common
law.

Inconvenience
thereof.

Executors and
administrators
may have debt
for rent due at
death of tes-
tator, and may
distrain for
such arrears so
long as the
lands remain
in possession
of the tenant
in demesne or
those claiming
under him, as
their testator
might.

“Forasmuch as by the order of the common law, the executors or administrators of tenants in fee simple, tenants in fee tail, and tenants for term of lives, of rents services, rents charges, rents secks, and fee farms, have no remedy to recover such arrearages of the said rents or fee farms, as were due unto their testators in their lives, nor yet the heirs of such testators, nor any persons having the reversion of his estate after his decease, may distrain or have any lawful action to levy any such arrearages of rents, or of the fee farms due unto him in his life, as is aforesaid, by reason whereof the tenants of the demesne of such lands, tenements, or hereditaments, out of the which such rents were due and payable, who of right ought to pay the rents and farms at such days and terms as they were due, do many times keep, hold, and retain such arrearages in their own hands, so that the executors and administrators of the persons to whom such rents or fee farms were due, cannot have or come by the said arrearages of the same, towards the payment of the debts, and performance of the will of the said testator; for remedy whereof, be it enacted by the authority of this present parliament, that the executors and administrators of every such person or persons unto whom any such rent or fee farm is or shall be due, and not paid at the time of his death, shall and may have an action of debt for all such arrearages against the tenant or tenants that ought to have paid the said rent or fee farm, so being behind in the life of their testator, or against the executors and administrators of the said tenants. And also furthermore it shall be lawful to every such executor and administrator of any such person or persons, unto whom such rent or fee farm shall be due, and not paid at the time of his death, as is aforesaid, to distrain for the arrearages of all such rents and fee farm upon the lands, tenements, and other hereditaments, which were charged with the payment of such rents or fee farms, and chargeable to the distress of the said testator, so long as the said lands, tenements, or hereditaments, continue, remain, and be in the seisin or possession of the said tenant in demesne, who ought immediately to have paid the said rent or fee farm so being behind to the said testator, in his life, or in the seisin or possession of any other person or persons claiming the said lands, tenements, and hereditaments, only by and from the same tenant, by purchase, gift, or descent, in like manner and form as their said

testator might or ought to have done in his life-time; and the said executors and administrators shall for the same distress lawfully make avowry upon their matter aforesaid.

“II. And further be it enacted by the authority aforesaid, that if any man which now hath, or hereafter shall have in the right of his wife any estate in fee simple, fee tail, or for term of life, of or in any rents or fee farms, and the same rents or fee farms now be, or hereafter shall be due, behind, and unpaid in the said wife’s life, then the said husband after the death of his said wife, his executors and administrators, shall have an action of debt for the said arrearages against his tenant of the demesne that ought to have paid the same, his executors or administrators; and also the said husband, after the death of his said wife, may distrain for the said arrearages, in like manner and form as he might have done, if his said wife had been then living, and make avowry upon his matter, as is aforesaid.

“III. And likewise it is further enacted by the authority aforesaid, that if any person or persons which now hath, or hereafter shall have any rents or fee farms for term of life or lives of any other person or persons, and the said rent or fee farm now be, or hereafter shall be due, and behind, and unpaid in the life of such person or persons, for whose life or lives, the estate of the said rent or fee farm did depend or continue, and after the said person or persons do die, then he unto whom the said rent or farm was due in form aforesaid, his executors and administrators, shall and may have an action of debt against the tenant in demesne, that ought to have paid the same when it first was due, his executors and administrators, and also distrain for the same arrearages upon such lands and tenements, out of the which the said rents or fee farms were issuing and payable, in such like manner and form as he ought or might have done, if such person or persons by whose death the aforesaid estate in the said rents and fee farms was determined and expired, had been in full life, and not dead; and the avowry for the taking of the said distress, to be made in manner and form aforesaid.”

STAT. 10 CAR. 1, c. 5, SESS. 2. [IR.]

Husband shall have like remedy for rent due in the right, and in the life, of his wife.

Tenant *pour autre vie*, shall have like remedy for rent due in life of *cest. que vie*, after his death.

VIII. STAT. 10 CAROLI 1, c. 21, SESS. 2 (1). [IRELAND.] A.D. 1634.

“An Act for the restraining of all Persons from Marriage, until their former Wives and former Husband be dead.”

STAT. 10 CAR. 1, c. 21, SESS. 2. [IR.]

IX. STAT. 10 CAROLI 1, c. 1, SESS. 3. [IRELAND.] A.D. 1634.

“An Act for Maintenance and Execution of Pious Uses.”

STAT. 10 CAR. 1, c. 1, SESS. 3. [IR.]

“For the advancement of pious intentions, and the better execution of charitable uses and trusts; be it enacted by the authority of this present parliament, that all archbishops and bishops of this kingdom, and their successors for ever, shall and may from the time of any grant or estate to them, or any of them, and to their or any of their successors, made or to be made, either by our late sovereign lord King James of happy memory, or by the king our sovereign lord that now is, or any of their heirs or successors, or by any other person or persons, bodies politic and corporate whatsoever, of any manors, lands, tenements, tithes, pensions, profits, or other hereditaments, unto the use, or upon trust and confidence unto, or for the erection, maintenance, or support of any college, school, lecture in divinity, or in any the liberal arts or sciences, or for the relief or maintenance of any manner of poor, succourless, distressed, or for impotent persons, or for the building, re-edifying, or maintaining in repair of any church, college, school, or hospital, or for the maintenance of any minister and preacher of the holy word of God, or for the erection, building, maintenance or repair of any bridges, causeways, cashes, paces, and highways within this realm, or for any other like lawful and charitable use and uses, warranted by the laws of this realm, now established and in force*, are and shall be taken and construed to be good and effectual in law, according to the purport and true intent and meaning thereof; and that they the said archbishops

Bishops may be compelled in chancery, or by petition to the council board, to execute trusts and uses of conveyances to them for lawful and charitable purposes.

* The parliament roll has been examined and found so.

STAT. 10 CAR.
1, c. 1, SESS.
3. [IR.]

Saving the
right of others
than the
grantors, and
their heirs.

and bishops, and their successors, and every of them, shall and may be compelled by way of *sub pœna* in the high court of Chancery, or by petition before the lord deputy and privy council of this kingdom, at the council board, to execute and perform all and every the said trusts and uses, according to the true intent of the charters, deeds, and conveyances to them in that behalf made, or hereafter to be made, or of any other deed or writing containing or directing the uses and intents of such grants or conveyances respectively; any law, custom, or other matter or thing whatsoever to the contrary notwithstanding. Saving to all and every person and persons, bodies politic and corporate, their heirs and successors, other than the said donors or grantors, their heirs and successors, all such right, title, estate, interest, entry, and demand, of, in, and to the said manors, lands, tenements, and hereditaments, as he or they, or any of them, should or might have had and enjoyed if this act had never been had or made."

STAT. 10 CAR.
1, c. 5, SESS.
3. [IR.]

X. STAT. 10 CAROLI 1, c. 5, SESS. 3. [IRELAND.] A.D. 1634.

"An Act for confirmation of Leases made by the Lord Primate and other Bishops in Ulster."

STAT. 10 CAR.
1, c. 10, SESS.
3. [IR.]

Eng. 43 Eliz.
c. 8.
Fraud practised in taking administration to deceive others of their debts.

Persons obtaining goods or debts, or releasing debts of intestate, upon fraud or without valuable consideration, except in satisfaction of some just debt of that value due to them from the intestate, shall be so far charged as executors of their own wrong. Allowance of just debts and other lawful payments.

XI. STAT. 10 CAROLI 1, c. 10, SESS. 3. [IRELAND.] A.D. 1634.

"An Act against the fraudulent Administration of Intestates' Goods."

"Forasmuch as it is often put in ure, to the defrauding of creditors, that such persons as are to have the administration of the goods of others dying intestate committed unto them, if they require it, will not accept the same, but suffer or procure the administration to be granted to some stranger of mean estate, and not of kin to the intestate, from whom themselves or others, by their means, do take deeds of gifts and authorities by letter of attorney, whereby they obtain the state of the intestate into their hands, and yet stand not subject to pay the debts owing by the same intestate, and so the creditors, for lack of knowledge of the place of habitation of the administrator, cannot arrest him or sue him, and if they fortune to find him out, yet for lack of ability in him to satisfy of his own goods, the value of that he hath conveyed away of the intestate's goods, or released of his debts by way of wasting, the creditors cannot have or recover their just and due debts: be it enacted by the authority of this present parliament, that every person and persons that hereafter shall obtain, receive, or have any goods or debts of any person intestate, or a release or other discharge of any debt or duty that belonged to the intestate upon any fraud, as is aforesaid, or without such valuable consideration as shall amount to the value of the same goods and debts or near thereabouts, except it be in or towards satisfaction of some just and principal debt, of the value of the same goods or debts to him owing by the intestate at the time of his decease, shall be charged and chargeable as executor of his own wrong, and so far only as all such goods and debts coming to his hands, or whereof he is released or discharged by such administrator, will satisfy, deducting nevertheless, to and for himself, allowance of all just, due, and principal debt, upon good consideration, without fraud, owing to him by the intestate at the time of his decease, and of all other payments made by him, which lawful executors or administrators may and ought to have and pay by the laws and statutes of this realm."

STAT. 10 CAR.
1, c. 23, SESS.
3. [IR.]

XII. STAT. 10 CAROLI 1, c. 23, SESS. 3. [IRELAND.] A.D. 1634.

"An Act for the granting of eight entire Subsidies by the Prelates and Clergy of Ireland."

STAT. 10 & 11
CAR. 1, c. 1.
[IR.]

XIII. STAT. 10 & 11 CAROLI 1, c. 1(1). [IRELAND.] A.D. 1634-5.

"An Act to prevent and reform profane Swearing and Cursing, &c."

Eng. 21 Jac.
1, c. 20.

"Forasmuch as all profane swearing and cursing is forbidden by the word of God; be it therefore enacted by the authority of this present parliament, that no

person or persons shall from henceforth profanely swear or curse; and that if any person or persons shall at any time or times hereafter offend herein, either in the hearing of any justice of peace of the county, or of any mayor, justice of peace, bailiff, or any other head officer of any city or town corporate where such offence is or shall be committed, and shall thereof be convicted by the oaths of two witnesses, or by the confession of the party before any justice of the peace of the county, or head officer, or justice of the peace in the city or town corporate where such offence is or shall be committed, to which end every justice of the peace and every such head officer shall have power by this act to minister the same oath, that then every such offender shall, for every time so offending, forfeit and pay to the use of the poor of that parish where the same offence is or shall be committed, the sum of twelve pence: and it shall also be lawful for the constables and churchwardens, or any of them, by warrant from such justice of peace or head officer, to levy the same sum or sums of money by distress and sale of the offender's goods, rendering to the party the overplus; and in defect of such distress, the offender, if he or she be above the age of twelve years, shall by warrant from such justice of the peace or head officer, be set in the stocks by three whole hours; but if the offender be under the age of twelve years, and shall not forthwith pay the said sum of twelve pence, then he or she, by the warrant of such justice of peace or head officer, shall be whipped by the constable, or by the parents, or master, in his presence.

distress, set in stocks three hours, if above twelve; if under twelve,

"II. And be it further enacted, that if any such offender shall commence any suit in law against any officer or other for such distraining, sale of goods, whipping, or setting in the stocks, the defendant or defendants may plead the general issue, and give the special matter in evidence to the jury at the trial, and if it be found against the plaintiff, or that the plaintiff be non-suit, the defendant or defendants shall be allowed good costs, to be taxed by the court.

"III. Provided nevertheless, that every offence against this law, shall be complained of and proved as abovesaid, within twenty days after the offence committed.

"IV. And it is also enacted, that this act shall be read in every parish church, by the minister thereof, upon the Sunday after the evening prayer, twice in the year."

XIV. STAT. 10 & 11 CAROLI 1, c. 2 (1). [IRELAND.] A.D. 1634-5.

"An Act to enable Restitution of Improvements and Tithes, and other Rights Ecclesiastical, to the Clergy, with a restraint of aliening the same, and Directions for Presentation to the Churches."

"For the due maintenance for such as shall teach and instruct the people in the worship of God, and the better to enable them to keep hospitality and relieve the poor; be it enacted by the king our sovereign lord, and the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that it shall and may be lawful from henceforth for all and every person and persons of full age, sane memory, and not covert baron, and for all and every bodies politic and corporate, of or within this realm, which are seised of any appropriations of any parsonages, rectories, vicarages, or other benefices ecclesiastical whatsoever, or of any glebe lands, tithes, portions of tithes, pensions, oblations, or rights heretofore ecclesiastical of any estate of inheritance in possession, reversion, or remainder, or in use, freely out of their devotion or otherwise at their pleasure, upon any other reasonable ground or contract without any licence of alienation or licence to alien in mortmain, to restore, dedicate, give, devise, limit, or convey the same or any part thereof, for the better maintenance of the ministers of God's holy word and sacraments, either by his or their deed or charter under his or their respective seal or seals made and delivered in the presence of three or more sufficient witnesses, or by their respective last will in writing made

STAT. 10 & 11 CAR. 1, c. 1. [IR.]

7 Gul. 3, c. 9. None shall profanely swear or curse. Offenders in hearing of justice of peace, mayor, &c. convicted by oaths of two witnesses, &c. shall each time forfeit to the poor of the parish, 12d.

To be levied by constable or churchwardens by warrant, by distress and sale; in default of to be whipped.

Officer sued for the same may plead general issue, and have costs if found for him or plaintiff nonsuit.

Prosecution must be in twenty days. This act to be read in church twice every year.

STAT. 10 & 11 CAR. 1, c. 2. [IR.]

For maintenance of the clergy.

Appropriations of ecclesiastical benefices may, without licence to alien in mortmain, be restored by deed or will under seal to the persons of the respective parishes.

STAT. 10 & 11
CAR. 1, c. 2.
[1R.]

If none, to the bishop in trust for the minister serving cure, till a rector or vicar appointed, and then to his sole use. Such use expressed in writing.

Said parson, &c. shall be immediately seised thereof in fee simple.

Non obstante
Statute of
Mortmain.

If in the parish no parson or vicar endowed, the ordinary may (after there shall be glebe lands, tithes, &c. to the full third part of the profits of the entire impropriation) ordain one, in perpetual succession.

His institution, &c. to be inrolled at his cost in Exchequer.

And then shall be seised in fee of such parsonage, &c.

Persons seised of inheritance in possession in benefices appropriate may by writing under seal present a clerk to the ordi-

and published in the presence of like number of sufficient witnesses, unto any the parson or vicar of the said parish or parishes immediately, and to his successors, if any such be endowed within the said parish where the said appropriation, glebe land, tithes, or other the said premises, are or do lie, arise, or grow; or if there be no such parson or vicar endowed within such parish, then to the archbishop of that province, or bishop of that diocese, and to their or any of their successors in trust unto and for the use of such minister as shall serve the cure in the said parish until there shall be a rector, parson, or vicar of the said parish there established, and then to the sole use of the rector, parson, or vicar of the said parish, and of his successors for ever, such use and trust to be expressed and contained in such deed, charter, or last will, or otherwise in some writing under the seals of such person and persons who shall so give, limit, or devise the same.

“II. And it is hereby enacted, that immediately from and after such deed and writing made as aforesaid, and after the deaths of such testators or devisors who shall make such will as aforesaid respectively, the said parson or vicar and his successors to whom such grant, limitation, or devise shall be immediately made, and the said metropolitan, bishop, or bishops, and their successors unto whom such parsonage impropriate, glebe lands, tithes, or other the premises shall be granted, bequeathed, or limited by such deed, charter, will, or writing upon such trust, or to such use as aforesaid, shall stand and be seised thereof to them and their successors for ever respectively, of an absolute and indefeasible estate in fee simple; the statute concerning lands aliened in mortmain or any other law or statute, or other matter or thing whatsoever to the contrary thereof in any wise notwithstanding.

“III. And the true intent of this present act further is, that if within the parish wherein the said appropriations, glebe lands, tithes, or other the premises, are limited by the said donors or devisors to be employed for the maintenance of any such minister of the word of God as aforesaid, there be no parson or vicar endowed, that then it shall be lawful unto and for the ordinary and metropolitan of that diocese, after that there shall be glebe lands, tithes, or other the premises amounting to the full third part or more of all the profits of the entire impropriation limited as aforesaid, by their writings under their archiepiscopal and episcopal seals to ordain, constitute, and appoint one sufficient minister or clerk, learned in the word of God, to be parson or vicar of the said parish in a perpetual succession to him and his successors for ever, and shall cause him to be admitted, instituted, and inducted as parson and rector or vicar thereunto; which said ordination, constitution and appointment, institution, and induction, shall within convenient time after be all of them enrolled in his majesty's court of Exchequer, at the costs of the said new ordained parson or vicar; immediately from and after the enrolment whereof, the said parson or vicar so ordained, instituted, and inducted, shall be, and in law shall be accounted, accepted, and taken to be parson or vicar of the said rectory, church, and parish to him and his successors for ever, in a perpetual succession to all intents and purposes; and then and from thenceforth also shall have, and by virtue of the said conveyances and limitations and by virtue of this act, shall be and become estated and seised to him and his successors for ever, of and in all and every the said parsonage or other benefice, appropriation, glebe lands, tithes, and premises before conveyed and estated, or otherwise limited as aforesaid, in trust unto the said archbishops or bishops for the maintenance of a minister, of a good, sure, absolute, and indefeasible estate in fee simple, as parson and rector or vicar of that church and parish.

“IV. And be it likewise further enacted by the authority aforesaid, that at all times, and from time to time hereafter, it shall and may be lawful unto and for all and every person and persons whatsoever, being of full age, sane memory, and not covert baron, and to and for all and every bodies politick and corporate, who shall be seised of any estate of inheritance in possession of and in any parsonages, vicarages, and other benefices appropriate within this realm of Ireland, by his or their writing or writings under their respective seals, to present a lawful and sufficient clerk for such parsonage, vicarage, or other such benefice appropriate, unto

the ordinary or metropolitan of the diocese where such parsonage, vicarage, or benefice appropriate is and doth lie; and that upon such presentation, such ordinary or metropolitan shall admit such clerk so presented, and him institute and cause to be inducted into the said church and benefice; all which said presentation, admission, institution, and induction, shall be entered and enrolled in the said court of Exchequer, at the charge of the parson so presented, (or of the said party who so presented him, if he so please.) And that immediately from and after such presentation and institution so made and enrolled, the said appropriation shall be for ever dissolved, and the said rectory, vicarage, (or other benefice or living whatsoever it be,) disappropriate, and thenceforth for ever shall be and shall become presentative by the donors thereof, their heirs, successors, and assigns, in such manner and form as other churches presentative are by other patrons, when and so often as the same shall become void by any ways or means; any law, statute, custom, or other thing whatsoever to the contrary hereof notwithstanding. Saving to the king's majesty, his heirs, and successors, and to all and every other person and persons, bodies politick and corporate, their heirs, and successors, (other than the said donors and devisors of any such appropriation, glebe lands, tithes, or other hereditaments formerly ecclesiastical, or of any of them, and their heirs and successors, and other than such person and persons, and bodies politic and corporate, who shall make such presentations as aforesaid to the said benefices appropriate, and to their heirs and successors, and other than all and every other person and persons, bodies politic and corporate whatsoever, their heirs and successors, claiming any estate, title, or interest in the remainder or reversion of or in the same, after the estate or estates of such donors, devisors, or presentors ended and determined, and other than all and every other person and persons seised or claiming to their or any of their uses,) all such estate, right, title, interest, rent, pensions, profits, emoluments, and demands, as they or any of them had therein or thereto at and before the time of such restitution, dedication, limitation, gift, grant, devise, conveyance, or presentation made as aforesaid, as if this present act had never been had or made.

“V. Provided always, and be it further enacted by the authority aforesaid, that when any such donation, dedication, limitation, or conveyance shall be made of any rectory, vicarage, or benefice appropriate, or of any glebe lands, tithes, or other hereditaments formerly ecclesiastical, or of any part thereof, or of any of them, unto and for the maintenance of any such minister as aforesaid; that then if the parsonage appropriate or other thing so given, restored, dedicated, limited, or conveyed, be the sole and only endowment of such minister in right of the same church, or if it shall be four times in yearly value so much or more as such minister, parson, vicar, or beneficer formerly had, and was endowed of in right of the said church; that then the sole patronage of such benefice shall be and shall appertain to such donor or devisor, his and their heirs and successors only; but if the same be only three times so much, then such donor or devisor, his and their heirs and successors, shall have upon the successive avoidances thereof three presentations only, and the former patron and patrons the fourth presentation; and if but twice as much in yearly value, then the said donors or devisors, their heirs and successors, to have only two presentations, and the former patron or patrons one; and if it be but of equal yearly value or near thereabouts, under or over, then the said donors or devisors, their heirs and successors, and the said former patrons to present by turns, whereof the said donors to have the first; and on the other side the like proportion and course to be holden where the former endowments of such beneficer shall exceed the yearly value of the rectories appropriate, tithes, glebe lands, or other hereditaments so given, restored, dedicated, limited, or conveyed; the said proportions and rates of the said endowments, glebes, tithes, and hereditaments, to be made by commission to be granted out of the said court of Exchequer, at the proportionable charge of the said donors or devisors, or of their heirs and of the former patrons; which being executed and returned into the said court of Exchequer, shall be peremptory and final to all parties.

ceed the value of that restored. Said proportions by commission out of Exchequer. Peremptory when returned.

STAT. 10 & 11
CAR. I, c. 2.
[Ir.]

nary, who
shall admit,
&c.

Presentation to
be entered and
enrolled in
Exchequer.

The appropri-
ation afterwards
for ever dis-
solved, and the
benefice be-
come presenta-
tive by the
donors.

Saving the
right of the
king and
others.

When such
conveyance is
the sole en-
dowment of
such minister
in right of
that church,
or if it be four
times in yearly
value so much
as such minis-
ter formerly
had, donor
shall have sole
patronage.

If only three
times, he shall
have only three
presentations,
the former pa-
tron the fourth.
If twice as
much, two pre-
sentations, the
former one.

If equal value,
or near, pre-
sent by turns.
Donor to have
the first.

The like pro-
portion where
the former en-
dowments ex-

STAT. 10 & 11
CAR. 1, c. 2.
[1R.]

Where in one parish both parson and vicar endowed, or more, the bishop may consolidate into one benefice (except parsonages annexed to prebends, &c.) Yet if then full of incumbents, they shall hold respectively till avoidance, then to be consolidated to the survivor.

Where several patrons, presentation to be made according to the valuation by commission as above.

In what manner, where the value equal; where unequal.

Eng. 13 Eliz.
c. 20.

Leases, charges, &c. by spiritual person upon his benefice shall be in force only so long as he is resident, without absence above eighty days in one year.

6 Geo. 1, c. 14.

Eng. 14 Eliz.
c. 11, s. 15.
43 Eliz. c. 9,
s. 8.

“VI. And whereas in divers places of this kingdom of Ireland there are within one parish both a parson and a vicar endowed, and in some parishes more; be it enacted by authority aforesaid, that in every such case, it shall and may be lawful unto and for the bishop of that diocese and metropolitan of that province, (within which the said parishes are situate,) by their writing under their archiepiscopal and episcopal seals, at any time or times hereafter, to unite and consolidate all and every the said parsonages and vicarages so being within one parish, (other than such parsonages or vicarages as are annexed to any dean, prebend, or dignity in any cathedral church,) into one entire parsonage, or rectory, or benefice; yet nevertheless, so that if such parsonages and vicarages or any of them be at that time full of incumbents, that every of the said incumbents shall and may hold and retain to their own use, his and their respective parsonages and vicarages, and all the profits thereof, for so long time as they shall live and continue lawful incumbents thereof; and if one or more of such incumbents do die, or otherwise cease, resign, or be deposed or deprived from their said benefices and incumbencies, that then the said parsonage, vicarage, or benefice, so or by any other means growing void, with all the lands, emoluments, and profits thereof, shall survive, remain, accrue, and grow to the survivor and survivors of such the said incumbents, and after such survivors, accruing or coming into one hand, shall thenceforth for ever be and continue one whole and entire rectory, and parsonage, or benefice, according to the union and consolidation aforesaid, to such surviving parson and his successors for ever; and that then and from thenceforth if there be several patrons of the said benefices, then, by like commission as aforesaid, to be sued out of the said court of Exchequer, at the equal charge of the said patrons, and directed unto two, three, or more sufficient persons, a true and perfect valuation shall be made of each of the said parsonages, vicarages, and benefices, and if the same appear to be of equal value or near the same, and no one of them to be full double in value to any one of the rest of them, then the said patrons, whose clerk did first die, shall present to the first avoidance of the said benefice, and the other patron to the second, and so afterwards the said patrons, their heirs, successors, and assigns, shall thenceforth for ever present by turns; and if it fall out that any one or more of the said united benefices prove to be less in yearly value than the fourth part of any other of the said benefices, that then the patronage of such smaller benefices to be extinct, and the sole advowson and advowsons of the said united and newly consolidated rectory or benefice, to be and remain unto the other patron and patrons solely; and if it fall out that any one or more of the said benefices, (so as aforesaid united and consolidated in one,) be in yearly value a full fourth part or more of the greatest of them, but under the yearly value of the moiety thereof, then the patron of the said greatest benefice, to have the two presentations unto the said entire, united, and consolidated benefice, and the patron and patrons of the said lesser benefices to have one presentation only in their several turns, in manner and form as is above expressed; and that such commission and commissions also so executed and returned as aforesaid, shall be final and peremptory, to all and every the patrons, their heirs, and successors for ever.

“VII. And be it further enacted as aforesaid, that all and every gifts, grants, alienations, leases, forfeitures, charges, and incumbences, imposed, laid, or suffered by any such minister, parson, vicar, or other beneficer of such benefice, or by any parson, vicar, or beneficer of any other benefice, of what nature soever it be, having cure of souls within this kingdom of Ireland, of or upon his said benefice, or of or upon any part thereof, shall be effectual and stand in force for such time only as such parson, vicar, or other beneficer, shall be resident upon his said benefice, without absence from the same, above eighty days in any one year, and for no longer, further, or other time. And that all covenants, bonds, statutes merchant, and of the staple, recognizances, judgments, and other assurances whatsoever, hereafter to be acknowledged, made, or suffered by any such beneficer, or collaterally, for or on his behalf, for the enjoying of the houses, lands, tithes, and other profits or hereditaments of such benefices, or of any part thereof, otherwise or for any longer or other time, than as aforesaid, or whereby such beneficer shall

be enforced or compellable to resign his said benefice, and likewise all covenants, bonds, and other like assurances as aforesaid, hereafter to be made, to the intent to force such beneficer to be resident, for the upholding of any grant, lease, alienation, or charge made as aforesaid, and allowed to stand in force during such residence as above is expressed, shall be utterly void in law to all and every intent and purpose whatsoever.

“VIII. Provided always, that if the king’s majesty, his heirs, or successors, upon any plantation hereafter to be had and made within this realm, shall endow any parson or vicar, and their successors, with any glebe lands, that in such case the incumbent thereof, for the benefit of the plantation, may by the licence of the lord deputy of this kingdom for the time being, and of the privy council here make any leases of such glebe lands, whereof they shall upon such plantation be newly endowed, not exceeding twenty-one years from the time of such endowment made, under such rents and other reservations as shall by the lord deputy and council be directed.

“IX. Lastly, the true intent and meaning of this present act is, that all and every the parsons, vicars, and other beneficers, whose estates and livelihoods shall be made, raised, enlarged, or increased, by the ways and means aforesaid, or by any other good means, shall be subject unto, and be charged for the repair of the chancels of such churches, after that the same shall be erected and built.”

XV. STAT. 10 & 11 CAROLI 1, c. 3. [IRELAND.] A.D. 1634-5.

“An Act for Preservation of the Inheritance, Rights, and Profits of Lands belonging to the Church and Persons ecclesiastical.”

“For the preservation and continuance of all and every the manors, lands, tenements, franchises, liberties, profits, and hereditaments unto the archbishops, bishops, deans, and chapters of the cathedral and collegiate churches, archdeacons, prebendaries, and other dignitaries ecclesiastical, parsons, vicars, and likewise unto the masters or governors, and fellows of colleges, and masters and guardians of hospitals, according to the true intent and meaning of the original foundations thereof, without detriment, spoil, or prejudice; be it enacted by our sovereign lord the king, with the assent of the lords spiritual and temporal, and commons in this present parliament assembled, and by authority of the same, that all feoffments, gifts, grants, leases, alienations, conveyances, estates, charges, and incumbrances, at any time or times, from and after the first day of June now last past, made, or done, or to be made, done, committed, or suffered, by any of the said archbishops, bishops, deans and chapters, archdeacons, prebendaries, or other the said dignitaries ecclesiastical, parsons, vicars, masters, and governors, and fellows of colleges, and masters, guardians, or other governors of hospitals, or any of them, of any manors, lands, tenements, or other hereditaments, being any parcel of the possessions of any such archbishop, bishop, dean, dean and chapter, chapter, prebend, dignitary, parson, vicar, college, cathedral or collegiate church, or hospital, or any ways belonging to the same, or to any of them, (other than such leases and grants as hereafter in this present act, or in any other act made or to be made in this present parliament, are or shall be expressed and authorized to be made,) shall be utterly void and of none effect, to all intents, constructions, and purposes; any law, custom, or usage, or other thing whatsoever to the contrary notwithstanding.

“II. Provided always nevertheless, and be it enacted by the authority aforesaid, that it shall and may be lawful unto, and for all and every the said archbishops, bishops, deans, deans and chapters, archdeacons, prebendaries, and other the said dignitaries ecclesiastical, and likewise unto and for the said masters and governors, and fellows of colleges and hospitals, to grant any ancient office, concerning their or any of their land, or other their possessions, or concerning the attendance upon their persons or churches, together with all and every the like pensions, annuities, fees, and other profits as were formerly accustomed to be granted, had, and enjoyed therewith; and also by their writings indented under

STAT. 10 & 11 CAR. 1, c. 2. [Ir.]

All obligations, &c. to enforce such incumbrances, void. Incumbents, for benefit of plantation, may lease glebe granted by the king not exceeding twenty-one years, by licence of and under reservations directed by the deputy and council. Parsons, whose livings thus increased, charged for repair of the chancels.

STAT. 10 & 11 CAR. 1, c. 3. [Ir.]

Eng. 1 Eliz. c. 19. 13 Eliz. c. 10. 18 Eliz. c. 11. 12 Geo. 1, c. 10. 1 Geo. 2, c. 15. Conveyances, leases, charges, by ecclesiastical persons, void.

Ecclesiastical dignitaries, governors of colleges and hospitals, may grant ancient offices with pensions as accustomed; and by indenture under seal

STAT. 10 & 11
CAR. I. c. 3.
[IR.]

of office (counterpart whereof entered in the register) may demise for twenty-one years, except dwelling houses and demesnes for forty years past.

Where no lease or estate in being, not to expire in one year; reserving yearly at peril of lessees the moiety of the true value. How to be tried.

So much as relates to the commission and certificate repealed, 11 Geo. 2, c. 15. No power therein to commit waste. By licence of the governor and council, leases for necessary building fortresses, &c. may be made longer than twenty-one years.

And in consideration of re-assignment or surrender of fee-farms and long leases, and upon further improvement of the rent, leases for sixty years or under may by licence be made.

14 Eliz. c. 11. Leases for forty years under like valuable rent may be of houses and curtilages in cities and towns, so as not their dwelling houses &c.

their respective seals of office, (a counterpart whereof shall be entered in the respective register books of the said archbishops, bishops, deans and chapters, and of the said colleges and hospitals, for the benefit of succession,) from time to time to demise any the lands, or other the hereditaments belonging to their respective churches, colleges, and hospitals, (the dwelling houses for the most part of forty years, now last past, used for any of their respective habitations, and the demesne lands thereunto belonging, and therewithal during the said time commonly used and occupied as the demesnes of the said houses only accepted,) unto any person or persons, for and during the term of one and twenty years from the time of the making thereof, whereof or of any part whereof there shall be no other lease or estate then in being, which shall not expire or be ended and determined within the space of one year then next coming, upon which lease and leases shall be reserved and continued due and payable unto the said lessors and their successors, during the said estate and term of one and twenty years, so much yearly rent or profits, or more, at the peril of the lessees, who shall take the same as the moiety of the true value of the said lands, or other hereditaments, (*communibus annis*,) at or immediately before the time of the making of such lease, shall amount unto, as the same shall or may thereafter appear, either upon a legal trial between the successor or successors of such lessors, if they shall question the same, and the said lessees, or their assignees, by verdict of twelve indifferent persons at the common law, or otherwise by the certificate of four or more honest, equal, and indifferent persons, authorized by commission under the great seal of this kingdom to inquire and find the same, and the said certificate approved of by the lord deputy and privy council of this kingdom, for the time being, which verdict or certificate so respectively made or given, shall be peremptory to both parties, and their respective successors and assignees during the said term; in which leases or any of them shall be contained, no power, liberty, or privilege for such leases or their assignees, to commit waste, or to be punishable of waste.

“III. Provided nevertheless, that it shall and may be lawful unto and for the said archbishops, bishops, deans, chapters, archdeacons, prebendaries, and other the said dignitaries ecclesiastical, and their successors, and unto the said masters and governors, and fellows of colleges, and hospitals, and to their successors or any of them, by the licence of the lord deputy, or other chief governor or governors of this kingdom, and council of state of this kingdom for the time being, to make leases for a longer term or time than one and twenty years, of any their lands or grounds fit for the necessary building of castles, fortresses, or other houses of strength, in places convenient and requisite, for the good of this realm, and the defence thereof, for such term and time, and in such sort as shall be thought fit by the king's majesty or the lord deputy, or other the said chief governor or governors of this kingdom and council of state for the time being; and likewise whereas there are, and of late times hath been, sundry fee-farms and long leases in being, of divers manors, lands, tenements, and hereditaments formerly belonging to the said archbishops, bishops, deans, chapters, archdeacons, prebendaries, and other the said dignitaries ecclesiastical, parsons, vicars, and likewise unto the said colleges and hospital, that it shall and may be lawful unto and for them, and every of them, for and in consideration of the re-assignment, surrender, and taking in of any such fee-farms, leases, or estates, and upon further improvement of the yearly rents and profits thereof, to be reserved and payed to them and their successors, by and with the licence and approbation of the lord deputy, or other chief governor or governors, and council of state of this kingdom for the time being, to make any lease or leases for the term of sixty years or under of such fee-farm lands, and of such leased lands, for the like term, or for fewer years, if the said leases in being were for fewer years; and likewise that it shall and may be lawful unto and for any the spiritual persons, colleges, and hospitals before mentioned, by their like writings indented, sealed, entered, and enrolled as aforesaid, to make any lease or leases for and during the term of forty years, under the like valuable rent as is afore expressed, of all or any their houses belonging to their churches, colleges, or hospitals, and of the curtilages appertaining to the same, which are

situate within any city, town corporate, or market town of this kingdom, so as the same be not of any their mansion or dwelling houses, or of any part thereof, or of any the curtilages, gardens, or orchards belonging thereto.

“IV. And be it enacted as aforesaid, that all and every the rents and yearly profits above reserved, or in and by this act limited and appointed to be reserved, upon the making of all and every the leases above mentioned, immediately from and after such lease and leases, reservation and reservations made, shall by virtue of this act continue due and payable unto the said lessors and their successors during the said respective leases and terms, and shall by no means be aliened, released, or discharged to the prejudice of the successors of such lessors or any of them.

“V. Provided always, that this act, nor any thing therein contained, shall not restrain the most reverend father in God, James lord archbishop of Armagh, primate and metropolitan of all Ireland, but that he may make such leases, and for such terms as are mentioned in his majesty's letters patents to him heretofore granted in that behalf; any thing in this act contained to the contrary notwithstanding.”

STAT. 10 & 11 CAR. 1, c. 3. [Ir.]

The rents to continue payable during the term, and not be aliened to prejudice of successors.

Not to extend to restrain the primate, who may lease as in his letters patent.

XVI. STAT. 15 CAROLI 1, c. 6. [IRELAND.] A.D. 1639.

“An Act for strengthening of Letters Patents passed and to be passed, upon any of His Majesty's Commissions of Grace for the remedy of defective Titles, &c.”

STAT. 15 CAR. 1, c. 6. [Ir.]

“VI. Provided nevertheless, and be it enacted by the authority aforesaid, that this act, nor any thing therein contained, shall not any wise bar or prejudice the right or title of any archbishop, bishop, dean, chapter, archdeacon, dignitary, prebendary, parson, vicar, or other spiritual or ecclesiastical person, to any manors, lands, tenements, or hereditaments, being the inheritance and possession of their respective churches or benefices.”

Saving the right of spiritual persons, to inheritance and possession of their benefices.

XVII. STAT. 15 CAROLI 1, c. 7 (1). [IRELAND.] A.D. 1639.

“An Act concerning Clergy.”

STAT. 15 CAR. 1, c. 7. [Ir.]

XVIII. STAT. 15 CAROLI 1, c. 11 (2). [IRELAND.] A.D. 1639.

“An Act for endowing of Churches with Glebe Lands.”

STAT. 15 CAR. 1, c. 11. [Ir.]

“Whereas all beneficiaries with cure, especially vicars, are bound to perpetual residence, and yet through the war and confusion of former times in this kingdom the ancient glebes in many places are so obscured that they cannot be found out, by which means the incumbents are necessitated to perpetual non-residence; be it therefore enacted by the king's most excellent majesty, the lords spiritual and temporal, and commons in this parliament assembled, and by the authority of the same, that it shall be lawful for any devout person, without licence of mortmain, to endow churches having no glebes, or not above ten acres of glebe, with new glebe, provided the glebe of any one church so endowed do not exceed forty acres at the most, and that the said lands be not holden *in capite*, or by knight's service.”

2 Ann. c. 10.
8 Geo. 1, c. 12.
1 Geo. 2, c. 15.
3 Geo. 2, c. 12.
Ancient glebes so obscured that incumbents necessitated to perpetual non-residence. Churches having no

glebe, or not above ten acres, may, without licence of mortmain, be endowed with new glebe, so as not to exceed forty acres. The lands not held *in capite*, or by knight's service.

XIX. STAT. 15 CAROLI 1, c. 12 (3). [IRELAND.] A.D. 1639.

“An Act concerning Twentieth Parts, and other Sums of Money payable by Persons Ecclesiastical.”

STAT. 15 CAR. 1, c. 12. [Ir.]

(1) *Vide* Stat. 6 Geo. 4, c. 25. Stat. 9 43. Stat. 10 Geo. 4, c. 58. Stat. 2 & 3 Geo. 4, c. 54. Gul. 4, c. 67.

(2) *Vide* Stat. 8 Geo. 1, c. 12. (I.) Stat. (3) *Vide* Stat. 3 & 4 Gul. 4, c. 37.
1 Geo. 2, c. 15. (I.) Stat. 7 & 8 Geo. 4, c.

STAT. 16 CAR.
1, c. 11.

XX. STAT. 16 CAROLI 1, c. 11 (1). A.D. 1640.

"A Repeal of the Branch of a Statute Primo Elizabethæ, concerning Commissioners for Causes Ecclesiastical."

1 Eliz. c. 1,
s. 18.

"Whereas in the parliament holden in the first year of the reign of the late Queen Elizabeth, late queen of England, there was an act made and established, intituled, 'An Act restoring to the Crown the ancient Jurisdiction over the State Ecclesiastical and Spiritual, and abolishing all foreign Power repugnant to the same;' in which act, amongst other things, there is contained one clause, branch, article, or sentence, whereby it was enacted to this effect; namely, that the said late queen's highness, her heirs and successors, kings or queens of this realm, should have full power and authority by virtue of that act, by letters patents under the great seal of England, to assign, name, and authorize, when and as often as her highness, her heirs and successors, should think meet and convenient, and for such and so long time as should please her highness, her heirs or successors, such person or persons, being natural-born subjects to her highness, her heirs and successors, as her majesty, her heirs or successors, should think meet to exercise, use, occupy, and execute, under her highness, her heirs and successors, all manner of jurisdictions, privileges, and pre-eminence, in any wise touching or concerning any spiritual or ecclesiastical jurisdiction within these her realms of England and Ireland, or any other her highness' dominions and countries, and to visit, reform, redress, order, correct, and amend, all such errors, heresies, schisms, abuses, offences, contempts, and enormities whatsoever, which by any manner of spiritual or ecclesiastical power, authority, or jurisdiction, can or may lawfully be reformed, ordered, redressed, corrected, restrained, or amended, to the pleasure of Almighty God, the increase of virtue, and the conservation of the peace and unity of this realm: and that such person or persons so to be named, assigned, authorized, and appointed, by her highness, her heirs or successors, after the said letters patents to him or them made and delivered as aforesaid, should have full power and authority, by virtue of that act, and of the said letters patents, under her highness, her heirs or successors, to exercise, use, and execute, all the premises, according to the tenour and effect of the said letters patents; any matter or cause to the contrary in any wise notwithstanding.

High Commis-
sion court.

"II. And whereas by colour of some words in the aforesaid branch of the said act, whereby commissioners are authorized to execute their commission according to the tenour and effect of the king's letters patents, and by letters patents grounded thereupon, the said commissioners have, to the great and insufferable wrong and oppression of the king's subjects, used to fine and imprison them, and to exercise other authority not belonging to ecclesiastical jurisdiction restored by that act, and divers other great mischiefs and inconveniences have also ensued to the king's subjects, by occasion of the said branch and commissions issued thereupon, and the executions thereof: therefore, for the repressing and preventing of the aforesaid abuses, mischiefs, and inconveniences in time to come:

The said branch
of Stat. 1 Eliz.
c. 1, repealed.

"III. Be it enacted by the king's most excellent majesty, and the lords and commons, in this present parliament assembled, and by the authority of the same, that the aforesaid branch, clause, article, or sentence, contained in the said act, and every word, matter, and thing, contained in that branch, clause, article, or sentence, shall from henceforth be repealed, annulled, revoked, annihilated, and utterly made void for ever; any thing in the said act to the contrary in anywise notwithstanding.

Powers taken
away from
archbishops,
bishops, and
other ecclesias-
tical persons
and courts.

"IV. And be it also enacted by the authority aforesaid, that no archbishop, bishop, nor vicar-general, nor any chancellor, official, nor commissary of any archbishop, bishop, or vicar-general, nor any ordinary whatsoever, nor any other spiritual or ecclesiastical judge, officer, or minister of justice, nor any other person or persons whatsoever, exercising spiritual or ecclesiastical power, authority, or jurisdiction, by any grant, licence, or commission of the king's majesty, his heirs

(1) Repealed by Stat. 13 Car. 2, St. I. c. 12, s. 2, except what concerns the High Commission court; *vide ante* 357.

or successors, or by any power or authority derived from the king, his heirs, or successors, or otherwise, shall, from and after the first day of August, which shall be in the year of our Lord God one thousand six hundred forty and one, award, impose, or inflict any pain, penalty, fine, americiament, imprisonment, or other corporal punishment upon any of the king's subjects, for any contempt, misdemeanor, crime, offence, matter, or thing whatsoever, belonging to spiritual or ecclesiastical cognizance or jurisdiction, or shall, *ex officio*, or at the instance or promotion of any other person whatsoever, urge, enforce, tender, give, or minister unto any churchwarden, sideman, or other person whatsoever, any *corporal oath* (1), whereby he or she shall or may be charged or obliged to make any pre-

STAT. 16 CAR.
1, c. 11.

(1) *Corporal oath*.—Oaths are as old as the creation: thus, in the Book of Genesis, and in the 30th chapter of Numbers, oaths occur in a variety of instances; and the nature of an oath was not altered by Christianity, but it was only made more solemn from the sanction of rewards and punishments being more openly declared.

The passage in the 14th chapter of St. Matthew, relating to Herod, and the daughter of Herodias, is very extraordinary; Herod appears there to revolt from murder, and yet thought an oath of such a sacred nature, as to choose rather to commit murder than to break his oath.

Pythagoras, in his *Golden Verses*, and Tully, in several parts of his works, speak of an oath with the highest reverence. Grotius, (1 Grot. de Jure Belli et Pacis, lib. 2, c. 13; de Jurejurando, s. 1.) states, "Apud omnes populos, et ab omni Evo circa pollicitationes, promissa et contractus maxima semper vis fuit jurisjurandi."

An oath is a religious sanction that mankind have universally established; and all that is necessary to an oath is an appeal to the supreme Being, as thinking Him the rewarder of truth and avenger of falsehood: in fact, the necessity of religion to the support of human society in nothing appears more evidently than in this, that the obligation of an oath, which is so necessary for the maintenance of peace and justice among men, depends wholly upon the sense and belief of a Deity.

If the witness be of a *religion*, it will be sufficient;—because the foundation of all religion is the belief of a God, though it is difficult to have a distinct idea of an infinite and incomprehensible being, as God is; yet mankind may have a relative idea of the being of a God, as dependent creatures upon Him.

This is the sense of all the civilized nations in the world, the foundation of all treaties; "nullum enim vinculum ad adstringendam fidem jurijurando majores arctius esse voluerint." Lib. 3, M. T. C. de Offic. s. 31.

The best writers on Christian morality have gone so far as to admit the oath to false gods. It is the sense of Grotius: "sed et si quis per falsos deos juraverit, obligabitur; quia quamquam sub falsis notis, generali tamen complexione, numen intuetur: ideoque Deus verus, si pejeratum sit, in suam injuriam id factum interpretatur." Lib. 2, c. 13, s. 12.

The patriarchs of old, considered the

heathens capable of an oath. The instance of Isaac and Abimelech swearing to one another, (Gen. xxvi. 31,) and in Gen. xxxi. 51—53, Jacob swears by the fear of his father Isaac, and accepted of Laban's oath without hesitation, though he swore by false gods.

It is laid down by all writers, that the outward act is not essential to the oath: thus, Dr. Tillotson, (1 Tillot. Sermon 144,) states, "As for the ceremonies in use among us in the taking of oaths, it is no just exception against them, that they are not found in Scripture, for this was always matter of liberty, and several nations have used several rites and ceremonies in their oaths."

In fact, there was a time when swearing on the holy Evangelists was not the practice in England; for when St. Austin introduced the Christian religion, the inhabitants were tenacious of their own customs, and therefore he indulged them, and a considerable period of time elapsed before witnesses were sworn on the holy Evangelists.

In *Dutton v. Colt*, (1 Sid. 6, App.) Doctor Owen, vice-chancellor of Oxford, being a witness for the plaintiff, refused to be sworn in the usual manner, by laying his right hand upon the book, and by kissing it afterwards; "but he caused the book to be held open before him, and he lifted up his right hand: the jury, upon this, prayed the opinion of the court, if they ought to think this testimony as strong as the testimony of another witness, and *Glin*, (Chief Justice,) told them, that in his judgment, he had taken as strong an oath as any other witness, but said, if he was to be sworn himself, he would lay his right hand upon the book."

Christians were sworn sometimes without laying their hands upon the Gospel, by lifting up their hands to heaven: Jews were sworn first with rites and ceremonies, afterwards without any. It is plain, that by the policy of all countries, oaths are to be administered to all persons according to their own opinion, and as it most affects their conscience, and laying the hand was originally borrowed from the pagans.

The form of oaths varies in countries according to different laws and constitutions, but the substance is the same in all. Thus Grotius: (1 Grot. de Jure Belli et Pacis, lib. 2, c. 13, s. 10 :) "Forma jurisjurandi verbis differt, re convenit; hunc enim sensum habere debet, ut Deus invocetur, puta hoc modo, Deus testis sit, aut Deus sit vindex." In our old law books, "Sic Deus adjuvet," and other expressions of the like nature, and now "So help me God." *Vide etiam* Matt.

STAT. 16 CAR.
1, c. 11.

Penalty, treble
damages, and
one hundred
pounds.

sentment of any crime, or offence, or to *confess or to accuse himself* (1) or herself of any crime, offence, delinquency, or misdemeanor, or any neglect, matter, or thing, whereby or by reason whereof he or she shall or may be liable or exposed to *any censure, pain, penalty* (2), or punishment whatsoever; upon pain and penalty that

xxiii. 20—22. Stephens on Nisi Prius, tit. EVIDENCE, 1719—1721.

(1) *To confess or to accuse himself*:—It is said, that by the common law there were but two sorts of causes, in which the spiritual judge might compel a layman to accuse himself, *viz.* matrimonial and testamentary; to support which, the two following writs in the ancient Register are relied upon:

“Rex Vic.’ salutem. Præcipimus tibi quòd non permittas quòd aliqui laici ad citationem talis episcopi, aliquo loco convenient de cætero ad aliquas recognitiones fac’, vel sacramentum præstand’, nisi in casibus matrimonialibus et testamentariis. T. &c.” Reg. Br. f. 36(b).

“Rex Vic.’ salutem. Pone per vadium, &c., talem episcopum, quòd sit coram iusticiariis nostris, &c. ostensurus quare fecit summoneri, et per censuras ecclesiasticas distingui, laicas personas, vel laicos homines et fœminas, ad comparandum coram eo, ad præstandum juramentum pro voluntate suâ, ipsis invitis, in grave præjudicium coronæ et dignitatis nostræ regie, necnon contra consuetudinem regni nostri. Et habeas ibi nomina pleg. &c. T. &c.”

The reason given by my Lord Coke, (2 Inst. 657; 12 Co. 26, tit. *Oath, ex officio*,) why the ecclesiastical judge was allowed to examine the parties upon oath, in these two cases, is, that contracts of matrimony, and the estates of the dead, are many times secret, and do not concern the shame and infamy of the party, as adultery, incontinency, usury, simony, hearing of mass, heresy, &c. And therefore, long before the making of this statute, when the High Commission, and other ecclesiastical courts, required the oath of the party in these and the like cases, they were prohibited by the temporal courts. *Deyton’s case*, Moore (Sir F.), 840. *Collier v. Collier*, Ibid. 906. *Hunt’s (Dr.) case*, Cro. Eliz. 262.

But when my Lord Coke, (2 Inst. 657, 658,) supposes this oath to be the same with what is called *juramentum calumniæ*, and, on that supposition, reasons against the constitution of *Otho* upon that account; his lordship confounds two things which are widely different; as will be evident by comparing that constitution with this statute.

(2) *Any censure, pain, penalty*:—In other cases, where the course of the ecclesiastical courts had been, to receive answers upon oath, they might still receive them. And, therefore, in *Herne v. Brown*, (1 Vent. 339,) where the suit was for payment of the proportion assessed towards the repair of the church, and the defendant offering to give in his answer, but not upon oath, prayed a prohibition, because it was refused; the court, after hearing divers arguments, denied the prohibition: for they said, “it was no more than the Chancery did, to make defendants answer upon oath in such like

cases.” And, some years before that, in *Goulson v. Wainwright*, (1 Sid. 374,) it was held by the court, “that if articles, *ex officio*, are exhibited in the spiritual court, for matters which are criminal, and the party is required to answer upon oath, he may plead, ‘Quòd non tenetur respondere;’ and if they will proceed notwithstanding, he may have prohibition; but if it be a civil matter he cannot do so; for then he is bound to answer.”

Under this head may be added, the different rules in the spiritual and temporal courts with regard to the number of witnesses. In the spiritual court, they admit no proof but by two witnesses at least; in the temporal court, one witness, in many cases, is judged sufficient. If therefore the point to be proved be merely spiritual, the spiritual court requires two witnesses, and they will not be disturbed by prohibition.

In *Roberts’s case*, (Cro. Jac. 269; 12 Co. 65,) the suit was for subtraction of tithes, and prohibition was obtained, because there was but one witness to prove the lease of the tithes, and the spiritual court would not allow the proof. “But upon aviseiment in this case, by Coke and all the justices, it was resolved, that consultation should be awarded; because there is a rule in the Register, that where *cognitio principalis* is, there *cognitio accessaria* necessarily follows: and so is the Book of 1 Edw. 4. Secondly, if such surmise should be allowed in every case, it would oft-times be made for mere delay, and the spiritual court should not try the accessary, as well as the principal.” And the conclusion is, “When the original cause belongs unto them, although matter triable at the common law ariseth, depending upon the original cause, yet it shall be determined in the ecclesiastical court: and such surmise, that he hath but one witness, is not sufficient to have a prohibition, where the ecclesiastical court hath jurisdiction of the principal; for if such a surmise should be sufficient, all suits in the ecclesiastical court should thereby be stayed, or otherwise taken away, and the plaintiff in the spiritual court could not have answer thereto.”

But the more modern reports have recognised a different principle; thus in *Richardson v. Disborow*, (1 Vent. 291,) where prohibition was prayed, because the spiritual court refused the proof of *plenè administravit* by one witness; it was granted: and Hale said, “Where the matter to be proved, which falls in incidentally in a cause before them [in the spiritual court] is temporal; they ought not to deny such proof as our law allows.”

In *Shotter v. Friend*, (3 Mod. 283; 2 Salk. 547,) prohibition was prayed and obtained, because the spiritual court would not allow the proof of the payment of a legacy by one witness. Upon which occasion, it

every person who shall offend contrary to this statute, shall forfeit and pay treble damages to every person thereby grieved, and the sum of one hundred pounds to

STAT. 16 CAR.
1, c. 11.

was said by the court, "Such proof, which is good at the common law, ought to be allowed in their court; and at the common law, it is not necessary to prove the payment of a debt by two witnesses. They may follow their own rules, concerning things which are originally in their cognizance; but if any collateral matter doth arise, as concerning a revocation of a will, or payment of a legacy, if the proof be by one witness, they ought to allow it." And it was also resolved, that if the ecclesiastical court proceed in a matter merely spiritual, and if they proceed in their own manner, though that be different from the common law, no prohibition will be granted; thus in probate of wills, if they refuse one witness, no prohibition will be issued.

In *Brown v. Wentworth*, (Yelv. 92,) prohibition was granted where the spiritual court would not allow the proof of a revocation of a will by one witness; and that precedent is accordingly alleged for the prohibition in *Richardson v. Disborow*, (1 Vent. 291,) but, at the same time, these circumstances might have deserved to be mentioned. i. That the very next year before this, upon complaint made to the king and council against such prohibition for refusing one witness, the answer of all the judges was, if the question be upon payment or setting out of tithes, or upon the proof of a legacy, or marriage, or such like incidence, we are to leave it to the trial of their law, though the party have but one witness. ii. That in *Brown v. Wentworth*, (Yelv. 92,) two of the judges, *Popham* and *Williams*, argued strongly, that consultation ought to go, because the will, which was the principal, did undoubtedly belong to the spiritual court, and revocation was merely dependent upon it, and accessory to it. iii. That the others, who were for the prohibition, held, that the revocation was not dependent on the will; those things being dependencies which affirm the will, and not those that disannul and disaffirm it, as the revocation doth: though it is true, that *Tanfield* grounded his opinion chiefly on the denial of such proof as the common law allows. *Gibson's Codex*, 1012.

The canonists have borrowed their rule of evidence respecting the number of their witnesses, as they have most of their rules of evidence, from the civil law, which does not permit a single witness to be heard. "Unius testis responsio non audiatur etiamsi præclaræ curiæ honore præfulgeat." Cod. 4. 20. 9. Dig. 22. 5. 12. A cause, therefore, which rested on the testimony of a single witness, uncorroborated by any other evidence, was to be dismissed without tendering the suppletory oath. "Non jus deficit sed probatio." Noodt. ad Dig. 22. 5. But a complete proof might be adduced without any witness, by deeds or instruments; and the evidence of one witness corroborated by circumstances, or circumstances without a witness, furnishes conclusive proof in crimes as well as in civil actions. *Vide* Huber ad

Dig. de Testibus. Matheus de Criminibus, cap. De Probationibus. Dig. 50, 3, 4, 5, De probationibus, præsumptionibus, et testibus. Cod. 4. 19, 20.

The general rule of evidence appears to be common to the civil law and to the law of England; thus *Gaill* states, "The law is contented with such proof as can be made, if the subject in its nature be difficult of proof;" (lib. 2, obs. 91, 149;) ("probationum facultas non angustiari sed ampliori debet.") This principle coincides with the common law; thus in *Omychund v. Barker*, (1 Atk. 49,) Lord *Hardwicke* observed, "The judges and sages of the law have laid it down, that there is but one general rule of evidence, the best that the nature of the case will admit." Mr. *Burke*, in his report of the Committee on the Question of Evidence in Warren Hastings' trial, (14 Debates on Evidence, 8vo. 355; Rep. from Com. to inspect Lords' Journals,) remarks, "Courts, (i. e. of common law,) in England do not judge upon evidence *secundum allegata et probata*, as in other countries, and under other laws, (viz. of the ecclesiastical courts,) they do, but upon verdict. By a fiction of law, they consider the jury as supplying in some sense the place of testimony. One witness (and for that reason) is allowed sufficient to convict in cases of felony, which in other laws is not permitted.

The maxim of the older civilians is, "In re criminali probationes debent esse evidentes et luce meridiana clariores."

In *Theakston v. Marson*, (4 Hagg. 313,) Sir John *Nicholl* observed: "But, at all events, that proof appears to stand on the single testimony of Mr. Pochin; and the court cannot wholly pass over without notice the point of law,—whether the evidence of one witness, unsupported by any circumstances, makes legal proof of a testamentary act. The recognition of the sufficiency of such evidence seems to be big with all the dangers against which the Statute of Frauds, (29 Car. 2, c. 3, s. 19,) was intended to guard.

"By the general law of these courts, one witness does not make full proof; not that two witnesses are required to each particular fact, nor to every part of a transaction, for it often happens, that to the contents of a will, or to instructions, there is only one witness,—the confidential solicitor, or other drawer; but there are, and must be, admissible circumstances to the transaction, such as the expressed wishes of the testator to make his will, the sending for the drawer of it, his being left alone with the deceased for that known purpose, some previous declarations or subsequent recognitions, some extrinsic circumstances, in short, showing that a testamentary act was in progress, and tending to corroborate the act itself: but, in this case, there is nothing except Pochin's own account of the occurrences of this quarter of an hour, not acknowledged by the deceased, nor even declared, while the deceased was yet alive, by Pochin himself, nor

STAT. 16 CAR. 1, c. 11. him or them who shall first demand and sue for the same; which said treble damages and sum of one hundred pounds, shall and may be demanded and reco-

confirmed by his conduct. I am strongly inclined to think, that these courts have never held that such evidence of such an act, by a single witness, is alone sufficient to sustain it; and I should be unwilling to make such a precedent." Vide etiam, *In re Keeton*, 4 Hagg. 209. *Kenrick v. Kenrick*, Ibid. 130, 136. *Crompton v. Butler*, 1 Consist. 460. *Donnellan v. Donnellan*, 2 Hagg. 145, App.

In *Hunt v. Sarell*, (1 Lee, 591,) it was considered that one witness was sufficient to prove identity, it being a collateral question; and that one witness was competent to prove a release.

The rule of requiring a certain number of witnesses to make full proof, was productive of serious inconvenience, and was one of the causes which occasioned the enactment of Stat. 27 Hen. 8, c. 4, for changing the criminal jurisdiction of the court of Admiralty. Such rule has been relaxed in other countries; but, in one instance, very absurdly, thus: "Regulariter tamen in criminalibus causis duo testes plenam faciunt probationem; nec unus testis sufficit; quod fallit, quando de crimine levi et modico agitur præjudicio, atque cum unico teste præsumptiones concurrunt. Sed si unus testis plenam probationem non faciat, sufficit tamen ad semiplenam probationem; et ut reo, vel juramentum purgationis, vel tortura adjudicari queat, pro ratione criminum, et qualitate præsumptionum concurrentium." Carpzovius, Prac. Crim. Sax. pt. 3, Q. 114, s. 4. Respecting crimes, *in genere*, distinguished from specific crimes, an exception as to several witnesses, to several acts, was admitted. "Secundò, quando agitur de probando delicto *in genere*, quod sub se comprehendit species diferentes, et actus particulares, seu successivos,—qualia sunt hæresis, sortilegium, seu maleficium, adulterium et similia. Quo casu testimonium testium singularium, quorum unus de hoc, alius de alio, tertius de illo indicio deponit, conjungenda sunt, ad effectum torquendi reum super delicto, de quo suspectus est." Ibid. Q. 123, s. 53, 54.

Where the law of England is silent, the civil as well as the canon law, is the basis and text law of our ecclesiastical courts. Vide *Moore v. Paine*, 2 Lee, 595; *Moore v. Moore*, 1 Phill. 434. Constant reference to that code will be found in the judgments of Lord Stowell. And in *Moore v. Moore*, (1 Phill. 434,) argued before the delegates, the question whether the mutilation of a will should be held to amount to a cancellation, seems to have been mainly decided by a reference to the doctrine of the civil law upon the subject.

The advocates and proctors of the court of Arches are entitled to practise in the other ecclesiastical courts, and in the High Court of Admiralty, upon being admitted by the judge thereof. This connexion between the ecclesiastical and admiralty jurisdictions has long subsisted, and probably owes its origin

to the similarity of the form of proceedings in both courts, and of the course of study necessary to qualify the practitioners for the proper discharge of the duties entrusted to them. The study of the ecclesiastical law requires an accurate acquaintance with the principles of the civil law, upon which the law of the admiralty is founded; and the civilian is led to the investigation of those principles of general jurisprudence by which the intercourse of nations is governed, and the rights and obligations of belligerents and neutrals in time of war are defined.

In the case of the *Ville de Varsovie*, (2 Dods. 185,) in the court of Admiralty, where an objection was taken to the competency of Lord Cochrane to appear as a witness, Sir William Scott remarked, "This objection must be considered on the authority of the law of England. The question, it is true, arises in a cause, and likewise in a court, which are both governed by another system, but it arises incidentally in a case, that concerns British subjects only, on a mere dispute of property between them, and, if determined in one manner, deeply affecting the civil condition and capacity of one of them; upon all these considerations, it is the duty of the court to look only to the law of England as its proper guide, although it does not administer that law generally, and therefore does not profess to understand it, otherwise than by the information it collects *pro re natâ*, and with the diffidence that naturally belongs to partial views, and an imperfect knowledge of the general system."

And it may be here observed, that rules of evidence in ecclesiastical courts cannot be imported into courts of common law. *Wright v. Latham*, 5 C. & F. 670. 4 Bing. N. C. 489. *Leake v. Westmeath (Marquis of)*, 2 M. & Rob. 394.

It may not perhaps be considered inexpedient, while considering a practical point of evidence, to explain, in the language of my learned friend, Professor J. T. Graves, (vide *Encyclopædia Metropolitana*, article Law,) the manner of citing the different parts of the Corpus Juris Canonici, which is generally considered to be very complicated and enigmatical.

"The Decretum is divided into three parts. The first contains 101 sections, called distinctiones, and treats of the origin and different kinds of law, and particularly of the sources of ecclesiastical law; of persons in holy orders, and the hierarchy. The second treats of thirty-six particular cases (cause), out of which questions of law (questiones) arise. The solution of these questions is given in the extracts. Caus. 33, quest. 3, of the second book, constitutes a special treatise concerning penance (de pœnitentia), and is subdivided into seven distinctiones. The third book is entitled De Consecratione, and contains canons relating to the consecration of churches, the sacraments, and the celebration of divine service. It is divided into five distinctiones. It is

vered by action of debt, bill, or plaint, in any court of record, wherein no privilege, essoin, protection, or wager of law, shall be admitted or allowed to the defendant. And be it further enacted, that every person who shall be once convicted of any act or offence prohibited by this statute, shall, for such act or offence,

STAT. 16 CAR.
1, c. 11.

Offenders convicted, disabled from any office

remarkable that the *Dicta Gratiani* are entirely wanting in the third part. Each separate extract is marked by the letter C., which stands for chapter, (*caput, capitulum*,) not, as it is ordinarily read, for canon. In the early manuscripts and editions of the *Decretum*, the larger divisions are numbered, but not so the chapters; hence the latter were necessarily cited by initial words. The first part was thus anciently cited: *I. d. lex*, meaning the chapter beginning with the word *lex*, in the first distinction. This is now numbered c. 3, and the fuller modern mode of citing would be, *1 dist. c. 3, lex*. The second part is thus cited: *3, qu. 9, caveat*; or more fully, *3, qu. 9, c. 2, caveat*; meaning, cause the third, question the ninth, canon or chapter the second. The thirty-third cause and third question is cited in a peculiar manner, thus: *De pœnit. d. 2, radicata*. The same passage might be otherwise referred to, thus: *33, qu. 3, dist. 2, c. 2*. The third part is cited like the first, with the addition of the words *De consecratione*, thus: *De consec. d. 2, quia corpus*. This means the thirty-fifth chapter or canon, (which begins with the words *Quia corpus*,) of the second distinction of the treatise *De consecratione*, which is the third part of the *Decretum Gratiani*. As the *Decretum* long stood alone, it is understood to be cited when there is no distinctive mark to denote a reference to other portions of the *Corpus Juris Canonici*. It is upon the same principle that distinctions of the first part of the *Decretum* are denoted simply by the letter d., while to the distinctions in the second and third parts are respectively prefixed the specific symbols *De pœnit.* and *De consec.* We have seen that there is usually no mark to denote *causa*, [*Causa*, by the moderns, is often denoted by a capital C.; the small c. being still reserved to denote *caput*,] and that a mere number followed by *qu.* was considered a sufficient reference to a *causa* of the second part of the *Decretum*. Such is the explanation of a wretched technical system of citation, which seems designed to puzzle the uninitiated.

"The *Decretals*, we have seen, consist of three parts: Gregory's, the *Sext*, and the *Clementines*. Gregory's *Decretals*, (which are sometimes exclusively designated when the *Decretals* simply are spoken of,) are divided (like the collection of *Bernardus Papiensis*, which they superseded,) into five books, the contents of which are denoted by the verse,

"*Judex, Judicium, Clerus, Sponsalia, Crimen.*

Each book is divided into titles with rubrics, and the titles are subdivided into chapters with inscriptions. The *Decretals* of Gregory, having been the first collection that wandered beyond the *Decretum*, were originally denominated *Extravagantes*, and they

are still denoted in citation by the word *Extra.* or the letter X., though the name of *Extravagantes* has been transferred to later compilations. Gregory's *Decretals* are usually cited by the chapter and title, without any reference to the number of the books. The varieties in the modes of citation are similar to those which we have explained in treating of the references to the *Pandects*. Thus, c. *Cum contingat*, X. *De offic. et pot. jud. del.*, is the thirty-sixth chapter, beginning with *Cum contingat*, of the title in Gregory's *Decretals*, which is inscribed *De officio et potestate judicis delegati*; and which, by consulting the index, we find to be the twenty-ninth title of the first book.

"The canonists seem to have been fond of the number five. The *Sext*, or sixth book of the *Decretals*, is itself divided into five books of the second order. The *Clementines* also consist of five books, the fourth book consisting of only three or four lines. The subdivisions of the *Sext* and *Clementines* resemble those of the *Decretals* of Gregory. The mode of citation, too, is similar, and admits of similar varieties; only, instead of *Extra.* or X., there is subjoined, in *Sexto*, or in 6, in references to the *Sext*, and *Clem.* or in *Clem.*, in references to the *Clementines*. Thus c. *Si gratiose*, 5, *De rescript.* in 6, is the fifth chapter, beginning with *Si gratiose* of the title *De rescriptis* in the *Liber Sextus Decretalium*,—the title with that rubric being the third of the first book. Again, *Clem. 1, De sent. et R. J.*, or *Ut calumniis*, 1, *De sent. et R. J.* in *Clem.*, is the first chapter of the *Clementine Constitutions*, under the title *De sententiâ et re judicata*,—which chapter begins with *Ut calumniis*, and belongs to the eleventh title of the second book.

"The *Extravagantes* of John the Twenty-second, are contained in one book, divided into fourteen titles. They are cited thus: *Extravag. ad conditorem*, Joh. 22 de V. S. This means the chapter beginning with *Ad conditorem* of the *Extravagantes* of John the Twenty-second, title *De verborum significatione*,—which is found to be the fourteenth title.

"The *Extravagantes Communes*, in imitation of Gregory's *Decretals*, are divided into five books, though the fourth book is a blank! '*Quartus Liber vacat!*' The mode of citation may be thus exemplified: *Extravag. Commun. c. Salvator de præbendis*. This means the chapter beginning with *Salvator*, in the title *De præbendis*, among the *Extravagantes Communes*. There is no constancy in the position of the references to the larger or smaller divisions. Sometimes the rubric of the title precedes, sometimes follows, the initial words of the chapter. We have given, with some additions and explanations, the examples of citation which are contained in a note to the first chapter of *Halifax's Analysis of the Civil Law*, b. i."

STAT. 16 CAR.
1, c. 11.

or employment
by the king's
letters patents.

No new court
to be erected
with the like
power.

be, from and after such conviction, utterly disabled to be or continue in any office or employment in any court of justice whatsoever, or to exercise or execute any power, authority, or jurisdiction by force of any commission or letters patents of the king, his heirs or successors.

"V. And be it further enacted, that from and after the said first day of August, no new court shall be erected, ordained, or appointed, within this realm of England, or dominion of Wales, which shall or may have the *like power, jurisdiction, or authority* (1), as the said High Commission court now hath, or pretendeth to have; but that all and every such letters patents, commissions, and grants, made or to be made by his majesty, his heirs or successors, and all powers and authorities granted, or pretended or mentioned to be granted thereby, and all acts, sentences, and decrees to be made by virtue or colour thereof, shall be utterly void and of none effect."

STAT. 16 CAR.
1, c. 27.

XXI. STAT. 16 CAROLI 1, c. 27 (2). A.D. 1640.

"An Act for disenabling all Persons in Holy Orders to exercise any temporal Jurisdiction or Authority."

(1) *Like power, jurisdiction, or authority*:—They who contended for the legality of the Ecclesiastical Commission, granted by King James 2, endeavoured to restrain the words, *like power*, &c. to a power of fining and imprisoning; and thus to leave the crown at liberty, notwithstanding this repeal, to constitute a commission to proceed by ecclesiastical censures; although, in the same preamble, after fining and imprisoning, divers other great mischiefs and inconveniences are complained of. If the legislature had intended to take away only these two abuses, it would probably have been enacted,

in express terms, with "like power, jurisdiction, or authority to fine and imprison;" independent of which, the repeal is general, of the whole branch, clause, &c. in Stat. 1 Eliz. c. 1, (*antè* 357,) by which the power of erecting such commission was given. But that very commission granted by King James 2, as well as all other commissions and courts of like nature, are now declared by Stat. 1 G. & M. Sess. 2, c. 2, to be illegal and pernicious. *Vide* 1 Stephens on Corporations, 2nd ed. 7-14.

(2) Repealed by Stat. 13 Car. 2, St. I. c. 2.

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A.D. 1649—1685.

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I. STAT. 12 CAROLI 2, c. 11. A.D. 1660.

STAT. 12 CAR.
2, c. 11.*"An Act of Free and General Pardon, Indemnity, and Oblivion."*

[Intruders into lands for the repairs of cathedrals: and those who have converted the goods of the church to their own use :—excepted from pardon.]

II. STAT. 12 CAROLI 2, c. 14. A.D. 1660.

STAT. 12 CAR.
2, c. 14.*"An Act for a perpetual anniversary Thanksgiving on the Nine-and-twentieth Day of May."*

"Forasmuch as Almighty God, the King of kings, and sole Disposer of all earthly crowns and kingdoms, hath by His all-swaying providence and power miraculously demonstrated in the view of all the world His transcendant mercy, love, and graciousness towards his most excellent majesty Charles the Second, by his especial grace, of England, Scotland, France, and Ireland, king, defender of the true faith, and all his majesty's loyal subjects of this his kingdom of England, and the dominions thereunto annexed, by his majesty's late most wonderful, glorious, peaceable, and joyful restoration to the actual possession and exercise of his undoubted hereditary sovereign and regal authority over them, (after sundry years forced extermination into foreign parts, by the most traitorous conspiracies and armed power of usurping tyrants and execrable perfidious traitors,) and that without the least opposition or effusion of blood, through the unanimous, cordial, loyal votes of the lords and commons in this present parliament assembled, and passionate desires of all other his majesty's subjects; which inexpressible blessing (by God's own most wonderful dispensation) was completed on the twenty-ninth day of May last passed, being the most memorable birth-day, not only of his majesty, both as a man and prince, but likewise as an actual king, and of this and

STAT. 12 CAR.
2, c. 14.

other his majesty's kingdoms, all in a great measure new-born and raised from the dead on this most joyful day, wherein many thousands of the nobility, gentry, citizens, and other his lieges of this realm, conducted his majesty unto his royal cities of London and Westminster, with all possible expressions of their public joy and loyal affections, in far greater triumph than any of his most victorious predecessors, kings of England, returned thither from their foreign conquests; and both his majesty's houses of parliament, with all dutiful and joyful demonstrations of their allegiance, publicly received and cordially congratulated his majesty's most happy arrival, and investiture in his royal throne, at his palace at Whitehall: upon all which considerations, this being the day which the Lord himself hath made and crowned with so many public blessings and signal deliverances, both of his majesty and his people, from all their late most deplorable confusions, divisions, wars, devastations, and oppressions: to the end that it may be kept in perpetual remembrance in all ages to come, and that his sacred majesty, with all his subjects of this realm, and the dominions thereof, and their posterities after them, might annually celebrate the perpetual memory thereof, by sacrificing their unfeigned hearty public thanks thereon to Almighty God, with one heart and voice, in a most devout and Christian manner, for all these public benefits received and conferred on them upon this most joyful day; be it therefore enacted by the king's most excellent majesty, the lords and commons in this present parliament assembled, and by the authority of the same, that all and singular ministers of God's word and sacraments, in every church, chapel, and other usual place of divine service and public prayer, which now are or hereafter shall be within this realm of England, and the respective dominions thereof, and their successors, shall in all succeeding ages annually celebrate the twenty-ninth day of May, by rendering their hearty public *praises and thanksgivings*(1) unto Almighty God for all the forementioned extraordinary mercies, blessings, and deliverances received, and mighty acts done thereon, and declare the same to all the people there assembled, and the generations yet to come, that so they may for ever praise the Lord for the same, whose name alone is excellent, and His glory above the earth and heavens: and be it further enacted, that all and every person and persons inhabiting within this kingdom, and the dominions thereunto belonging, shall upon the said day annually resort with diligence and devotion to some usual church, chapel, or place, where such public thanksgivings and praises to God's most divine majesty shall be rendered, and there orderly and devoutly abide during the said public thanksgivings, prayers, preaching, singing of psalms, and other service of God there to be used and ministered.

All persons to resort to some church, chapel, or public place of thanksgiving on the said day.

Notice to be given the next Lord's day before.

"II. And to the end that all persons may be put in mind of their duty thereon, and be the better prepared to discharge the same with that piety and devotion as becomes them: be it further enacted, that every minister shall give notice to his parishioners publicly in the church at morning prayer the Lord's day next before every such twenty-ninth day of May, for the due observation of the said day, and shall then likewise publicly and distinctly read this present act to the people."

STAT. 12 CAR.
2, c. 17.

III. STAT. 12 CAROLI 2, c. 17 (2). A.D. 1660.

"An Act for the confirming and restoring of Ministers."

STAT. 12 CAR.
2, c. 30.

IV. STAT. 12 CAROLI 2, c. 30. A.D. 1660.

"An Act for the Attainder of several Persons guilty of the horrid Murder of his late Sacred Majesty King Charles the First."

"And be it enacted, . . . that every thirtieth day of January, unless it falls out to be upon the Lord's day, and then the day next following, shall be for ever

(1) *Praises and thanksgivings*:—The celebration enjoined by this statute, (as also that on the 5th of November,) seems to have been left at first to the discretion of every minister; until the convocation, April 26th, 1662, had finished a form for that purpose: "Forma precum pro 29 Maii introduct' et publicè

perfect' et unanimi consensu approbat';" which form had been under consideration, from May 16, 1661, when the preparing of it was referred to four members of the House of Lords, and eight members of the House of Commons.

(2) Expired.

hereafter set apart, to be kept and observed, in *all* the churches and chapels . . . STAT. 12 CAR. 2, c. 30.
as an anniversary day of fasting and humiliation, *to implore the mercy of God* (1),
that neither the guilt of that sacred and innocent blood [of his late majesty King
Charles I], nor those other sins by which God was provoked to deliver up both us
and our king into the hands of cruel and unreasonable men, may at any time here-
after be visited upon us or our posterity."

V. STAT. 12 CAROLI 2, c. 31 (2). A.D. 1660. STAT. 12 CAR. 2, c. 31.
"Leases and Grants from Colleges and Hospitals confirmed."

VI. STAT. 12 CAROLI 2, c. 33 (3). A.D. 1660. STAT. 12 CAR. 2, c. 33.
"An Act for Confirmation of Marriages."

VII. STAT. 13 CAROLI 2, c. 1 (4). A.D. 1661. STAT. 13 CAR. 2, c. 1.
*"An Act for Safety and Preservation of His Majesty's Person and Government
against treasonable and seditious Practices and Attempts."*

[If persons attempted to alter the ecclesiastical government they incurred the
penalty of a præmunire; or if they affirmed that the king was a *papist* (5), or
that he designed to introduce popery, they were disabled from holding any place,
ecclesiastical, civil, or military.]

VIII. STAT. 13 CAROLI 2, c. 2. A.D. 1661. STAT. 13 CAR. 2, c. 2.
*"An Act for Repeal of an Act of Parliament, intituled, 'An Act for disabling
all Persons in Holy Orders to exercise any Temporal Jurisdiction or Au-
thority.'"*

"Whereas at the parliament begun at Westminster, the third day of November, 16 Car. 1,
in the sixteenth year of the reign of our late sovereign lord King Charles of blessed c. 27.
memory, since deceased, an act of parliament was made, intituled, 'An Act for
disenabling all Persons in Holy Orders to exercise any Temporal Jurisdiction or
Authority;' which act hath made several alterations prejudicial to the constitution
and ancient rights of parliament, and contrary to the laws of this land, and is by
experience found otherwise inconvenient; be it enacted by the king's most excel-
lent majesty, by and with the advice and consent of the lords and commons in this
present parliament assembled, and by the authority of the same, that the said act,
intituled, 'An Act for disabling all Persons in Holy Orders to exercise any
Temporal Jurisdiction or Authority,' and every clause, matter, and thing therein
contained, shall be and is hereby from henceforth repealed, annulled, and made
void, to all intents and purposes whatsoever."

(1) *To implore the mercy of God*:—
"The form of prayer for this solemnity,
and also for that of the 29th of May, were
of a different complexion in the reign of
King Charles 2, from what they are now.
Of which, the reason is said to have been
this: the parliament, and other leading men,
who called home King Charles 2, (many
of whom had been concerned in opposing
his father's measures,) would not be called
traitors; and required that a distinction
should be made between the commence-
ment of the war and the conclusion of it:
they would not suffer the first opposition
made to the measures of that unhappy prince
to be styled rebellion, notwithstanding that
they disapproved of the abolition of the regal
government which ensued.

"And accordingly, the offices for these two
solemnities were drawn up without any re-
flection on the first authors or promoters of

the opposition; and, in general, breathe more
a spirit of piety than of party, of humili-
ation than of revenge; and, throughout, are
modest, grave, decent, sensible, and devout.

"King James 2 altered these forms, and
King William did not venture to reduce them
to their primitive state; and so they have
continued, with very little variation, to this
day." 2 Burn's E. L. by Phillimore, 322.

(2) Expired.

(3) Ibid.

(4) Ibid.

(5) *Papist*:—In *Ireland v. Smith*, (2
Brownl. 166,) it was adjudged, that to say
of a subject, "He is a papist," was not ac-
tionable; but Mr. Justice *Winch* said that,
"if a man call a bishop, or another man who
is trusted with the government of the church
and ecclesiastical causes, 'a papist,' that he
thought the action lay, otherwise not." Vide
etiam *Kingston & Hill's case*, Godb. 147.

STAT. 13 CAR.
2, c. 9.

IX. STAT. 13 CAROLI 2, c. 9 (1). A.D. 1661.

"An Act for the establishing Articles and Orders for the regulating and better government of His Majesty's Navies, Ships of War, and Forces by Sea."

[That the Lord's day be observed, according to law: and that Officers at sea cause the Common Prayer to be read.]

STAT. 13 CAR.
2, c. 11.

X. STAT. 13 CAROLI 2, c. 11. A.D. 1661.

"An Act for confirming of three Acts therein mentioned."

Anniversary
thanksgiving.
12 Car. 2,
c. 14.

" And one other act, intituled, 'An Act for a perpetual anniversary Thanksgiving on the Twenty-ninth Day of May,' and all and every the clauses sentences, and articles in them and every of them contained, shall be and hereby are ratified, and confirmed, and enacted, and declared, to have the full force and strength of acts of parliament, according to the tenour and purport thereof; and so shall be adjudged, deemed, and taken to all intents and purposes whatsoever, and as if the same had been made, declared, and enacted by authority of this present parliament."

STAT. 13 CAR.
2, c. 12.

XI. STAT. 13 CAROLI 2, c. 12. A.D. 1661.

"An Act for Explanation of a Clause contained in an Act of Parliament made in the seventeenth Year of the late King Charles, intituled, 'An Act for Repeal of a Branch of a Statute Primo Elizabethæ, concerning Commissioners for Causes Ecclesiastical.'"

16 Car. 1,
c. 11.

"Whereas in an act of parliament made in the seventeenth year of the late King Charles, intituled, 'An Act for Repeal of a Branch of a Statute *Primo Elizabethæ*, concerning Commissioners for Causes Ecclesiastical,' it is (amongst other things) enacted, that no archbishop, bishop, nor vicar-general, nor any chancellor nor commissary of any archbishop, bishop, or vicar-general, nor any ordinary whatsoever, nor any other spiritual or ecclesiastical judge, officer, or minister of justice, nor any other person or persons whatsoever, exercising spiritual or ecclesiastical power, authority, or jurisdiction, by any grant, licence, or commission of the king's majesty, his heirs or successors, or by any power or authority derived from the king, his heirs or successors, or otherwise, shall (from and after the first day of August, which then should be in the year of our Lord God one thousand six hundred forty-one,) award, impose, or inflict any pain, penalty, fine, amerciaement, imprisonment, or other corporal punishment, upon any of the king's subjects, for any contempt, misdemeanour, crime, offence, matter, or thing whatsoever, belonging to spiritual or ecclesiastical cognizance or jurisdiction; whereupon *some doubt hath been made* (2), that all ordinary power of coercion and proceedings in causes ecclesiastical were taken away, whereby the ordinary course of justice in causes ecclesiastical hath been obstructed: be it therefore declared and enacted by the king's most excellent majesty, by and with the advice and consent of the lords and commons in this present parliament assembled, and by the authority thereof, that neither the said act, nor anything therein contained, doth or shall take away any ordinary power or authority from any of the said archbishops,

(1) Repealed by Stat. 22 Geo. 2, c. 33, s. 1.

(2) *Some doubt hath been made*:—Fuller, (Church Hist. 1640, p. 82,) commenting upon the passing of that act, says, "that Mr. Pim, triumphed at this success, crying out, *Digitus Dei*, (the finger of God,) that the bishops should so supinely suffer themselves to be surprised in their power." But it appears by the same writer, and in the same paragraph, that the bishops were aware of the interpretation that would be put upon it, to the prejudice of the ecclesiastical jurisdiction; because "a proviso (as he says) was

made in the House of Lords, that the general words in this bill should extend only to the High Commission court, and not reach other ecclesiastical jurisdiction." Which, probably, explains the following entry upon the Journal of the Lords, at a free conference with the Commons upon this bill. "Next, was read the alterations and amendments concerning the bill touching the High Commission court. The first clause, in the proviso added thereunto, is not admitted;" which seems to have been this very proviso, that the Commons would not admit.

bishops, or any other person or persons named as aforesaid, but that they and every of them exercising ecclesiastical jurisdiction, may proceed, determine, sentence, execute, and exercise all manner of ecclesiastical jurisdiction, and all censures and coercions appertaining and belonging to the same before the making of the act before recited, in all causes and matters belonging to ecclesiastical jurisdiction, according to the king's majesty's ecclesiastical laws used and practised in this realm, in as ample manner and form as they did and might lawfully have done before the making of the said act.

"II. And be it further enacted by the authority aforesaid, that the afore recited act of *decimo septimo Caroli*, and all the matters and clauses therein contained, (excepting what concerns the High Commission court, or the new erection of some such like court by commission,) shall be and is hereby repealed, to all intents and purposes whatsoever; any thing, clause, or sentence in the said act contained to the contrary notwithstanding.

"III. Provided always, and it is hereby enacted, that neither this act, nor any thing herein contained, shall extend or be construed to revive or give force to the said branch of the said statute made in the said first year of the reign of the said late Queen Elizabeth, mentioned in the said act of parliament made in the said seventeenth year of the reign of the said King Charles, but that the said branch of the said statute made in the said first year of the reign of the said late Queen Elizabeth, shall stand and be unrepealed in such sort as if this act had never been made.

"IV. Provided also, and it is hereby further enacted, that it shall not be lawful for any archbishop, bishop, vicar-general, chancellor, commissary, or any other spiritual or ecclesiastical judge, officer, or minister, or any other person having or exercising spiritual or ecclesiastical jurisdiction, to tender or administer unto any person whatsoever the oath usually called the oath *ex officio*, or any other oath whereby such person to whom the same is tendered or administered may be charged or compelled to confess (1), or accuse, or to purge him or herself (2) of any criminal

STAT. 13 CAR. 2, c. 12.

The ordinary power of archbishops, &c. not taken away.

May use ecclesiastical jurisdiction.

The Stat. 16 Car. 1, c. 11, repealed as to all, except what concerns the High Commission court.

Proviso.

1 Eliz. c. 1, s. 18.

Proviso touching the oath *ex officio*. 1 Mod. 185. 12 Rep. 26.

(1) *Compelled to confess*.—So that any person might still have offered himself voluntarily, for the clearing of his innocence, to such purgation as is described in this statute.

(2) *Purge him or herself*.—The purgation hereby taken away, (if not, virtually, before, by Stat. 16 Car. 1, c. 11, as against the oath *ex officio*.) was exercised in the following method. When any man or woman lay under a common suspicion or public fame of incontinence, or other vice; though there was not proof plain and full enough to convict them, yet were they liable to be summoned before the spiritual judge, and to be charged with the crime. If they confessed, they had a certain penance immediately enjoined them; if they denied, the judge enjoined them purgation, to be performed on a day appointed, by their own oath, and by the oaths of five or six neighbours, (more or less, according to the nature of the crime, and the condition of the person,) and those to be of good fame and sober conversation. The oath of the person suspected, was, to declare his own innocence; and the oath of the compurgators, that they believed what he swore was true. This was the rule of the ancient canon law; which, (after the oath of the person,) speaking of the compurgators, says, "*Deinde compurgatores super sancta Dei Evangelia jurabunt, quod ipsi credunt eum verum jurasse.*" Extra. l. 5, t. 34, c. 5. And from thence, it is thus described in the *Reformatio Legum*: (f. 37 (a):) "*Hæc formula purgationis esto; defensor se crimen non admisisse jurato; defensoris li-*

beratores, (vel, ut vulgò dicunt, compurgatores,) credere se verum ejus juramentum fuisse, juramento et ipsi affirmanto."

If the person came at the day appointed, together with his neighbours, and purged himself according to the rules of the church; he was dismissed, and declared innocent, and restored to his good name, "*Dominus dimisit ab officio, et declaravit ipsum innocentem fore, ac eundem restituit pristinae famæ*" (as the entry is); but he was, at the same time, enjoined to avoid the cause of suspicion, or the ground of the fame, for the time to come. But if he appeared not, he was declared contumacious, and proceeded against as such; or if he did appear, and could not perform purgation, (*i. e.*, either would not swear to his own innocence, or could not bring others to swear that they believed he swore true,) such failure was taken for conviction, and the judge proceeded to enjoin penance, in the same manner, as if the person had been duly convicted, by his own confession, or by the testimony of others.

Examples of this proceeding before the Reformation, are without number, in the ancient acts of visitation; and, though, since the Reformation, the accounts of what passed in visitations are either wholly omitted, or but imperfectly entered; yet, that the exercise of the same wholesome discipline continued, appears from nine instances thereof in a visitation of Archbishop Parker, (Reg. Park. 312 (b), &c.,) and no doubt, but many more may be found in the acts of particular registries and courts. "And, (what-

STAT. 13 CAR.
2, c. 12.

Proviso not to
give any other
jurisdiction to
any archbishop
&c. than they
had by law
before the year
1639.

The king's su-
premacy in
ecclesiastical
matters.

Canons eccle-
siastical.

matter or thing, whereby he or she may be liable to any censure or punishment; any thing in this statute, or any other law, custom, or usage heretofore to the contrary hereof in any wise notwithstanding.

"V. Provided always, that this act, or any thing therein contained, shall not extend or be construed to extend to give unto any archbishop, bishop, or any other spiritual or ecclesiastical judge, officer, or other person or persons aforesaid, any power or authority to exercise, execute, inflict, or determine any ecclesiastical jurisdiction, censure, or coercion, which they might not by law have done before the year of our Lord one thousand six hundred thirty-nine; nor to abridge or diminish the king's majesty's supremacy in ecclesiastical matters and affairs, nor to confirm the *canons made in the year one thousand six hundred and forty* (1), nor

ever may be said or suggested against it,) where the life and conversation of any person has drawn upon him such a strong and general presumption of guilt, that, though he swears himself innocent, six or seven persons cannot be found in a whole parish, who believe he swears true; such an one seems to be fully ripe for the shame and scandal of public penance." Gibson's Codex, 1042. Notwithstanding this opinion of Dr. Gibson's, the existence of such a law would be at variance with the first principles of the English constitution, and opposed to modern notions of common sense.

(1) *Canons made in the year one thousand six hundred and forty*:—These canons were confirmed by the king, (June 30,) in the sixteenth year of his reign, and may be seen at large in the printed collection of articles, injunctions, &c. Several of them are of such a nature, as could give no reasonable offence to the temporal legislature; relating only to the discipline of the church and clergy, and to the regulation of the ecclesiastical courts. But others there are, which concern the regal power, the civil establishment of the church of England, the state of popery and presbytery, and the like; and of these, the resolution of the two houses in the next parliament applies, "that they contain in them many matters contrary to the king's prerogative, to the fundamental laws and liberties of the realm, to the right of parliaments, to the property and liberty of the subjects, and matters tending to sedition, and of a dangerous consequence." 4 Rushworth, 112. And it cannot be doubted, but that it was in consequence of such objectionable topics, that the parliament, under King Charles 2, in framing the present clause, guarded so diligently against the suspicion, of giving credit or authority to the Canons of 1640.

In the convocation of 1661, a debate occurred, "*de et super revisione canonum sive constitutionum in anno Domini 1640 edit*"; *quinam eorundem fuerunt aut sunt debite et idonee observandi et utiandi*;" but it does not appear, that any further progress was made in that design, than the referring it to two committees of bishops.

The modern period of canonical law is, to the generality of persons, very little known; it has therefore been deemed expedient to insert the following observations, written by my learned friend, Professor J. T. Graves, (vide *Encyclopædia Metropolitana*, article *LAW*,) and which are very illustrative of the subject under consideration.

"In the modern period of canonical law, less alteration and advance have been made, than in the ancient or the middle. While the ancient is chiefly signalized by the canons of the Greek church, and the middle by the formation of the *Corpus Juris Canonici*, the modern, commencing after the council of Pisa, in 1409, is remarkable chiefly for a few councils, among which the councils of Basil and Trent are the most important, for some bulls and briefs of the Popes, the transactions and concordats between sovereigns and the see of Rome, the sentences and ordinances of the various congregations of the cardinals at Rome, and the decisions of the Rota, the supreme tribunal of justice in Rome, both for spiritual and temporal concerns.

"All these are merely continuations of sources of canon law, which existed in more ancient times; and no one can presume to call himself an accomplished canonist, who rests contented with the extracts of the *Corpus Juris Canonici*, instead of resorting to the authorities whence they are taken. Of these, the most important are the transactions of councils. The earliest collection of councils is that of Merlin. (Paris, 1523.) The collection best known in this country, is that of Labbe and Cossart, with the apparatus of Jacobatius. (18 vols. fol. Paris, 1672.) More complete is the collection of Coleti, with the supplement of Mansi. (31 vols. fol. Venice and Lucca, 1728-52.) The most copious collection of all, is that of Mansi and others, printed by Zatta: (31 vols. fol. Florence and Venice, 1759-98:) the 31st volume of this collection, stops short some time before the middle of the fifteenth century. Chronological and alphabetical lists of councils, abridged from the excellent *L'Art de vérifier les Dates*, are given in the useful little book of Sir Harris Nicolas, entitled *Chronology of History*. Among the councils held since the council of Pisa, in 1409, are that of Constance, 1414, and that of Basle, 1431. Of much greater consequence than these, is the famous council of Trent, 1545. Its history has been often written; it will be sufficient here to name, the celebrated and opposing histories of Fra Paolo Sarpi, and Sforzia Pallavicini. The translation into French of the former, by Le Courayer, is more valued than the original. The best edition is that of Paris, 1751, 3 vols. 4to. "The classical purity," says Charles Butler, 'and severe simplicity of the style in which the decrees of the council are expressed, are universally ad-

any of them, nor any other ecclesiastical laws or canons not formerly confirmed, STAT. 13 CAR.
2, c. 12.

mired, and are greatly superior to the language of any part of Justinian's law.' The best edition of the *Canones et Decreta Concilii Tridentini*, is that of Rome, 1834. It has been reprinted, (Leipz. 1837,) as a supplement to the *Corpus Juris Canonici* of Richter. A preceding edition, of Augsburg, 1781, contains, in addition, the declarations of the *Congregatio Cardinalium, Concilii Tridentini interpretum*, and the decisions of the *Rota Romana*. There have been several collections of the bulls of Popes: the best known is the *Bullarium Magnum*, published at Luxembourg, 1727—58, in 19 vols. fol. We know of no separate and complete collection of Concordats, unless Münch's collection, published at Leipzig in 1830, may be regarded as such; but for the names of treatises relating to some of the modern Concordats, we would refer the reader to the *Bibliothèque de Droit of Camus*, which is particularly copious in its information with respect to French works on ecclesiastical and canon law.

"Into the detailed examination of the particular canon law of the several nations of Christendom, we are unable here to enter. Some of the ecclesiastical laws of Rome, are not intended for general adoption, but are designed only for the dominions of the papacy; others, intended to be general, have been by some countries rejected, or only partially received. The struggles which have been made in various Roman catholic countries, for the liberties and independence of their respective national churches, fill some interesting chapters in ecclesiastical history. Canon law verges not only upon ecclesiastical history, but upon dogmatic theology. It prescribes articles of faith as laws; it looks upon offences rather as sins than as crimes; and it holds forth punishments *pro salute animæ*. Of those branches of the Roman canon law, which are intended to be general, some parts relate to matters of faith, some merely to matters of practice and discipline. The former are generally received by Roman catholic countries, whereas the reception of the latter is variable and limited. If to give an account of the reception throughout Europe of the Roman canon law, exceed our limits, still more is it inconsistent with the plan of so slight a sketch as the present, to delineate the internal legislation of each national church. We must confine ourselves to a few words respecting the state of our own canonical law.

"The canon law of England may be classed under two heads, foreign and domestic.

"The foreign canon law of England, consists of so much of the general canon law of Rome, as has become incorporated into the English system by usage, and by its reception in particular cases. Its efficacy rests upon the same foundation with the efficacy of those portions of the imperial civil law, which have been adopted by usage in the court of Admiralty. For example, by such usage and recognition, there are canons of the fourth council of Lateran, which have

become part of the canon law of the land. Vide *Alston v. Atlay*, 7 A. & E. 289.

"The domestic canon law may be divided into the canons anterior to Stat. 25 Hen. 8, c. 19, and the canons subsequent to that statute. We omit, as antiquated, the Anglo-Saxon canons.

"The canons anterior to Stat. 25 Hen. 8, c. 19, consist of legatine and provincial constitutions.

"The legatine constitutions were made in national councils held within this realm, in the time of Otho, legate of Gregory the Ninth, 1220, and of Othobon, (afterwards Pope Adrian the Fifth,) who was legate here under Clement the Fourth, in 1268. They were edited, with a Gloss by John de Athona, canon of Lincoln, about 1290. They extend to both provinces, Canterbury and York.

"The provincial constitutions were made in convocations of the clergy of the province of Canterbury, in the times of various archbishops, commencing with Stephen Langton, under Henry 3, and ending with Henry Chichele, under Henry 5. These were collected, and adorned with the Gloss of William Lyndwood, official of the court of Canterbury, and afterwards bishop of St. David's, in the reign of Henry 5. Although made only for the province of Canterbury, they were received also by the province of York, in convocation, in the year 1463.

"There were other constitutions, of divers prelates, both before and after; but these which have been mentioned, having been introduced to public notice by the two learned canonists above mentioned, have been principally regarded. Vide Burn's E. L. Preface.

"The printed editions of Lyndwood's *Provinciale*, contain also the collection of John de Athona. The latest edition is that of Oxford, 1679.

"By Stat. 25 Hen. 8, c. 19, after the following recital: 'Where divers constitutions, ordinances, and canons, provincial or synodal, which heretofore have been enacted, be thought to be not only much prejudicial to the king's prerogative royal, and repugnant to the laws and statutes of this realm, but also over much onerous to his highness and his subjects;'

"It was enacted, that the said canons, constitutions, and ordinances, provincial and synodal, should be revised by a commission of thirty-two persons, to be appointed by the king; and that such of them as should be disapproved by the majority of the commissioners, upon such review, should from thenceforth be void and of none effect:

"Provided that such canons, constitutions, ordinances, and synodals provincial, being already made, which will not be contrary or repugnant to the laws, statutes, and customs of this realm, nor to the damage or hurt of the king's prerogative royal, shall now still be used and executed as they were afore the making of this act, till such time as they be viewed, searched, or otherwise

STAT. 13 CAR. 2, c. 12. allowed, or enacted by parliament, or by the established laws of the land, as they stood in the year of our Lord one thousand six hundred thirty-nine."

STAT. 13 CAR. 2, St. II. c. 1.

XII. STAT. 13 CAROLI 2, ST. II. c. 1(1). A.D. 1661.

"An Act for the well-governing and regulating of Corporations."

[Magistrates to take and subscribe to certain oaths.]

ordered and determined by the said two-and-thirty persons, or the more part of them, according to the tenor, form, and effect of this present act."

"Upon this, Sir W. *Blackstone* (1 Com. 83,) observes, 'As no such review has yet been perfected, upon this statute now depends the authority of the canon law in England.'

"The words of *Blackstone*, in this passage, are not expressly limited to the domestic canon law of England, although, in a former page, (80,) he expressly rested all the strength of the papal laws in England, (so far as they had not parliamentary sanction,) 'on immemorial usage and custom in some particular cases and some particular courts.' This is probably an example of that studied ambiguity, under which *Blackstone* not unfrequently shelters himself in cases of difficulty; so that he may be quoted on both sides. 'Magno se iudice quisque tuetur.' To us it appears, that the act, according to legal principles of interpretation, extends only to domestic canon law; and we much doubt that the domestic canons used and executed afore the making of the act, and not repugnant to law or prerogative, [in the early history of our constitution, prerogative is often contrasted with law, not as being illegal, but as being beyond or above law,] derived any authority from the act which they would not have possessed from reception and usage, if the act had never been made.

"It is to be observed, that traces still subsist of that ancient jealousy which severed the barristers of Westminster Hall and the advocates of Doctors' Commons. For example, Bishop *Gibson's* legal notions of ecclesiastical jurisdiction, are very different from those of *Blackstone*, who has been accused by Mr. *Bowyer*, in his recent work on the English Constitution, of an Erastian spirit. But Westminster Hall is armed with the power of prohibition, and its doctrines must, therefore, be received as the sounder, when they clash with those which are in vogue near St. Paul's.

"Under a similar act, since repealed, (3 & 4 Edw. 6, c. 11,) the well-known *Reformatio Legum Ecclesiasticarum* was compiled, under the direction of Edward 6, but was not confirmed before his death and the accession of Queen Mary, and so fell to the ground.

"The Stat. 25 Hen. 8, c. 19, was repealed by 1 & 2 P. & M. c. 8, but was revived by 1 Eliz. c. 1, and is now in force.

"With the exception of certain rubrics, [*vide* Cardwell's *Synodalia*,] the Thirty-nine Articles, and some regulations relating to the Common Prayer, which, though made in convocation, have been incorporated into the statute law by the several Acts of Unifor-

mity, the only canons subsequent to the 25th year of Henry 8, affecting generally the law of the ecclesiastical courts, and the rights, order, and discipline of the church, were those which were passed in the convocation of the province of Canterbury, under James 1, in the year 1603. These canons have never received parliamentary authority, but they were ratified by the king for himself, his heirs and successors, and about the year 1605, were received and passed in the province of York.

"With respect to the Canons of 1603, it was held by Lord *Hardwicke*, in the case of *Middleton v. Croft*, (Str. 1056,) that they do not, *proprio vigore*, bind the laity even in ecclesiastical matters. How far they are binding upon ecclesiastical persons, as the clergy, and *quasi*-ecclesiastical persons, as churchwardens, appears to be not completely settled. Here, again, Sir W. *Blackstone* speaks with studied ambiguity: 'It has been solemnly adjudged,' says he, (1 Com. 83,) 'upon the principles of the law and the constitution, that where they are not merely declaratory of the ancient common law, but are introductory of new regulations, they do not bind the laity, whatever regard the clergy may think proper to pay them.'

"We believe the fact to be, that the ecclesiastical courts look to the Canons of 1603—canons far more suited to the circumstances of the present times, than the older canons, which were made before the Reformation—as their rule in cases to which they are applicable, and that they are constantly cited in those courts. What length of usage will sanction the practice of a court—how far the constant adoption of a rule not opposed to any definite authority would be valid, though its origin might be traced to an unparliamentary canon of no very ancient date—these are questions which, though not unworthy of discussion, we shall not now stop to discuss. Many of the doctrines and practices which now prevail in our courts of common law and equity, might easily be shown to be more recent than 1603, and to have no act of parliament for their warrant.

"Among the more important repertoires and treatises of English ecclesiastical law, we would mention, (in addition to *Lyndwood*,) *Burn's Ecclesiastical Law*; (of which a valuable edition, by Dr. *Phillimore*, appeared, London, 1842;) *Gibson's Codex*; (2nd edit. Oxford, 1761;) and *Wilkins' Concilia Magnæ Britanniae et Hiberniae*, (London, 1737.) The last-named work has recently become expensive, and is not always easily to be met with."

(1) *Vide* Stat. 5 Geo. 1, c. 6. Stat. 16 Geo. 2, c. 30. Stat. 9 Geo. 4, c. 17. Stat. 1 Gul. 4, c. 26. Stat. 5 & 6 Gul. 4, c. 28.

XIII. STAT. 13 & 14 CAROLI 2, c. 1(1). A.D. 1662.

STAT. 13 & 14
CAR. 2, c. 1.

"An Act for preventing the Mischiefs and Dangers that may arise by certain Persons called Quakers, and others, refusing to take lawful Oaths."

XIV. STAT. 13 & 14 CAROLI 2, c. 4. A.D. 1662.

STAT. 13 & 14
CAR. 2, c. 4.

"An Act for the Uniformity of public Prayers, and Administration of Sacraments, and other Rites and Ceremonies; and for establishing the Form of making, ordaining, and consecrating Bishops, Priests, and Deacons, in the Church of England."

"Whereas in the first year of the late Queen Elizabeth, there was one uniform order of common service and prayer, and of the administration of sacraments, rites, and ceremonies, in the church of England, (agreeable to the word of God, and usage of the primitive church,) compiled by the reverend bishops and clergy, set forth in one book, intituled, 'The Book of Common Prayer, and Administration of Sacraments, and other Rites and Ceremonies in the Church of England,' and enjoined to be used by act of parliament, holden in the said first year of the said late queen, intituled, 'An Act for the Uniformity of Common Prayer and Service in the Church, and Administration of the Sacraments,' very comfortable to all good people desirous to live in Christian conversation, and most profitable to the estate of this realm; upon the which the mercy, favour, and blessing of Almighty God is in no wise so readily and plentifully poured, as by common prayers, due using of the sacraments, and often preaching of the gospel, with devotion of the hearers; and yet this notwithstanding, a great number of people in divers parts of this realm, following their own sensuality, and living without knowledge, and due fear of God, do wilfully and schismatically abstain and refuse to come to their parish churches, and other public places where common prayer, administration of the sacraments, and preaching of the word of God is used upon the Sundays and other days ordained and appointed to be kept and observed as holy-days: and whereas by the great and scandalous neglect of ministers in using the said order or liturgy so set forth and enjoined as aforesaid, great mischiefs and inconveniences, during the times of the late unhappy troubles, have arisen and grown, and many people have been led into factions and schisms, to the great decay and scandal of the reformed religion of the church of England, and to the hazard of many souls: for prevention whereof in time to come, for settling the peace of the church, and for allaying the present distempers which the indisposition of the time hath contracted, the king's majesty, according to his *declaration* (2) of the five and twentieth of October, one thousand six hundred and sixty, granted *his commission* (3) under the great seal of England to several bishops and other divines, to review the Book of Common Prayer, and to prepare such *alterations and additions* (4) as they thought fit to offer: and afterwards the convoca-

This act
enforced by
5 Ann. c. 5,
s. 1.

1 Eliz. c. 2.

The king's declaration and commission for reviewing the Book of Common Prayer, and alterations to be propounded therein.

(1) *Vide* Stat. 10 Ann. c. 2. Stat. 5 Geo. 1, c. 6. Stat. 52 Geo. 3, c. 155. Stat. 9 Geo. 4, c. 17. Stat. 9 Geo. 4, c. 32. Stat. 1 Gul. 4, c. 26. Stat. 3 & 4 Gul. 4, c. 82. Stat. 5 & 6 Gul. 4, c. 28. Stat. 1 & 2 Vict. c. 77.

(2) *Declaration*.—Which recites the discourses that the king had in Holland with several of the principal asserters of the presbyterian opinion, who were sent to him from England; together with the zeal they then discovered for the peace of the church and state; being (as they said) neither enemies, as they had been given out to be, of episcopacy or liturgy; but modestly desiring such alterations in either, as, without shaking foundations, might best allay the present distempers.

(3) *His commission*.—"Which bore date

March 25th, 1661, and was directed to twelve bishops, and twelve presbyterian divines; with nine assistants on each side, to supply the places of the principals, when they should be occasionally absent. The commission hath been printed at large, (Nicols Pr. Numb. 2,) in virtue of which, the commissioners met frequently at the Savoy, and disputations were held, but nothing concluded," Gibson's Codex, 275.

(4) *Alterations and additions*.—"Their progress therein, and the several steps of it, will best appear by the acts of convocation, now printed: from the 25th session, (November 21, 1661,) in which they received the king's letter of direction to enter upon the review; to the 48th session, (December 20, 1661,) in which the bishops and clergy subscribed the book." Ibid.

STAT. 13 & 14
CAR. 2, c. 4.

tions of both the provinces of Canterbury and York, being by his majesty called and assembled, and now sitting, his majesty hath been pleased to authorize and require the presidents of the said convocations, and other the bishops and clergy of the same, to review the said Book of Common Prayer, and the Book of the Form and Manner of the making and consecrating of Bishops, Priests, and Deacons : and that after mature consideration they should make such additions and alterations in the said books respectively, as to them should seem meet and convenient ; and should exhibit and present the same to his majesty in writing for his further allowance or confirmation : since which time, upon full and mature deliberation, they the said presidents, bishops, and clergy, of both provinces, have accordingly reviewed the said books, and have made some alterations which they think fit to be inserted to the same ; and some additional prayers to the said Book of Common Prayer, to be used upon proper and emergent occasions ; and have exhibited and presented the same unto his majesty in writing, in one book, intituled, ‘The Book of Common Prayer and Administration of the Sacraments, and other Rites and Ceremonies of the Church, according to the use of the Church of England ; together with the Psalter or Psalms of David, pointed as they are to be sung or said in Churches ; and the Form and Manner of making, ordaining, and consecrating, of Bishops, Priests, and Deacons :’ all which his majesty having duly considered, hath fully approved and allowed the same, and recommended to this present parliament, that the said Books of Common Prayer, and of the Form of Ordination and Consecration of Bishops, Priests, and Deacons, with the alterations and additions which have been so made and presented to his majesty by the said convocations, *be the book* (1) which shall be appointed to be used by all that officiate in all cathedral and collegiate churches and chapels, and in all chapels of colleges and halls in both the universities, and the colleges of Eton and Winchester, and in all parish churches and chapels within the kingdom of England, dominion of Wales, and town of Berwick upon Tweed, and by all that make or consecrate bishops, priests, or deacons, in any of the said places, under such sanctions and penalties as the houses of parliament shall think fit.

The peace and honour of religion much advanced by uniform agreement in the public worship of God.

“II. Now in regard that nothing conduced more to the settling of the peace of this nation (which is desired of all good men), nor to the honour of our religion, and the propagation thereof, than an universal agreement in the public worship of Almighty God ; and to the intent that every person within this realm may certainly know the rule to which he is to conform in public worship, and administration of sacraments, and other rites and ceremonies of the Church of England, and the manner how and by whom bishops, priests, and deacons, are and ought to be made, ordained, and consecrated ; be it enacted by the king’s most excellent majesty, by the advice and with the consent of the lords spiritual and temporal, and of the commons, in this present parliament assembled, and by the authority of the same, that all and singular ministers in any cathedral, collegiate or parish church or chapel, or other place of public worship within this realm of England, dominion of Wales, and town of Berwick upon Tweed, shall be bound to say and use the morning prayer, evening prayer, celebration and administration of both the sacraments, and all other the public and common prayer, in such order and form as is mentioned in the said book annexed and joined to this present act, and intituled, ‘The Book of Common Prayer and Administration of the Sacraments, and other Rites and Ceremonies of the Church, according to the use of the Church of England ; together with the Psalter or Psalms of David, pointed as they are to be sung or said in Churches ; and the Form or Manner of making, ordaining, and consecrating of Bishops, Priests, and Deacons :’ and that the morning and evening prayers therein contained shall, upon every Lord’s day, and upon all other days and occasions, and at the times therein appointed, be openly and solemnly read by all and every minister or curate, in every church, chapel, or other place of public worship, within this realm of England and places aforesaid.

The Book of Common Prayer shall be used.

(1) *Be the book*:—“Before the king transmitted the book of the convocation, to the House of Lords, they had received

another from the Commons: but the Lords followed the book from the king. Journ. Proc. Mar. 13, 17.” Gibson’s Codex, 276.

“III. And to the end that uniformity in the public worship of God (which is so much desired) may be speedily effected, be it further enacted by the authority aforesaid, that every parson, vicar, or other minister whatsoever, who now hath and enjoyeth any ecclesiastical benefice or promotion within this realm of England or places aforesaid, shall, in the church, chapel, or place of public worship, belonging to his said benefice or promotion, upon some Lord’s day before the feast of St. Bartholomew which shall be in the year of our Lord God one thousand six hundred sixty and two, openly, publicly, and solemnly read the morning and evening prayer appointed to be read by and according to the said Book of Common Prayer, at the times thereby appointed; and after such reading thereof, shall openly and publicly, before the congregation there assembled, declare his unfeigned assent and consent to the use of all things in the said book contained and prescribed, in these words, and no other:

“IV. ‘I, A. B., do here declare my unfeigned assent and consent to all and every thing contained and prescribed in and by the book, intituled, The Book of Common Prayer and Administration of the Sacraments, and other Rites and Ceremonies of the Church, according to the use of the Church of England; together with the Psalter or Psalms of David, pointed as they are to be sung or said in Churches; and the Form or Manner of making, ordaining, and consecrating of Bishops, Priests, and Deacons.’

“V. And that all and every such person, who shall (without some lawful impediment to be allowed and approved of by the ordinary of the place) neglect or refuse (1) to do the same within the time aforesaid, (or in case of such impediment, within one month after such impediment removed,) shall *ipso facto* be deprived of all his spiritual promotions: and that from thenceforth it shall be lawful to and for all patrons and donors of all and singular the said spiritual promotions, or of any of them, according to their respective rights and titles, to present or collate to the same, as though the person or persons so offending or neglecting were dead.

“VI. And be it further enacted by the authority aforesaid, that every person who shall hereafter be presented or collated, or put into any ecclesiastical benefice or promotion (2) within this realm of England and places aforesaid, shall, in the church, chapel, or place of public worship belonging to his said benefice or promotion, within two months next after that he shall be in the actual possession of the said ecclesiastical benefice or promotion, upon some Lord’s day, openly, publicly, and solemnly read the morning and evening prayers appointed to be read by and according to the said Book of Common Prayer, at the times thereby appointed; and after such reading thereof shall openly and publicly, before the congregation there assembled, declare his unfeigned assent and consent to the use of all things therein contained and prescribed, according to the form before appointed: and that all and every such person who shall (without some lawful impediment (3) to be allowed and approved by the ordinary of the place) neglect or refuse to do the same within the time aforesaid, (or in case of such impediment, within one month after such impediment removed,) shall, *ipso facto*, be deprived of all his said ecclesiastical benefices and promotions: and that from thenceforth it shall and may be lawful to and for all patrons and donors of all and singular the said ecclesiastical benefices and promotions, or any of them, according to their respective rights and titles, to present or collate to the same, as though the person or persons so offending or neglecting were dead.

“VII. And be it further enacted by the authority aforesaid, that in all places where the proper incumbent of any parsonage or vicarage, or benefice with cure,

STAT. 13 & 14
CAR. 2, c. 4.

All parsons, vicars, and ministers, to read and declare their assent to use the same.

The penalty for refusing.
23 Geo. 2, c. 23.

Every parson shall read the Common Prayer, and declare his assent thereto.

The penalty for not so doing.
2 Show. 53.

Incumbents of livings, keep ing curates,

(1) *Every such person, who shall . . . neglect or refuse*:—Parsons need not prove their reading of the articles, &c. until something appears to the contrary. *Powel v. Milbank*, Black. (Sir W.), 852. Possession of a benefice for a lengthened period is *prima facie* evidence of a regular induction, and of reading the Thirty-nine Articles. *Doe d. Kerby*

v. *Carter*, R. & M. 237.

(2) *Benefice or promotion*:—It seems, that donatives with cure of souls are within the Acts of Uniformity. *Powel v. Milbank*, Black. (Sir W.), 852. *Carver v. Pinkney*, 3 Lev. 82.

(3) *Impediment*:—*Vide* Stat. 23 Geo. 2, c. 28, s. 2.

STAT. 13 & 14
CAR. 2, c. 4.

shall read
the same
once every
month.

Penalty and
manner of
conviction for
not doing it.

Deans, &c.
shall subscribe
the declaration.
15 Car. 2, c. 6.
See 12 Ann.
St. II. c. 7;
and 2 Geo. 2,
c. 31, s. 8.

The declara-
tion.
In part abo-
lished by
1 G. & M.
Sess. 1, c. 8,
s. 11.

The penalty
for not sub-
scribing.

doth reside on his living and keep a curate, the incumbent himself in person (not having some lawful impediment to be allowed by the ordinary of the place) shall once (at the least) in every month openly and publicly read the common prayers and service in and by the said book prescribed, and (if there be occasion) administer each of the sacraments and other rites of the church, in the parish church or chapel, of or belonging to the same parsonage, vicarage, or benefice, in such order, manner, and form, as in and by the said book is appointed; upon pain to forfeit the sum of five pounds to the use of the poor of the parish for every offence, upon conviction by confession, or proof of two credible witnesses, upon oath, before two justices of the peace of the county, city, or town corporate, where the offence shall be committed, (which oath the said justices are hereby empowered to administer,) and in default of payment within ten days, to be levied by distress and sale of the goods and chattels of the offender, by the warrant of the said justices, by the churchwardens, or overseers of the poor of the said parish, rendering the surplusage to the party.

“VIII. And be it further enacted by the authority aforesaid, that every dean, canon, and prebendary of every cathedral or collegiate church, and all masters and other heads, fellows, chaplains, and tutors of or in any college, hall, house of learning, or hospital, and every public professor and reader in either of the universities, and in every college elsewhere, and every parson, vicar, curate, lecturer, and every other person in holy orders, and every schoolmaster keeping any public or private school, and every person instructing or teaching any youth in any house or private family as a tutor or schoolmaster, who upon the first day of May, which shall be in the year of our Lord God one thousand six hundred sixty-two, or at any time thereafter, shall be incumbent or have possession of any deanery, canonry, prebend, mastership, headship, fellowship, professor's place or reader's place, parsonage, vicarage, or any other ecclesiastical dignity or promotion, or of any curate's place, lecture, or school, or shall instruct or teach any youth as tutor or schoolmaster, shall, before the feast day of St. Bartholomew, which shall be in the year of our Lord one thousand six hundred sixty-two, or at or before his or their respective admission to be incumbent or have possession aforesaid, subscribe the declaration or acknowledgment following, *scilicet*:

“IX. ‘I, A. B., do declare, that it is not lawful, upon any pretence whatsoever, to take arms against the king; and that I do abhor that traitorous position of taking arms by his authority against his person, or against those that are commissioned by him; and that I will conform to the liturgy of the church of England, as is now by law established: and I do declare (1) that I do hold, there lies no obligation upon me or on any other person, from the oath commonly called, The solemn League and Covenant, to endeavour any change or alteration of government either in church or state; and that the same was in itself an unlawful oath, and imposed upon the subjects of this realm against the known laws and liberties of this kingdom.’

“X. Which said declaration and acknowledgment shall be subscribed by every of the said masters and other heads, fellows, chaplains, and tutors, of or in any college, hall, or house of learning, and by every public professor and reader in either of the universities, before the vice-chancellor of the respective universities for the time being, or his deputy: and the said declaration or acknowledgment shall be subscribed before the respective archbishop, bishop, or ordinary of the diocese, by every other person hereby enjoined to subscribe the same; upon pain that all and every of the persons aforesaid failing in such subscription, shall lose and forfeit such respective deanery, canonry, prebend, mastership, headship, fellowship, professor's place, reader's place, parsonage, vicarage, ecclesiastical dignity or promotion, curate's place, lecture, and school, and shall be utterly disabled and (*ipso facto*) deprived of the same; and that every such respective deanery, canonry, prebend, mastership, headship, fellowship, professor's place, reader's place, parson-

(1) *And I do declare*:—There was a long debate in the House of Lords, whether ministers should be obliged to make any decla-

ration against the covenant. Journ. Proc. Apr. 5.

age, vicarage, ecclesiastical dignity or promotion, curate's place, lecture, and school, shall be void, as if such person so failing were naturally dead.

STAT. 13 & 14
CAR. 2, c. 4.

“XI. And if any schoolmaster or other person, instructing or teaching youth in any private house or family as a tutor or schoolmaster, shall instruct or teach any youth as a tutor or schoolmaster, before *licence* (1) obtained from his respective archbishop, bishop, or ordinary of the diocese, according to the laws and statutes of this realm, (for which he shall pay twelve pence only,) and before such subscription and acknowledgment made as aforesaid; then every such schoolmaster and other, instructing and teaching as aforesaid, shall, for the first offence, suffer three months' imprisonment without bail or mainprize; and for every second, and other such offence, shall suffer three months' imprisonment without bail or mainprize; and also forfeit to his majesty the sum of *five pounds* (2): and after such subscription made, every such parson, vicar, curate, and lecturer, shall procure a certificate under the hand and seal of the respective archbishop, bishop, or ordinary of the diocese, (who are hereby enjoined and required, upon demand, to make and deliver the same,) and shall publicly and openly read the same, *together with the declaration* (3) or acknowledgment aforesaid, upon some Lord's day within three months then next following, in his parish church where he is to officiate, in the presence of the congregation there assembled, *in the time of divine service* (4), upon pain that every person failing therein shall lose such parsonage, vicarage, or benefice, curate's place, or lecturer's place respectively, and shall be utterly disabled, and *ipso facto* deprived of the same; and that the said parsonage, vicarage, or benefice, curate's place or lecturer's place, shall be void as if he was naturally dead.

Schoolmasters
in private
houses.

“XII. Provided always, that from and after the twenty-fifth day of March, which shall be in the year of our Lord God one thousand six hundred eighty-two, there shall be omitted in the said declaration or acknowledgment so to be subscribed and read, these words following, *scilicet*:

What to be
omitted in the
declaration
after the 25th
of March,
1682.

“And I do declare, that I do hold there lies no obligation on me, or on any other person, from the oath commonly called, The solemn League and Covenant, to endeavour any change or alteration of government either in church or state, and that the same was in itself an unlawful oath, and imposed upon the subjects of this realm against the known laws and liberties of this kingdom.”

“So as none of the persons aforesaid shall from thenceforth be at all obliged to subscribe or read that part of the said declaration or acknowledgment.

“XIII. Provided always, and be it enacted, that from and after the feast of St. Bartholomew, which shall be in the year of our Lord one thousand six hundred sixty and two, no person who is now incumbent, and in possession of any parsonage, vicarage, or benefice, and who is not already in holy orders by episcopal ordination, or shall not before the said feast-day of St. Bartholomew be ordained priest or deacon, according to the form of episcopal ordination, shall have, hold, or

Persons not
ordained ac-
cording to
episcopal or-
dination shall
not hold any
ecclesiastical
promotion, &c

(1) *Licence*.—In *Matthews v. Burdett*, (2 Salk. 672; 3 Ibid. 318,) a prohibition was prayed to the spiritual court to stay proceedings against one who “taught school” without licence from the bishop; and in order to acquire such writ, it was alleged, that the office of a schoolmaster is a lay office, and that, where the common or statute law gives a remedy *in foro seculari*, whether the matter be temporal or spiritual, the cognizance of that matter belongs to the king's temporal courts only, unless the jurisdiction of the spiritual court be saved by that statute which gives the penalty; for, otherwise, one might be twice punished for the same thing. On the other hand, it was alleged, that by the ancient canons received in England, the bishop is to superintend the education of youth; that this was confirmed by the several statutes which required a licence to be taken from the ordinary, and that the Toleration Act gave no relief: but the cause was not finally determined.

(2) *Five pounds*.—This does not deprive the ecclesiastical courts of their jurisdiction, when they *exclusively* proceed according to the canon law. Ibid. *Vide antè* 441, n. (1).

(3) *Together with the declaration*.—“A doubt hath been raised, whether the design of the act was, that the clerk should only read the bishop's certificate to the congregation, in testimony of his having subscribed the declaration before him; or whether, after having read the certificate, he should not also make the same declaration again, in form, before the congregation; which point hath never been judicially determined; but the latter opinion is not only more safe, but hath also been thought more agreeable to the tenour of the act, than the bare reading of the certificate.” Gibson's Codex, 817.

(4) *In the time of divine service*.—And therefore it must be done, before the termination of divine service.

STAT. 13 & 14
CAR. 2, c. 4.

enjoy the said parsonage, vicarage, benefice with cure, or other ecclesiastical promotion within this kingdom of England, or the dominion of Wales, or town of Berwick-upon-Tweed, but shall be utterly disabled, and (*ipso facto*) deprived of the same, and all his ecclesiastical promotions shall be void, as if he was naturally dead.

"XIV. And be it further enacted by the authority aforesaid, that no person whatsoever shall thenceforth be *capable* (1) to be admitted to any parsonage, vicarage, benefice, or other ecclesiastical promotion or dignity whatsoever, nor shall presume to consecrate and administer the holy sacrament of the Lord's supper, before such time as he shall be ordained *priest* (2), according to the form and manner in and by the said book prescribed, unless he have formerly been made priest by episcopal ordination; upon pain to forfeit for every offence the sum of one hundred pounds; one moiety thereof to the king's majesty, the other moiety thereof to be equally divided between the poor of the parish where the offence shall be committed; and such person or persons as shall sue for the same by action of debt, bill, plaint, or information, in any of his majesty's courts of record, wherein no essoin, protection, or wager of law shall be allowed, and to be disabled from taking or being admitted into the order of priest, by the space of one whole year then next following.

"XV. Provided that the penalties in this act shall not extend to the foreigners or aliens of the foreign reformed churches allowed or to be allowed by the king's majesty, his heirs and successors, in England.

"XVI. Provided always, that no title to confer or present by lapse, shall accrue by any avoidance or deprivation (*ipso facto*) by virtue of this statute, but after six months after notice of such avoidance or deprivation given by the ordinary to the patron, or such sentence of deprivation openly and publicly read in the parish church of the benefice, parsonage, or vicarage becoming void, or whereof the incumbent shall be deprived by virtue of this act.

"XVII. And be it further enacted by the authority aforesaid, that no form or order of common prayers, administration of sacraments, rites, or ceremonies, shall be openly used in any church, chapel, or other public place of or in any college or hall in either of the universities, the colleges of Westminster, Winchester, or Eton, or any of them, other than what is prescribed and appointed to be used in and by the said book; and that the present governor or head of every college and hall in the said universities, and of the said colleges of Westminster, Winchester, and Eton, within one month after the feast of St. Bartholomew, which shall be in the year of our Lord one thousand six hundred sixty and two; and every governor or head of any of the said colleges or halls hereafter to be elected or appointed, within one month next after his election or collation, and admission into the same government or headship, shall openly and publicly in the church, chapel, or other public place of the same college or hall, and in the presence of the fellows and scholars of the same, or the greater part of them then resident, subscribe unto the Nine and thirty Articles of Religion, mentioned in the statute made in the thirteenth year of the reign of the late Queen Elizabeth, and unto the said book, and declare his unfeigned assent and consent unto, and approbation of, the said articles, and of the same book, and to the use of all the prayers, rites, and

No other form
of common
prayer to be
openly used in
any church or
public place.

Subscription to
the Thirty-
nine Articles
mentioned in
the statute
13 Eliz. c. 12.

(1) *Capable*.—Prior to the enactment of Stat. 13 & 14 Car. 2, c. 4, s. 14, if a layman was presented, instituted, and inducted, he was parson *de facto*, and acts done by him, while parson, such as marriages, leases, &c. were valid; (*Costard v. Winder*, Cro. Eliz. 775;) although he might have been deprived. *Coll & Glover v. Coventry & Lichfield (Bishop of)*, Hob. 149. *Sutton's case*, Cro. Car. 65. This statute however enacts, that no one shall be capable to be admitted to any benefice, who has not been ordained priest.

(2) *Priest*.—In *Hill v. Barne*, (2 Lev. 250,) where the prohibition was prayed to stay proceedings in the spiritual court; this

distinction was made by *Masters*, that priest or no priest is triable by the ordinary, but priest or no priest, *at such a time*, by a jury; but *Jones*, (Chief Justice,) held, that in this latter case also, it ought to be tried by the ordinary, when the time refers to a spiritual act, such as institution. And, in another report of the same case, (nom. *Hill v. Boomer*, Jon. (Sir T.), 132,) it is said, that though the case might be determined by the certificate of the bishop of the diocese, yet the rule being made, and the penalties inflicted, by act of parliament, the original cognizance did not belong to the bishop, but to the temporal courts; and consequently the prohibition was supported.

ceremonies, forms, and orders, in the said book prescribed and contained, according to the form aforesaid; and that all such governors or heads of the said colleges and halls, or any of them, as are or shall be in holy orders, shall once (at least) in every quarter of the year, (not having a lawful impediment,) openly and publicly read the morning prayer and service in and by the said book appointed to be read in the church, chapel, or other public place of the same college or hall; upon pain to lose, and be suspended of and from all the benefits and profits belonging to the same government or headship, by the space of six months, by the visitor or visitors of the same college or hall; and if any governor or head of any college or hall, suspended for not subscribing unto the said articles and book, or for not reading of the morning prayer and service as aforesaid, shall not at or before the end of six months next after such suspension, subscribe unto the said articles and book, and declare his consent thereunto as aforesaid, or read the morning prayer and service as aforesaid, then such government or headship shall be (*ipso facto*) void.

STAT. 13 & 14
CAR. 2, c. 4.

“XVIII. Provided always, that it shall and may be lawful to use the morning and evening prayer, and all other prayers and service prescribed in and by the said book, in the chapels or other public places of the respective colleges and halls in both the universities, in the colleges of Westminster, Winchester, and Eton, and in the convocations of the clergy of either province, *in Latin* (1), any thing in this act contained to the contrary notwithstanding.

Who may use
the service in
Latin.

“XIX. And be it further enacted by the authority aforesaid, that no person shall be or be received as a lecturer, or permitted, suffered, or allowed to preach as a lecturer, or to preach or read any sermon or lecture in any church, chapel, or other place of public worship, within this realm of England, or the dominion of Wales, and town of Berwick-upon-Tweed, unless he be first approved, and thereunto licensed by the archbishop of the province or bishop of the diocese, or (in case the see be void) by the guardian of the spiritualities, under his seal, and shall in the presence of the same archbishop or bishop, or guardian, read the Nine and thirty Articles of Religion mentioned in the statute of the thirteenth year of the late Queen Elizabeth, with declaration of his unfeigned assent to the same; and that every person and persons who now is, or hereafter shall be licensed, assigned, and appointed, or received as a lecturer, to preach upon any day of the week in any church, chapel, or place of public worship within this realm of England, or places aforesaid, the first time he preacheth (before his sermon) shall openly, publicly, and solemnly read the common prayers and service in and by the said book

Lectures.

13 Eliz. c. 12.

(1) *In Latin*.—Although no provision was made for this liberty, by Stat. 1 Eliz. c. 2, (*antè* 363,) yet the queen, by her letters patents, bearing date April 6th, 1560, granted it (*nostrâ autoritate et privilegio regali*,) to the colleges of the two universities, and to those of Winchester and Eton. Gibson's Codex, 279. But subsequently, in the third year of her reign, the Archbishop, Bishop of London, Dr. Bill, and Dr. Haddon, were commissioned, (among other things,) to limit the use of that liberty in collegiate churches, with regard to those of the laity who resorted thither. Stry. Park. App. 28.

No person can be a lecturer, endowed or unendowed, without the rector's consent, unless there be an immemorial custom to elect without his consent; where there is such a custom, it is binding on the rector, as it supposes a consideration to him. The *endowment* only seems material, in this respect, as it does (or may) furnish an argument in support of the custom, and to show, that it had a legal commencement. *Case of the Lecturer of St. Anne's, Westminster*, Str. 1192. *S. C. nom. Rex v. London (Bishop of)*, 1

Wils. 11. *Rex v. Field (rector)*, 4 T. R. 125. *Rex v. London (Bishop of)*, 1 T. R. 331.

Even after the rector's consent is obtained, the bishop's licence is also necessary, if not as forming part of the title of the lecturer, still, at least, to exempt him from the penalties of Stat. 13 & 14 Car. 2, c. 4. *Vide* Canons of 1603, can. 36. *Rex v. London (Bishop of)*, 1 T. R. 331. *Clinton v. Hatchard*, 1 Add. 103.

The Act of Uniformity, (13 & 14 Car. 2, c. 4, s. 19,) having enacted that no person shall be allowed to preach as a lecturer, in any church, &c. “unless he be first approved and thereunto licensed by the archbishop of the province or bishop of the diocese,” &c. the court will not entertain a motion for a *mandamus* to the bishop to license a lecturer appointed by the parish, upon the previous refusal of the bishop to do so, upon the alleged ground of unfitness in the party elected, unless it be shown, that the like application had also been made to the archbishop, and rejected by him. *Rex v. London (Bishop of)*, 13 East, 419. *Vide* Stephens on Nisi Prius, tit. MANDAMUS, 2309—2311.

STAT. 13 & 14 appointed to be read for that time of the day, and then and there publicly and
CAR. 2, c. 4. openly declare his assent unto, and approbation of, the said book, and to the use of all the prayers, rites, and ceremonies, forms, and orders therein contained and prescribed, according to the form before appointed in this act: and also shall upon the first lecture day of every month afterwards, so long as he continues lecturer or preacher there, at the place appointed for his said lecture or sermon, before his said lecture or sermon, openly, publicly, and solemnly read the common prayers and service in and by the said book appointed to be read for that time of the day at which the said lecture or sermon is to be preached, and after such reading thereof shall openly and publicly, before the congregation there assembled, declare his unfeigned assent and consent unto, and approbation of, the said book, and to the use of all the prayers, rites, and ceremonies, forms and orders, therein contained and prescribed, according to the form aforesaid; and that all and every such person and persons who shall neglect or refuse to do the same, shall from thenceforth be disabled to preach the said or any other lecture or sermon in the said or any other church, chapel, or place of public worship, until such time as he and they shall openly, publicly, and solemnly read the common prayers and service appointed by the said book, and conform in all points to the things therein appointed and prescribed, according to the purport, true intent, and meaning of this act.

Lectures in cathedral or collegiate churches. “XX. Provided always, that if the said sermon or lecture be to be preached or read in any cathedral or collegiate church or chapel, it shall be sufficient for the said lecturer, openly at the time aforesaid, to declare his assent and consent to all things contained in the said book, according to the form aforesaid.

The penalty upon persons disabled that preach. “XXI. And be it further enacted by the authority aforesaid, that if any person who is by this act disabled to preach any lecture or sermon, shall, during the time that he shall continue and remain so disabled, preach any sermon or lecture; that then for every such offence, the person and persons so offending shall suffer three months’ imprisonment in the common gaol without bail or mainprize; and that any two justices of the peace of any county of this kingdom and places aforesaid, and the mayor or other chief magistrate of any city or town corporate within the same, upon certificate from the ordinary of the place made to him or them of the offence committed, shall and are hereby required to commit the person or persons so offending, to the gaol of the same county, city, or town corporate accordingly.

Explained by 15 Car. 2, c. 6, s. 7. “XXII. Provided always, and be it further enacted by the authority aforesaid, that at all and every time and times when any sermon or lecture is to be preached, the common prayers and service in and by the said book appointed to be read for that time of the day, shall be openly, publicly, and solemnly read by some priest or deacon, in the church, chapel, or place of public worship, where the said sermon or lecture is to be preached, before such sermon or lecture be preached, and that the lecturer then to preach shall be present at the reading thereof.

Common prayer to be read before every lecture, and the lecturer to be present. “XXIII. Provided nevertheless, that this act shall not extend to the university churches in the universities of this realm, or either of them, when or at such times as any sermon or lecture is preached or read in the said churches, or any of them, for or as the public university sermon or lecture; but that the same sermons and lectures may be preached or read in such sort and manner as the same have been heretofore preached or read; this act or anything herein contained to the contrary thereof in any wise notwithstanding.

Proviso for sermons and lectures in the universities. “XXIV. And be it further enacted by the authority aforesaid, that the several good laws and statutes of this realm, which have been formerly made, and are now in force, for the uniformity of prayer and administration of the sacraments, within this realm of England and places aforesaid, shall stand in full force and strength, to all intents and purposes whatsoever, for the establishing and confirming of the said book, intituled, ‘The Book of Common Prayer and Administration of the Sacraments, and other Rites and Ceremonies of the Church, according to the use of the Church of England; together with the Psalter or Psalms of David, pointed as they are to be sung or said in Churches, and the Form or Manner of making,

Statutes formerly made for uniformity of common prayer, confirmed, &c.

ordaining, and consecrating of Bishops, Priests, and Deacons,' herein before mentioned to be joined and annexed to this act; and shall be applied, practised, and put in ure for the punishing of all offences contrary to the said laws, with relation to the book aforesaid, and no other.

STAT. 13 & 14
CAR. 2, c. 4.

“XXV. Provided always, and be it further enacted by the authority aforesaid, that in all those prayers, litanies, and collects, which do any way relate to the king, queen, or royal progeny, the names be altered and changed from time to time, and fitted to the present occasion, according to the direction of *lawful authority* (1).

Litanies, &c.
relating to the
king, &c.

“XXVI. Provided also, and be it enacted by the authority aforesaid, that a true printed copy of the said book, intituled, ‘The Book of Common Prayer and Administration of the Sacraments, and other Rites and Ceremonies of the Church, according to the Use of the Church of England, together with the Psalter or Psalms of David, pointed as they are to be sung or said in Churches, and the Form and Manner of making, ordaining, and consecrating of Bishops, Priests, and Deacons,’ shall at the costs and charges of the parishioners of every parish church and chapelry, cathedral church, college and hall, be attained and gotten before the feast-day of Saint Bartholomew, in the year of our Lord one thousand six hundred sixty and two; upon pain of forfeiture of three pounds by the month, for so long time as they shall then after be unprovided thereof, by every parish or chapelry, cathedral church, college, and hall, making default therein.

True copies of
the Book of
Common
Prayer to be
provided in all
churches, &c.

“XXVII. Provided always, and be it enacted by the authority aforesaid, that the Bishops of Hereford, St. David’s, Asaph, Bangor, and Llandaff, and their successors, shall take such order among themselves, for the souls’ health of the flocks committed to their charge within Wales, that the book hereunto annexed be truly and exactly translated into the British or Welsh tongue; and that the same so translated, and being by them, or any three of them at the least, viewed, perused, and allowed, be imprinted to such number at least, so that one of the said books so translated and imprinted, may be had for every cathedral, collegiate and parish church, and chapel of ease, in the said respective dioceses and places in Wales, where the Welsh is commonly spoken or used, before the first day of May, one thousand six hundred sixty-five; and that from and after the imprinting and publishing of the said book so translated, the whole divine service shall be used and said by the ministers and curates throughout all Wales within the said dioceses, where the Welsh tongue is commonly used, in the British or Welsh tongue, in such manner and form as is prescribed according to the book hereunto annexed to be used in the English tongue, differing nothing in any order or form from the said English book; for which book, so translated and imprinted, the churchwardens of every the said parishes shall pay, out of the parish money in their hands for the use of the respective churches, and be allowed the same on their account; and that the said bishops and their successors, or any three of them at the least, shall set and appoint the price for which the said book shall be sold: and one other Book of Common Prayer in the English tongue shall be bought and had in every church throughout Wales, in which the Book of Common Prayer in Welsh is to be had by force of this act, before the first day of May, one thousand six hundred sixty and four, and the same books to remain in such convenient places within the said churches, that such as understand them may resort at all convenient times to read and peruse the same, and also such as do not understand the said language, may, by conferring both tongues together, the sooner attain to the knowledge of the English tongue; any thing in this act to the contrary notwithstanding: and until printed copies of the said book so to be translated may be had and provided, the form of common prayer, established by parliament before the making of this act, shall be used as formerly in such parts of Wales where the English tongue is not commonly understood.

Proviso for the
Bishops of
Hereford, &c.

“XXVIII. And to the end that the true and perfect copies of this act, and the said book hereunto annexed, may be safely kept and perpetually preserved, and for the avoiding of all disputes for the time to come; be it therefore enacted by the

True copies of
this act, and
the Book of
Common

(1) *Lawful authority*:—i. e. (according to practice) of the king or queen in council.

STAT. 13 & 14
CAR. 2, c. 4.

Prayer, by
whom, and
how to be had
and kept.

authority aforesaid, that the respective deans and chapters of every cathedral or collegiate church within England and Wales shall, at their proper costs and charges, before the twenty-fifth day of December, one thousand six hundred sixty and two, obtain under the great seal of England a true and perfect printed copy of this act, and of the said book annexed hereunto, to be by the said deans and chapters, and their successors, kept and preserved in safety for ever, and to be also produced and shewed forth in any court of record, as often as they shall be thereunto lawfully required; and also there shall be delivered true and perfect copies of this act, and of the same book, into the respective courts at Westminster, and into the tower of London, to be kept and preserved for ever among the records of the said courts, and the records of the tower, to be also produced and showed forth in any court, as need shall require; which said books so to be exemplified under the great seal of England, shall be examined by such persons as the king's majesty shall appoint, under the great seal of England, for that purpose, and shall be compared with the original book hereunto annexed, and shall have power to correct and amend in writing any error committed by the printer in the printing of the same book, or of any thing therein contained, and shall certify in writing under their hands and seals, or the hands and seals of any three of them, at the end of the same book, that they have examined and compared the same book, and find it to be a true and perfect copy; which said books, and every one of them, so exemplified under the great seal of England as aforesaid, shall be deemed, taken, adjudged, and expounded to be good and available in the law, to all intents and purposes whatsoever, and shall be accounted as good records as this book itself hereunto annexed; any law or custom to the contrary in any wise notwithstanding.

Proviso for the
king's pro-
fessor of law in
Oxford.

"XXIX. Provided also, that this act, nor any thing therein contained, shall not be prejudicial or hurtful unto the king's professor of the law within the university of Oxford, for or concerning the prebend of Shipton within the cathedral church of Sarum, united and annexed unto the place of the same king's professor for the time being by the late King James of blessed memory.

Proviso con-
cerning the
thirty-sixth
article agreed
in the convo-
cation.
Anno 1562.

"XXX. Provided always, that whereas the six and thirtieth article of the Nine and Thirty Articles agreed upon by the archbishops and bishops of both provinces, and the whole clergy, in the convocation holden at London, in the year of our Lord one thousand five hundred sixty-two, for the avoiding of diversities of opinions, and for establishing of consent touching true religion, is in these words following, viz.:

"That the Book of Consecration of Archbishops and Bishops, and ordaining of Priests and Deacons, lately set forth in the time of King Edward the Sixth, and confirmed at the same time by authority of parliament, doth contain all things necessary to such consecration and ordaining, neither hath it any thing that of itself is superstitious and ungodly: and therefore, whosoever are consecrated or ordered according to the rites of that book, since the second year of the aforesaid King Edward unto this time, or hereafter shall be consecrated or ordered according to the same rites, we decree all such to be rightly, orderly, and lawfully consecrated and ordered;'

"XXXI. It be enacted, and be it therefore enacted by the authority aforesaid, that all subscriptions hereafter to be had or made unto the said articles by any deacon, priest, or ecclesiastical person, or other person whatsoever, who by this act or any other law now in force, is required to subscribe unto the said articles, shall be construed, and be taken to extend, and shall be applied (for and touching the said six and thirtieth article) unto the book containing the form and manner of making, ordaining, and consecrating of bishops, priests, and deacons, in this act mentioned, in such sort and manner as the same did heretofore extend unto the book set forth in the time of King Edward the Sixth, mentioned in the said six and thirtieth article; any thing in the said article, or in any statute, act, or canon heretofore had or made, to the contrary thereof in any wise notwithstanding.

The Common
Prayer used by
authority of

"XXXII. Provided also, that the Book of Common Prayer, and Administration of the Sacraments, and other Rites and Ceremonies of this Church of England, together with the Form and Manner of ordaining and consecrating Bishops, Priests,

and Deacons, heretofore in use, and respectively established by act of parliament in the first and eighth years of Queen Elizabeth, shall be still used and observed in the church of England, until the feast of St. Bartholomew, which shall be in the year of our Lord God one thousand six hundred sixty and two.”

to be used until Bartholomew Day, 1662. Expired. Farther provisions relating hereto, 1 c. 18, and 23 Geo. 2, c. 28.

STAT. 13 & 14
CAR. 2, c. 4.
parliament,
1 Eliz. c. 2,
8 Eliz. c. 1,
G. & M. St. I.

XV. STAT. 13 & 14 CAROLI 2, c. 25. A.D. 1662.

“An Act for the restoring of all such Advowsons, Rectories inappropriate, Glebe Lands, and Tithes, to his Majesty’s loyal Subjects, as were taken from them, and making void certain Charges imposed on them upon their Compositions for Delinquency, by the late usurped Powers.”

STAT. 13 & 14
CAR. 2, c. 25.

XVI. STAT. 13 & 14 CAROLI 2, c. 33(1). A.D. 1662.

“An Act for preventing the frequent Abuses in printing seditious, treasonable, and unlicensed Books and Pamphlets, and for regulating of Printing and Printing Presses.”

STAT. 13 & 14
CAR. 2, c. 33.

[Pamphlets or books prohibited to be printed, published, or sold, containing language contrary to the doctrine or discipline of the Church of England.]

XVII. STAT. 14 & 15 CAROLI 2, SESS. 4, c. 1. [IRELAND.] A.D. 1662.

STAT. 14 & 15
CAR. 2, SESS.
4, c. 1. [IR.]

“An Act for a perpetual anniversary Thanksgiving on the Nine and twentieth Day of May, in this Kingdom.”

“Forasmuch as Almighty God, the king of kings, and sole disposer of all earthly crowns and kingdoms, hath by his all-swaying providence and power, miraculously demonstrated in the view of all the world, his transcendant mercy, love, and goodness, towards his most excellent majesty Charles the Second, by his especial grace, of England, Scotland, France, and Ireland, king, defender of the truly ancient catholic and apostolic faith, and all his majesty’s loyal subjects of this his kingdom of Ireland, by his majesty’s late most wonderful, glorious, peaceable, and joyful restoration to the actual possession and exercise of his undoubted hereditary sovereign and regal authority over us, after sundry years’ forced extermination into foreign parts by the most traitorous conspiracies, and armed power of usurping tyrants, and execrable perfidious traitors; and that without the least opposition or effusion of blood, through the unanimous, cordial, loyal votes and passionate desires of us, and other his majesty’s subjects; which inexpressible blessing, by God’s own most wonderful dispensation, was completed on the nine and twentieth day of May, one thousand six hundred and sixty, being the most memorable birthday not only of his majesty as a man and a prince, but likewise as an actual king; and to this and other his majesty’s kingdoms, in a manner new born, and raised from the dead on this most joyful day; in consideration whereof, this being the day which the Lord himself had made and crowned with so many public blessings, and signal deliverances both of his majesty and his people, from all their late most deplorable confusions, divisions, wars, devastations, and oppressions; to the end that it may be kept in perpetual remembrance in all ages to come, and that all his majesty’s subjects of this realm, and their posterities after them, may annually celebrate the perpetual memory thereof, by sacrificing their unfeigned hearty public thanks thereon to Almighty God, with one heart and voice, in a most devout and Christian manner, for all these public benefits and mercies received and conferred on them upon this most memorable day: be it therefore enacted by the king’s most excellent majesty, by and with the assent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that all and singular ministers of God’s word and sacraments in every church, chapel, and other usual place of divine service and public prayer, which now are or hereafter shall be within this your majesty’s realm of Ireland, and their successors, shall, in all succeeding ages to come, annually cele-

Eng. 12 Car.
2, c. 14.
Power and
goodness of
God in the
king’s restora-
tion.

Unanimous
votes of both
houses, and
affection of all
subjects.
29th of May,
the day of the
king’s birth
and restora-
tion.

That it may be
kept in perpet-
ual remem-
brance,

all ministers
shall annually
celebrate it.

STAT. 14 & 15
CAR. 2, SESS.
4, c. 1. [Ir.]

To forbear
labour and
trades.

All persons to
resort to
church, &c.
on said day.

Ministers to
give notice the
Sunday before,
and publicly
and distinctly
read this act.

brate the nine and twentieth day of May, rendering their hearty public praises and thanksgivings unto Almighty God, for all the afore-mentioned extraordinary mercies, blessings, and deliverances received, and mighty acts done thereon as aforesaid; and declare the same to all the people there assembled, that the generations yet to come may for ever praise the Lord for the same, whose name is most excellent, and his glory above the heavens: and that all persons do on that day forbear all bodily labour, and the exercise of their trades.

“III. And be it further enacted, that all and every person and persons inhabiting within this kingdom of Ireland, shall upon the nine and twentieth day of May annually resort with diligence and devotion to some parish church, chapel, or public place allowed by authority, where such thanksgivings and praises to God’s most divine majesty shall be rendered, and there orderly and devoutly abide during the said public thanksgivings, prayers, preachings, singing of psalms, and celebration of divine service there to be used and ministered.

“IV. And to the end that all persons may be put in mind of their duty therein, and be the better prepared to discharge the same with that piety and devotion which becomes them, be it further enacted, that every minister, parson, and curate, shall give notice to his parishioners publicly in the church at morning prayer, the Lord’s day next before every such twenty-ninth day of May, for the due observation of the said day, and shall then likewise publicly and distinctly read this present act to the people.”

STAT. 14 & 15
CAR. 2, SESS.
4, c. 2. [Ir.]

XVIII. STAT. 14 & 15 CAROLI 2, SESS. 4, c. 2. [IRELAND.] A.D. 1662.

“An Act for the better Execution of His Majesty’s gracious Declaration for the Settlement of his Kingdom of Ireland, and Satisfaction of the several Interests of Adventurers, Soldiers, and other his Subjects there.”

[Rights of the church to its temporal possessions ratified and restored.]

STAT. 14 & 15
CAR. 2, SESS.
4, c. 10. [Ir.]

XIX. STAT. 14 & 15 CAROLI 2, SESS. 4, c. 10(1). [IRELAND.] A.D. 1662.

“An Act for real Union and Division of Parishes, and concerning Churches, Free Schools, and Exchanges.”

STAT. 14 & 15
CAR. 2, SESS.
4, c. 23. [Ir.]

XX. STAT. 14 & 15 CAROLI 2, SESS. 4, c. 23. [IRELAND.] A.D. 1662.

“An Act for keeping and celebrating the Twenty-third of October, as an anniversary Thanksgiving in this Kingdom.”

Recital of the
intended
conspiracy,
23 Oct. 1641,

“Whereas many malignant and rebellious papists and jesuits, friars, seminary priests, and other superstitious orders of the popish pretended clergy, most disloyally, treacherously, and wickedly conspired to surprise his majesty’s castle of Dublin, his majesty’s principal fort of this kingdom of Ireland, the city of Dublin, and all other cities and fortifications of this realm, and that all the Protestants and English throughout the whole kingdom that would not join with them should be cut off, and finally by a general rebellion to deprive our late sovereign lord of ever-blessed memory King Charles the First of this his ancient and rightful crown and sovereignty of this kingdom, and to possess themselves thereof; all which was by the said conspirators plotted and intended to be acted on the twenty-third of October, in the year of our Lord God one thousand six hundred and forty-one; a conspiracy so generally inhuman, barbarous, and cruel, as the like was never before heard of in any age or kingdom, and if it had taken effect in that fulness which was intended by the conspirators, it had occasioned the utter ruin of this whole kingdom, and the government thereof; and however it pleased Almighty God in his unsearchable wisdom and justice, as a just punishment and deserved correction to his people for their sins, and the sins of this kingdom, to

in great part
effected,

(1) Vide Stat. 9 Ann. c. 12. (I.) Stat. 2 4, c. 43. Stat. 10 Geo. 4, c. 58. Stat. 2 & Geo. 1, c. 14. (I.) Stat. 10 Geo. 1, c. 6. (I.) 3 Gul. 4, c. 67.
Stat. 1 Geo. 2, c. 19. (I.) Stat. 7 & 8 Geo.

permit then and afterwards the effecting of a great part of that destruction com-
 plotted by those wicked conspirators, whereby many thousand British and Pro-
 testants have been massacred, many thousands of others of them have been
 afflicted and tormented with the most exquisite torments that malice could
 suggest, and all men's estates, as well those whom they barbarously murdered, as
 all other good subjects, were wasted, ruined, and destroyed; yet as his Divine
 Majesty hath in all ages shown his power and mercy in the miraculous and
 gracious deliverance of his church, and in the protection of religious kings and
 states, so even in the midst of his justice he was graciously pleased to extend
 mercy to his majesty and to this his kingdom, and good subjects therein, not only
 in mercifully discovering to the then lords justices by one Owen O'Connelly, a
 mere Irishman, but trained up in the Protestant religion, who out of a sense of his
 duty and loyalty to his majesty, and for the preservation of his good people, and
 as an effect of that religion he was trained up in, revealed that hideous and bloody
 treason not many hours before the appointed time for the execution thereof, but
 also in preserving the said castle and city of Dublin, and some other cities, towns,
 and castles in the kingdom, from the bloody hands of the barbarous conspirators,
 as also in thereby rendering deliverance of the lives of the said lords justices and
 council, and of all the British and Protestants in Dublin, and in the said other
 cities, towns, and castles, preserved, and of sundry other British and Protestants
 fallen into the hands of those rebellious conspirators, and likewise in sending us
 succours out of England hither, by the piety, care, and wisdom, of our late
 sovereign lord King Charles the First, whereby with God's blessing the good sub-
 jects of this kingdom have hitherto continued safe under his mighty protection,
 notwithstanding the unexampled rage and implacable malice of those merciless
 rebels. Wherefore, as we do most humbly and justly acknowledge God's justice
 in our deserved punishments in those calamities, which, from the counsels and
 actions of those conspirators and their adherents, have fallen upon us in this king-
 dom in general, so we do in like manner acknowledge, that even in exercising of
 that his justice he remembered mercy also, and magnified his mercies to us in
 those great blessings which we humbly confess to have proceeded merely from his
 infinite goodness and mercy, and therefore to his most holy name we do ascribe all
 honour, glory, and praise: and to the end this unfeigned thankfulness may never
 be forgotten, but may be had in a perpetual remembrance, that all ages to come
 may yield praises to his divine majesty for the same, and have in memory that
 joyful day of deliverance; be it therefore enacted by the king's most excellent
 majesty, with the assent of the lords spiritual and temporal and commons in this
 present parliament assembled, and by authority of the same, that the twenty-third
 day of October shall be kept and celebrated as an anniversary holy-day in this
 kingdom for ever, and that all persons do at that day forbear all bodily labour, and
 the exercise of their trades; and that all and singular ministers in every cathedral
 and parish church, or other usual place for common prayer, within this realm of
 Ireland, shall always upon the twenty-third day of October say morning prayer,
 and give thanks to Almighty God for that most happy and miraculous deliverance
 and preservation far above the expectations of those wretched conspirators; and
 that all and every person and persons inhabiting within this realm of Ireland shall
 yearly, upon the twenty-third day of October, diligently and faithfully resort to
 the parish church or chapel accustomed, or to some usual church or chapel where
 the said morning prayer, preaching, or other service of God shall be used, and then
 and there abide orderly and soberly during the time of the said prayers, preaching,
 or other service of God there to be used and ministered.

“II. And because all and every person may be put in mind of his duty, and
 be then the better prepared to the said holy service; be it enacted by the authority
 aforesaid, that every minister shall give warning to his parishioners publicly in
 the church at morning prayer, the Lord's day next before every such twenty-third
 of October, for the due observation of the said day; and that after morning prayer
 or preaching upon every such twenty-third of October, they read publicly, dis-
 tinctly, and plainly, this present act.”

STAT. 14 & 15
 CAR. 2, SESS.
 4, c. 23. [Ir.]

discovered by
 Owen O'Con-
 nelly.

The castle and
 city of Dublin
 and others
 thereby pre-
 served.

23rd October
 to be kept as
 an anniversary
 holy day for
 ever.
 Labour and
 trades pro-
 hibited.

All persons to
 resort to
 church.

Warning given
 by the minister
 the Sunday
 before,

and this act
 read on the
 day

STAT. 14 & 15
CAR. 2, SESS.
4, c. 24. [IR.]

XXI. STAT. 14 & 15 CAROLI 2, SESS. 4, c. 24. [IRELAND.] A.D. 1662.

"An Act for the granting of Eight Subsidies by the Prelates and Clergy of Ireland."

STAT. 15 CAR.
2, c. 5.

XXII. STAT. 15 CAROLI 2, c. 5(1). A.D. 1663.

"An Act for regulating Select Vestries."

STAT. 15 CAR.
2, c. 6.

XXIII. STAT. 15 CAROLI 2, c. 6(2). A.D. 1663.

"An Act for Relief of such Persons as by Sickness or other Impediment were disabled from subscribing the Declaration in the Act of Uniformity, and Explanation of part of the said Act."

STAT. 15 CAR.
2, c. 17.

XXIV. STAT. 15 CAROLI 2, c. 17(3). A.D. 1663.

"An Act for settling the Draining of the great Level of the Fens, called Bedford Level."

[Ecclesiastical persons, being lords of manors in the levels drained, may demise them for twenty-one years, with a reserved rent of the fourth part of the value.]

STAT. 16 CAR.
2, c. 4.

XXV. STAT. 16 CAROLI 2, c. 4(4). A.D. 1664.

"An Act to prevent and suppress seditious Conventicles."

STAT. 16 & 17
CAR. 2, c. 1.

XXVI. STAT. 16 & 17 CAROLI 2, c. 1(5). A.D. 1664.

"An Act for granting a Royal Aid unto the King's Majesty. . . ."

STAT. 17 CAR.
2, c. 2.

XXVII. STAT. 17 CAROLI 2, c. 2(6). A.D. 1665.

"An Act for restraining Nonconformists from inhabiting in Corporations."

STAT. 17 CAR.
2, c. 3.

XXVIII. STAT. 17 CAROLI 2, c. 3(7). A.D. 1665.

"An Act for uniting Churches in Cities and Towns Corporate."

STAT. 17 CAR.
2, c. 8.

XXIX. STAT. 17 CAROLI 2, c. 8. A.D. 1665.

"An Act for avoiding unnecessary Suits and Delays."

"II. . . . Where any judgment after a verdict shall be had, by or in the name of any executor or administrator; in such case an *administrator de bonis non* (8) may sue forth a *scire facias* (9), and take execution upon such judgment."

(1) Expired.

(2) Ibid.

(3) Ibid.

(4) Ibid.

(5) Ibid. Spiritual promotions being rated by this statute to the subsidy of the laity, they were discharged from the last two subsidies granted by the clergy, which was in consideration of the clergy's being then first taxed, together with the laity, to the royal aid.

(6) Repealed by Stat. 52 Geo. 3, c. 155, s. 1.

(7) Repealed by Stat. 1 & 2 Vict. c. 106, s. 15.

(8) *Administrator de bonis non*:—If a person die intestate, and administration be granted to one who dies without having administered all the intestate's effects, the ordinary may grant administration of the goods unadministered to another. *Grays-*

brook v. Fox, Plowd. 279. *Bedell v. Constable*, Vaugh. 182. And a similar power can be exercised, in certain cases, where an executor dies. 1 Williams on Executors, 364. Stephens on Nisi Prius, tit. EXECUTORS AND ADMINISTRATORS, 1875.

(9) *May sue forth a scire facias*:—Before this statute, an administrator *de bonis non* could not have had a *scire facias* upon a judgment obtained by an original executor or administrator, for he came in previously to the judgment, and was no party thereto. *Snappe v. Norgate*, Cro. Car. 167. *Yaites v. Gough*, Yelv. 33. Since this statute, it has been held, that if an execution have been commenced by an administrator, it may be perfected by an administrator *de bonis non*. *Clerk v. Withers*, 1 Salk. 323. 2 Ld. Raym. 1072.

XXX. STAT. 17 & 18 CAROLI 2, c. 2. [IRELAND.] A.D. 1665.

STAT. 17 & 18
CAR. 2, c. 2.
[IR.]

“An Act for the explaining of some Doubts arising upon an Act intituled, An Act for the better execution of His Majesty’s gracious Declaration for the Settlement of his Kingdom of Ireland, and Satisfaction of the several Interests of Adventurers, Soldiers, and other his Subjects there, and for making some Alterations of and Additions unto the said Act, for the more speedy and effectual Settlement of the said Kingdom.”

[Lands, &c. of the University of Dublin, or of ecclesiastical persons in politic capacity, or college, hospital, churchwardens, corporations, parsons, or of any persons whose estates excepted out of former vesting clause, not to vest in the king: Commissioners to make books of the two-thirds, augmentation of bishoprics, allotment of glebes, &c.: Augmentation of bishoprics out of fee-farm lands to be held of them, as thentofore: Lands not lying within security set apart for the officers serving before 1649, or otherwise disposed of by letters patent, to bishops in augmentation, to be surveyed: If not exceeding the value of augmentation intended, to be enjoyed under such patents: In lieu of the provision for glebes as thentofore, so many acres more to be set out as to supply every parochial church with ten at least, except so endowed already: Forfeited fee-farms and impropriations to remain in possession of the bishops and incumbents till their augmentations and glebes set out, afterwards the fee-farms to uses as thentofore: The impropriations to be vested in incumbents, subject to reservation, as thentofore: Conveyances by bishops of augmentations, except for twenty-one years or three lives, from commencement, and whereon a full moiety of improved rent as then worth reserved, to be void: Lands settled on the Bishop of Cloyne, which were bequeathed to King Charles 1, by Sir John Fitz-Edmund Gerald: Except rectories and impropriations settled on incumbents serving cure: Presentation to the churches to be in the king’s patronage; residue of such lands to vest in the king: Papists not to have advowsons, presentation to benefices, &c. but to be vested in the king till conformity.]

XXXI. STAT. 17 & 18 CAROLI 2, c. 3. [IRELAND.] A.D. 1665.

STAT. 17 & 18
CAR. 2, c. 3.
[IR.]

“An Act for the Confirmation of Marriages.”

XXXII. STAT. 17 & 18 CAROLI 2, c. 6. [IRELAND.] A.D. 1665.

STAT. 17 & 18
CAR. 2, c. 6.
[IR.]

“An Act for the Uniformity of Public Prayers and Administration of Sacraments, and other Rites and Ceremonies, and for establishing the Form of making, ordaining, and consecrating Bishops, Priests, and Deacons, in the Church of Ireland.”

“Whereas nothing conduceth more to the honour of God, the settling of the peace of a nation, which is desired of all good men, nor to the advancement of religion, than an universal agreement in the public worship of Almighty God; and to the intent that we, his majesty’s subjects of this his kingdom of Ireland, may in this church of Ireland hold the same conformity of common prayers, and administration of the sacraments, and other the rites and ceremonies of the church, according to the use of the church of England, together with the Psalter or Psalms of David, pointed as they are to be sung or said in churches, and the form and manner of making, ordaining, or consecrating of bishops, priests, and deacons, which was recommended unto both houses of convocation here assembled in Ireland, to consider whether the same form of public worship might not be profitably received, as the public form of divine service in this your majesty’s kingdom of Ireland: whereupon both houses of convocation did diligently consider the same, and after mature consideration, well weighing the great advantages that must necessarily arise unto the whole kingdom from the uniformity of public prayers, did fully approve and allow the same, and have exhibited and presented

Eng. 13 & 14
Car. 2, c. 4.
Peace, and advancement of religion by universal agreement in public worship of God.

Both houses of convocation, to whom it was recommended to consider whether the same form

STAT. 17 & 18
CAR. 2, c. 6.
[IR.]

used in England might not be profitably received in Ireland, approved thereof, and presented to lord lieutenant and council the Book of Common Prayer.

Said book, to this act annexed, shall be used in all places of public worship.

All ministers enjoying ecclesiastical benefices, to read and declare assent to use the same,

On pain of deprivation.

unto your majesty's lord lieutenant and council here in Ireland, one book hereunto annexed, intituled, 'The Book of Common Prayer and Administration of Sacraments, and other Rites and Ceremonies of the Church, according to the use of the Church of Ireland, together with the Psalter or Psalms of David, pointed as they are to be sung or said in Churches; and the Form or Manner of making, ordaining, and consecrating of Bishops, Priests, and Deacons.' Therefore to the intent that the greatly desirable work of uniformity in divine worship may be obtained, and that every person within this your majesty's realm of Ireland may certainly know the rule to which he is to conform in public worship and administration of sacraments, and other rites and ceremonies of the church of Ireland; and the manner how and by whom bishops, priests, and deacons, are and ought to be made, ordained, and consecrated: may it please your majesty that it be enacted, and be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and of the commons in this present parliament assembled, and by the authority of the same, that all and singular ministers in any cathedral, collegiate or parish church or chapel, or other place of public worship within this realm of Ireland, shall be bound to say and use the morning prayer, evening prayer, celebration and administration of both the sacraments, and all other the public and common prayer, in such order and form as is mentioned in the said book annexed and joined to this present act, and intituled, 'The Book of Common Prayer, and Administration of the Sacraments, and other Rites and Ceremonies of the Church, according to the use of the Church of Ireland, together with the Psalter or Psalms of David, pointed as they are to be sung or said in Churches; and the Form and Manner of making, ordaining, and consecrating of Bishops, Priests, and Deacons:' and that the morning and evening prayers therein contained shall upon every Lord's day, and upon all other days and occasions, and at the times therein appointed, be openly and solemnly read by all and every minister or curate in every church, chapel, or other place of public worship within this his majesty's realm of Ireland.

"II. And to the end that uniformity in the public worship of God, which is so much desired, may be speedily effected, be it further enacted by the authority aforesaid, that every parson, vicar, or other minister whatsoever, who now hath and enjoyeth any ecclesiastical benefice or promotion within this realm of Ireland, shall in the church, chapel, or place of public worship, belonging to his said benefice or promotion, upon some Lord's day before the feast day of the Annunciation of the blessed Virgin Mary, which shall be in the year of our Lord God one thousand six hundred sixty and seven, openly, publicly, and solemnly read the morning and evening prayer appointed by this act to be read, by and according to the said Book of Common Prayer, at the times thereby appointed; and after such reading thereof, shall openly and publicly before the congregation there assembled, declare his unfeigned assent and consent to the use of all things in the said book contained and prescribed, in these words, and no other:

"I, A. B., do hereby declare my unfeigned assent and consent to all and everything contained and prescribed in and by the book, intituled, 'The Book of Common Prayer, and Administration of the Sacraments, and other Rites and Ceremonies of the Church, according to the use of the Church of Ireland, together with the Psalter or Psalms of David, pointed as they are to be sung or said in Churches; and the Form and Manner of making, ordaining, and consecrating of Bishops, Priests, and Deacons.'

"And that all and every such person, who shall, without some lawful impediment to be allowed and approved of by the ordinary of the place, neglect or refuse to do the same within the time aforesaid, or in case of such impediment, within one month after such impediment removed, shall (*ipso facto*) be deprived of his spiritual promotions; and that from thenceforth it shall be lawful to and for all patrons and donors of all and singular the said spiritual promotions, or any of them, according to their respective right and titles, to present or collate to the same, as though the person or persons so offending or neglecting were dead.

“III. And be it further enacted by the authority aforesaid, that every person who shall hereafter be presented or collated, or put into any ecclesiastical benefice or promotion within this his majesty’s realm of Ireland, shall in the church, chapel, or place of public worship belonging to his said benefice or promotion, within two months next after that he shall be in the actual possession of the said ecclesiastical benefice or promotion, upon some Lord’s day, openly, publicly, and solemnly, read the morning and evening prayers appointed to be read by and according to the said Book of Common Prayer, at the times thereby appointed; and after such reading thereof, shall openly and publicly before the congregation there assembled, declare his unfeigned assent and consent to the use of all things therein contained and prescribed, according to the form before appointed; and that all and every such person, who shall (without some lawful impediment to be allowed and approved by the ordinary of the place) neglect or refuse to do the same within the time aforesaid, or in case of such impediment, within one month after such impediment removed, shall (*ipso facto*) be deprived of all his said ecclesiastical benefits and promotion; and that from thenceforth it shall and may be lawful to and for all patrons and donors of all and singular the said ecclesiastical benefices and promotions, or any of them, (according to their respective rights and titles,) to present or collate to the same, as though the person or persons so offending or neglecting were dead.

“IV. And be it further enacted by the authority aforesaid, that in all places where the proper incumbent of any parsonage or vicarage, or benefice with cure, doth reside on his living, and keep a curate, the incumbent himself in person, not having some lawful impediment, to be allowed by the ordinary of the place, shall once at least in every month, openly and publicly read the common prayers and service in and by the said book prescribed, and if there be occasion administer each of the sacraments, and other rites of the church, in the parish church or chapel of or belonging to the same parsonage, vicarage, or benefice, in such order, manner, and form, as in and by the said book is appointed, upon pain to forfeit the sum of five pounds to the use of the poor of the parish, for every offence, upon conviction by confession, or proof of two credible witnesses upon oath, before two justices of the county, city, or town-corporate, where the offence shall be committed, (which oath the said justices are hereby empowered to administer,) and in default of payment within ten days, to be levied by distress and sale of the goods and chattels of the offender, by the warrant of the said justices, by the churchwardens or overseers of the poor of the said parish, rendering the surplusage to the party offending.

“V. And be it further enacted by the authority aforesaid, that every dean and other dignitary, canon, prebendary, and warden, of every cathedral or collegiate church, and all masters and other heads, fellows, chaplains, and tutors, of or in any college, hall, house of learning or hospital, and every public professor and reader in any universities, college or colleges, which are or shall be within this realm, and every parson, vicar, curate, lecturer, and every other person in holy orders, and every schoolmaster keeping any public or private school, and every person instructing or teaching any youth in any house or private family as a tutor or schoolmaster, who upon the feast of St. John Baptist, which shall be in the year of our Lord one thousand six hundred sixty and seven, or any time hereafter, shall be incumbent, to have possession of any deanery, dignity, canonry, prebend, wardenship, mastership, headship, fellowship, professor’s place, or reader’s place, parsonage, vicarage, or any other ecclesiastical dignity or promotion, or of any curate’s place, lecture, or school, or shall instruct or teach any youth as tutor or schoolmaster, shall before the nine and twentieth day of September, which shall be in the year of our Lord one thousand six hundred sixty and seven, or at or before his or their respective admissions to be incumbent, or have possession of any the dignities, promotions, or places aforesaid, subscribe the declaration or acknowledgment following, *scilicet*:

“I, A. B., do declare, that it is not lawful upon any pretence whatsoever to take arms against the king; and that I do abhor that traitorous position of

STAT. 17 & 19
CAR. 2, c. 6.
[I.R.]

The like by every person hereafter promoted.

Incumbent residing and keeping a curate shall once at least every month openly read the same, and if necessary administer the rites, on pain of 5*l.* to poor of the parish,

to be levied by distress and sale by churchwardens.

Deans and other dignitaries, heads and fellows of colleges or hospitals, &c. all persons in holy orders, schoolmasters, and private tutors, shall subscribe the declaration following.

The declaration.

STAT. 17 & 18
CAR. 2, c. 6.
[IR.]

Altered by
4 Geo. 1, c. 3.

Subscription,
before vice-
chancellor, &c.

Penalty for not
subscribing, to
be disabled
and deprived.

Schoolmasters
and private
tutors to take
oath of allegi-
ance and
supremacy,
and before they
teach obtain
licence from
the ordinary,
paying 12d.
only.

Penalty on
them.

Parsons, &c.
to procure
certificate from
the ordinary,
and publicly
read the same
with the
declaration,
on pain of
deprivation.

Part of the
declaration to
be omitted
after 1682.

taking arms by his authority against his person, or against those that are commissioned by him; and that I will conform to the liturgy of the church of Ireland, as it is now by law established; and I do declare that I do hold, that there lies no obligation upon me, or on any other person, from the oath commonly called, The Solemn League and Covenant, to endeavour any change or alteration of government, either in church or state, and that the same was in itself an unlawful oath.

“Which said declaration and acknowledgment shall be subscribed by every of the said masters, and other heads, fellows, chaplains, and tutors, of or in any college, hall, or house of learning, which are or shall be within this kingdom, and by every public professor and reader in any university, college, or colleges, within this kingdom, before the vice-chancellor, or visitor or visitors of the said college, hall, or his or their deputies; and the said declaration or acknowledgment shall be subscribed before the respective archbishop, bishop, or ordinary of the diocese, by every other person hereby enjoined to subscribe the same; upon pain that all and every the persons aforesaid, failing in or refusing such subscriptions, shall lose and forfeit such his respective deanery, dignity, canonry, prebend, wardenship, mastership, headship, fellowship, professor's place, reader's place, parsonage, vicarage, ecclesiastical dignity or promotion, curate's place, lecture, and school, and shall be utterly disabled and (*ipso facto*) deprived of the same; and that every such respective deanery, canonry, prebend, mastership, headship, fellowship, professor's place, reader's place, parsonage, vicarage, ecclesiastical dignity or promotion, curate's place, lecture, and school, shall be void, as if such person so failing or refusing were naturally dead.

“VI. And be it further enacted by the authority aforesaid, that every schoolmaster, or other person instructing or teaching youth in any private house or family, as a tutor or schoolmaster, be required to take the oath of allegiance and supremacy, which oath is to be administered by the ordinary; and if any schoolmaster or other person, instructing or teaching youth in any private house or family as a tutor or schoolmaster, shall instruct or teach any youth as a tutor or schoolmaster, before licence obtained from his respective archbishop, bishop, or ordinary of the diocese, according to the laws and statutes of this kingdom, (for which he shall pay twelve pence only,) and before such subscription and acknowledgment made as aforesaid, and before such taking of the oath of allegiance and supremacy as aforesaid; then every such schoolmaster and other, instructing and teaching as aforesaid, shall, for the first offence, suffer three months' imprisonment, without bail or mainprize; and for every second and other such offence, shall suffer three months' imprisonment without bail or mainprize, and also forfeit to his majesty the sum of five pounds; and after such subscription made, every such parson, vicar, curate, and lecturer, shall procure a certificate under the hand and seal of the respective archbishop, bishop, or ordinary of the diocese, who are hereby enjoined and required, upon demand, to make and deliver the same, and shall publicly and openly read the same, together with the declaration or acknowledgment aforesaid, upon some Lord's day within three months then next following, in his parish church where he is to officiate, in the presence of the congregation there assembled, in the time of divine service; upon pain that every person failing therein shall lose such parsonage, vicarage, or benefice, curate's place, or lecturer's place respectively, and shall be utterly disabled, and (*ipso facto*) deprived of the same; and that the said parsonage, vicarage, or benefice, curate's place, or lecturer's place, shall be void as if he were naturally dead.

“VII. Provided always, that from and after the twenty-fifth day of March, which shall be in the year of our Lord God one thousand six hundred eighty and two, there shall be omitted in the said declaration or acknowledgment, so to be subscribed and read, these words following, *scilicet*:

“And I do declare, that I do hold, that there lies no obligation on me, or any other person, from the oath commonly called The Solemn League and Covenant, to endeavour any change or alteration of government either in church or state, and that the same was in itself an unlawful oath.”

"So as none of the persons aforesaid shall from thenceforth be at all obliged to subscribe or read that part of the said declaration or acknowledgment.

"VIII. Provided always, and be it enacted, that from and after the twenty-ninth day of September, which shall be in the year of our Lord one thousand six hundred sixty and seven, no person, who now is incumbent and in possession of any parsonage, vicarage, or benefice, and who is not already in holy orders by episcopal ordination, or shall not before the said twenty-ninth day of September be ordained priest or deacon, according to the form of episcopal ordination, shall have, hold, or enjoy the said parsonage, vicarage, benefice with cure, or other ecclesiastical promotion within this kingdom of Ireland, but shall be utterly disabled, and (*ipso facto*) deprived of the same, and all his ecclesiastical promotion shall be void, as if he were naturally dead.

"IX. And be it further enacted by the authority aforesaid, that no person whatsoever shall thenceforth be capable to be admitted to any parsonage, vicarage, benefice, or other ecclesiastical promotion or dignity whatsoever; nor shall presume to consecrate and administer the holy sacrament of the Lord's supper, before such times as he shall be ordained priest, according to the form and manner in and by the said book prescribed, unless he have formerly been made priest by episcopal ordination; upon pain to forfeit, for every offence, the sum of one hundred pounds; one moiety thereof to the king's majesty; the other moiety thereof to be equally divided between the poor of the parish where the offence shall be committed, and such person or persons as shall sue for the same by action of debt, bill, plaint, or information in any of his majesty's courts of record, wherein no essoin, protection, or wager of law, shall be allowed, and to be disabled from taking or being admitted into the order of priest, by the space of one whole year then next following.

"X. Provided always, that no title to confer or present by lapse shall accrue by any avoidance or deprivation (*ipso facto*) by virtue of this statute, but after six months after notice of such avoidance or deprivation given by the ordinary to the patron, or such sentence of deprivation openly and publicly read in the parish church of the benefice, parsonage, or vicarage becoming void, or whereof the incumbent shall be deprived by virtue of this act.

"XI. And be it further enacted by the authority aforesaid, that no form or order of common prayers, administration of sacraments, rites, or ceremonies, shall be openly used in any church, chapel, or other public place, of or in any college or hall in any university, college, or colleges within this realm, or any of them, other than what is prescribed and appointed to be used in and by the said book; and that the present governor, or head of every college and hall in the university, and of the said college or colleges, within one month after the twenty-ninth day of September, which shall be in the year of our Lord one thousand six hundred sixty and seven, and every governor, or head of any of the said colleges or halls hereafter to be elected or appointed, within one month next after his election or collation, and admission into the same government or headship, shall openly and publicly in the church, chapel, or other public place of the same college or hall, and in the presence of the fellows and scholars of the same, or the greater part of them then resident, subscribe to the Thirty-nine Articles of Religion agreed upon by the archbishops and bishops and the whole clergy in the convocation holden at London in the year of our Lord one thousand five hundred sixty and two, for the avoiding of diversities of opinion, and for establishing of consent touching true religion, and unto the said book, and declare his unfeigned assent and consent unto, and approbation of the said articles, and of the same book, and to the use of all the prayers, rites, and ceremonies, forms and orders in the said book prescribed and contained, according to the form aforesaid; and that all such governors or heads of the said colleges and halls, or any of them, as are or shall be in holy orders, shall once at least in every quarter of the year, not having a lawful impediment, openly and publicly read the morning prayer and service in and by the said book appointed to be read in the church, chapel, or other public place of the same college or hall; upon pain to lose and be suspended of and from all the bene-

STAT. 17 & 18
CAR. 2, c. 6.
[IR.]

Persons not ordained according to episcopal ordination, not to hold any ecclesiastical promotion,

Nor consecrate and administer the sacrament.

Penalty 100*l.*, half to the king, half to poor of the parish and informer, and disability for one year.

No title by lapse to accrue by such deprivation, but after six months' notice by ordinary, or the public reading the sentence.

No other form of prayer or rights shall be openly used in church, &c.

Heads of colleges in one month shall read and subscribe the Thirty-nine Articles agreed upon in convocation at London, 1562, for avoiding diversity of opinion, and declare his assent, and if in holy orders, shall once a quarter publicly read said service. Penalty, suspension six

STAT. 17 & 18
CAR. 2, c. 6.
[I.R.]

months by the
visitor;
If not done in
six months
after, the head-
ship void.
Said penalties
not to extend
to aliens of fo-
reign reformed
churches
allowed.
Where service
in Latin may
be used.
No lecturer or
preacher
allowed till
thereto
licensed.

Shall read and
declare his
assent to the
Thirty-nine
Articles and
Book of Com-
mon Prayer,

on pain of
disability.

If in cathedral
or collegiate
churches, suffi-
cient to declare
assent to said
book.

Penalty of
preaching
during disa-
bility, three
months' im-
prisonment.

fits and profits belonging to the said government or headship by the space of **six** months, by the visitor or visitors of the same college or hall; and if any governor or head of any college or hall suspended for not subscribing unto the said articles and book, or for not reading of the morning prayer and service aforesaid, shall not, at or before the end of six months next after such suspension, subscribe to the said articles and book, and declare his consent thereunto as aforesaid, or read the morning prayer and service as aforesaid, then such government or headship shall be (*ipso facto*) void; provided that the penalties in this act shall not extend to the foreigners or aliens of the foreign reformed churches allowed or to be allowed by the king's majesty, his heirs and successors, in this kingdom.

"XII. Provided always, that it shall and may be lawful to use the morning and evening prayer, and all other prayers and services prescribed in and by the said book, in the chapels or other public places of any colleges, halls, or universities within this realm, and in the convocations of the clergy, in Latin; any thing in this act contained to the contrary notwithstanding.

"XIII. And be it further enacted by the authority aforesaid, that no person shall be or be received as a lecturer, or permitted, suffered, or allowed to preach as a lecturer, or to preach or read any sermon or lecture in any church, chapel, or other place of public worship within this realm of Ireland, unless he be first approved and thereunto licensed by the archbishop of the province, or bishop of the diocese, or (in case the see be void) by the guardian of the spiritualities, under his seal, and shall in the presence of the same archbishop, or bishop, or guardian, read the Nine and thirty Articles of Religion above mentioned, with declaration of his unfeigned assent to the same; and that every person and persons, who now is or hereafter shall be licensed, assigned, appointed, or received as a lecturer to preach upon any day of the week in any church, chapel, or place of public worship within this realm of Ireland, the first time he preacheth, before his sermon, shall openly, publicly, and solemnly read the common prayers and service in and by the said book appointed to be read for that time of the day, and then and there publicly and openly declare his assent unto and approbation of the said book, and to the use of all the prayers, rites, and ceremonies, forms and orders therein contained and prescribed, according to the form before appointed in this act; and also shall upon the first lecture day of every month afterwards, so long as he continues lecturer or preacher there, at the place appointed for his said lecture or sermon, before his said lecture or sermon, openly, publicly, and solemnly read the common prayers and service in and by the said book appointed to be read for that time of the day at which the said lecture or sermon is to be preached, and after such reading thereof shall openly and publicly, before the congregation there assembled, declare his unfeigned assent and consent unto and approbation of the said book, and to the use of all the prayers, rites, and ceremonies, forms and orders therein contained and prescribed, according to the form aforesaid; and that all and every such person and persons, who shall neglect or refuse to do the same, shall from thenceforth be disabled to preach the said or any other lecture or sermon in the said or any other church, chapel, or place of public worship, until such time as he and they shall openly, publicly, and solemnly read the common prayers and service appointed by the said book, and conform in all points to the things therein appointed and prescribed, according to the purport, true intent, and meaning of this act.

"XIV. Provided always, that if the said sermon or lecture be to be preached or read in any cathedral or collegiate church or chapel, it shall be sufficient for the said lecturer, openly at the time aforesaid, to declare his assent and consent to all things contained in the said book, according to the form aforesaid.

"XV. And be it further enacted by the authority aforesaid, that if any person who is by this act disabled to preach any lecture or sermon, shall, during the time that he shall continue and remain so disabled, preach any sermon or lecture, that then, for every such offence, the person and persons so offending shall suffer three months' imprisonment in the common gaol, without bail or mainprize, and that any two justices of the peace of any county of this kingdom, and the mayor or

other chief magistrate of any city or town corporate within the same, upon certificate from the ordinary of the place made to him or them of the offence committed, shall, and are hereby required to commit the person or persons so offending to the gaol of the same county, city, or town corporate accordingly.

“XVI. Provided always, and be it further enacted by the authority aforesaid, that at all and every time and times when any sermon or lecture is to be preached, the common prayers and service in and by the said book appointed to be read for that time of the day, shall be openly, publicly, and solemnly read by some priest or deacon in the church, chapel, or place of public worship, where the said sermon or lecture is to be preached, before such lecture or sermon be preached, and that the lecturer then to preach shall be present at the reading thereof.

“XVII. Provided nevertheless, that this act shall not extend to the chapels in the university, college, or colleges, that are or shall be in this realm, or any of them, when or at such times as any sermon or lecture is preached or read in the said chapels, or any of them, for or as the public university sermon or lecture; but that the same sermons and lectures may be preached and read in such sort and manner as the same have been heretofore preached or read in the said university or college; this act, or any thing herein contained, to the contrary thereof in any wise notwithstanding.

“XVIII. And be it further enacted by the authority aforesaid, that the law and statute of this realm, which hath been formerly made, and is now in force, for the uniformity of prayer and administration of the sacraments within this realm of Ireland, shall stand in full force and strength to all intents and purposes whatsoever, for the establishing and confirming of the said book, intituled, ‘The Book of Common Prayer, and Administration of the Sacraments, and other Rites and Ceremonies of the Church, according to the use of the Church of Ireland; together with the Psalter or Psalms of David, pointed as they are to be sung or said in Churches, and the Form and Manner of making, ordaining, or consecrating of Bishops, Priests, and Deacons,’ herein before mentioned to be joined and annexed to this act; and shall be applied, practised, and put in use for the punishing of all the offences contrary to the said law, with relation to the book aforesaid, and no other.

“XIX. Provided always, and be it further enacted by the authority aforesaid, that in all those prayers, litanies, and collects which do any way relate to the king, queen, royal progeny, or the lord lieutenant, or other chief governor or governors of this kingdom, the names or titles be altered and changed from time to time, and fitted to the then present occasion, according to the direction of lawful authority.

“XX. Provided also, and be it enacted by the authority aforesaid, that a true printed copy of the said book, intituled, ‘The Book of Common Prayer and Administration of the Sacraments, and other Rites and Ceremonies of the Church, according to the use of the Church of Ireland; together with the Psalter or Psalms of David, pointed as they are to be sung or said in Churches, and the Form and Manner of making, ordaining, and consecrating, of Bishops, Priests, and Deacons,’ shall at the cost and charge of the parishioners of every parish church and chapelry, cathedral church, college, collegiate church and hall, be attained and gotten before the twenty-ninth day of September, which shall be in the year of our Lord one thousand six hundred sixty and seven, upon pain of forfeiture of three pounds sterling, by the month, for so long time as they shall be then after unprovided thereof, by every parish or chapelry, cathedral church, college, collegiate church and hall, making default therein; the said forfeiture to be levied by the churchwardens, and employed for the reparation of the church, and relief of the poor.

“XXI. Provided always, that whereas the six and thirtieth article of the Nine and thirty Articles agreed upon by the archbishops and bishops of both provinces, and the whole clergy in the convocation holden at London in the year of our Lord one thousand five hundred sixty and two, for the avoiding of diversities

STAT. 17 & 18
CAR. 2, c. 6.
[1R.]

Common prayer to be read before every sermon, the lecturer present.

Sermons and lectures in colleges may be preached as usual there.

The former statute for uniformity to stand in force for establishing said book, and used for punishing offences with relation thereto.

Litanies, prayers, relating to the king, &c. to be altered from time to time, and fitted to the occasion. Printed copies of said book to be provided at cost of parishioners.

On pain of 3*l*. per month, for repair of the church and for the poor.

STAT. 17 & 18 of opinions, and for establishing of consent touching true religion, is in these words
CAR. 2, c. 6. following, viz.,
[IR.]

Subscriptions
to said articles
shall be con-
strued to ex-
tend, as to the
thirty-sixth
article, to the
Book contain-
ing Form of
ordaining and
consecrating,
as heretofore
to the Book
set forth in
time of Edw. 6,
in said thirty-
sixth article.

“That the Book of Consecration of Archbishops and Bishops, and ordaining of Priests and Deacons, lately set forth in the time of King Edward the Sixth, and confirmed at the same time by authority of Parliament, do contain all things necessary to such consecration and ordaining; neither hath it anything that of itself is superstitious and ungodly, and therefore whosoever are consecrated or ordered, according to the rites of that book, since the second year of the afore-named King Edward unto this time, or hereafter shall be consecrated or ordered, according to the same rites, we decree all such to be rightly ordered, and lawfully consecrated and ordered.”

“It be enacted, and be it further enacted by the authority aforesaid, that all subscriptions hereafter to be had or made unto the said articles by any deacon, priest, or ecclesiastical person, or other person whatsoever, who by this act, or any other law now in force, is required to subscribe unto the said articles, shall be construed and be taken to extend, and shall be applied for and touching the said six and thirtieth article, unto the Book containing the Form and Manner of making, ordaining, and consecrating of Bishops, Priests, and Deacons, in this act mentioned, in such sort and manner as the same did heretofore extend unto the Book set forth in the time of King Edward the Sixth, mentioned in the said six and thirtieth article; anything in the said article, or in any statute, act, or canon, heretofore had or made to the contrary thereof in any wise notwithstanding.”

STAT. 17 & 18
CAR. 2, c. 7.
[IR.]

XXXIII. STAT. 17 & 18 CAROLI 2, c. 7 (1). [IRELAND.] A.D. 1665.

“An Act for Provision of Ministers in Cities, Corporate Towns, and making the Church of St. Andrew’s, in the Suburbs of the City of Dublin, presentative for ever.”

STAT. 17 & 18
CAR. 2, c. 10.
[IR.]

XXXIV. STAT. 17 & 18 CAROLI 2, c. 10. [IRELAND.] A.D. 1665.

“An Act for disabling of Spiritual Persons from holding Benefices or other Ecclesiastical Dignities in England or Wales, and in Ireland, at the same time.”

No person to
hold ecclesias-
tical dignity or
benefice in
England and
Ireland at
same time.

“Whereas divers spiritual persons who have benefices, or other ecclesiastical dignities or promotions in his majesty’s kingdom of England, or the dominion of Wales, do commonly accept of and retain bishoprics, or other ecclesiastical dignities, benefices, or promotions, in this his majesty’s kingdom of Ireland, the duties of both which in the said several kingdoms they are in no ways able to discharge, whereby the service of God and his worship is in many places of this kingdom neglected: for remedy whereof, be it enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and the commons in this present parliament assembled, and by the authority of the same, that all and every person and persons having any bishopric, benefice, or other ecclesiastical dignity or promotion in his majesty’s kingdom of England, or dominion of Wales, shall, after the twenty-fourth day of June, in the year one thousand six hundred sixty and six, and during the time of his holding and enjoying the same, be wholly incapable of holding or enjoying any bishopric, or other ecclesiastical dignity, benefice, or promotion, in this kingdom of Ireland; and that from and after the four and twentieth day of June in the year one thousand six hundred sixty and six, all grants and presentations of any bishoprics, or other ecclesiastical dignities, benefices, or promotions in this kingdom, to any person or persons at the time of such grant or presentation, having or enjoying any bishopric, or other ecclesiastical benefice, dignity, or promotion, in his majesty’s kingdom of England, shall be and is hereby declared to be null and void to all intents and purposes whatsoever, in such and the like manner as if such bishop, incumbent, or dignitary, had died or resigned; and that from thenceforth it shall and may be lawful to and for the king’s most excellent majesty, and all other

patrons and donors of all and singular the said bishoprics, ecclesiastical promotions, dignities, or benefices, or of any of them, in this kingdom of Ireland, according to their respective rights and titles to grant, present, or collate, to the same, as if the said person or persons were dead or had resigned. And also if any person or persons having or enjoying any bishopric, or other ecclesiastical dignity, benefice, or promotion, in this his majesty's kingdom of Ireland, shall, after the four and twentieth day of June, one thousand six hundred sixty and six, accept of, hold, or enjoy, any bishopric, or other ecclesiastical dignity, benefice, or promotion, in his majesty's kingdom of England, or dominion of Wales, that then, and immediately from and after such acceptance, holding, or enjoying thereof, all former grants and presentations of any bishoprics, benefices, or other ecclesiastical dignities or promotions, in this kingdom of Ireland, to any such person or persons, shall be and are hereby also declared to be null and void to all intents and purposes whatsoever, in such and the like manner as if such bishop, incumbent, or dignitary, had died or resigned; any licence or other dispensation to the contrary hereof obtained, or to be obtained notwithstanding; and that from thenceforth it shall and may be lawful to and for the king's most excellent majesty, and all other patrons and donors of all and singular the said bishoprics, ecclesiastical promotions, dignities, or benefices, or of any of them, in this kingdom of Ireland, according to their respective rights and titles, to grant, present, or collate to the same, as if the said person or persons were dead, or had resigned.

“II. Provided always, that it shall and may be lawful for the right reverend father in God, Griffith, lord bishop of Ossory, to hold and retain the bishopric of Ossory, together with the deanery of Bangor in his majesty's dominions of Wales, until the augmentation mentioned in the act, intituled, ‘An Act for the better execution of his Majesty's gracious Declaration for the Settlement of his Kingdom of Ireland, and satisfaction of the several Interests of Adventurers, Soldiers, and other his Subjects there,’ shall be settled upon the said Bishop of Ossory, and his successors, anything in this act contained to the contrary notwithstanding.”

STAT. 17 & 18
CAR. 2, c. 10.
[1R.]

Bishop of
Ossory to hold
the deanery of
Bangor in
Wales, till the
augmentation
in the Act of
Settlement
made.

XXXV. STAT. 17 & 18 CAROLI 2, c. 13(1). [IRELAND.] A.D. 1665.

“An Act concerning Tithings, Oblations, and Mortuaries.”

STAT. 17 & 18
CAR. 2, c. 13.
[1R.]

XXXVI. STAT. 17 & 18 CAROLI 2, c. 14. [IRELAND.] A.D. 1665.

“An Act enabling the Precentor and Treasurer of the Cathedral Church of St. Patrick's, Dublin, and the Archdeacon of Dublin, to make Leases of part of their Yards and Gardens for sixty Years.”

STAT. 17 & 18
CAR. 2, c. 14.
[1R.]

XXXVII. STAT. 18 CAROLI 2, c. 4(2). A.D. 1666.

“An Act for burying in Woollen only.”

STAT. 18 CAR.
2, c. 4.

XXXVIII. STAT. 19 CAROLI 2, c. 3(3). A.D. 1667.

“An Act for rebuilding the City of London.”

STAT. 19 CA
2, c. 3.

[The second of September shall be a day of fasting for a memorial of the fire of London. Parish churches to be rebuilt shall not exceed the number of thirty-nine.]

XXXIX. STAT. 22 CAROLI 2, c. 1(4). A.D. 1670.

“An Act to prevent and suppress seditious Conventicles.”

STAT. 22 CAR.
2, c. 1.

(1) Vide Stat. 1 & 2 Vict. c. 109. Stat. c. 3. Stat. 32 Car. 2, c. 1. Stat. 54 Geo. 3 & 4 Vict. c. 13. Stat. 4 & 5 Vict. c. 37, 3, c. 108, s. 1.

s. 30.

(3) Obsolete.

(2) Repealed by Stat. 30 Car. 2, St. I.

(4) Repealed by Stat. 52 Geo. 3, c. 155.

STAT. 22 CAR.
2, c. 6.

XL. STAT. 22 CAROLI 2, c. 6(1). A.D. 1670.

"An Act for advancing the Sale of Fee-farm Rents and other Rents."

[Fee-farm rents given to schools and hospitals shall be paid.]

STAT. 22 CAR.
2, c. 11.

XLI. STAT. 22 CAROLI 2, c. 11. A.D. 1670.

"An additional Act for the rebuilding of the City of London, uniting of Parishes, and rebuilding of the Cathedral and Parochial Churches within the said City."

How the money received by means of the several impositions shall be disposed.

"XXXIX. And be it further enacted, that all and every sum and sums of money which shall be raised upon the receipt of the several and respective impositions aforesaid, or by such additional duty in case of concealment thereof, as by the aforesaid act is appointed, shall be employed and disposed in manner and form following; (that is to say,) three fourth parts of all the monies which, from and after the said first day of May, one thousand six hundred seventy, and before the said twenty-fourth day of June, one thousand six hundred seventy and seven, shall be raised or payable upon the receipt of the aforesaid imposition of two shillings for every chaldron or ton of coals, or in case of concealment thereof as aforesaid, shall be employed and disposed for and towards the rebuilding, erecting, or repairing of the said parish churches respectively, according to such order and direction as by the lord archbishop of Canterbury, the lord bishop, and lord mayor of London for the time being, or any two of them, shall be given in that behalf; and the same shall from time to time be issued out and paid accordingly, unto such person and persons as they, or any two of them, shall, by warrant under their hands and seals, for that purpose direct and appoint: and the other fourth part, residue thereof, shall be employed for and towards the giving satisfaction for grounds set out and employed for enlarging of the streets, making of wharfs, keys, public market places, and other public uses, in this and the aforesaid act mentioned and appointed: and that one moiety of all monies which from and after the said twenty-fourth day of June, one thousand six hundred seventy and seven, shall be raised or payable upon the aforesaid imposition of three shillings the chaldron or ton of coals, or in case of concealment thereof as aforesaid, shall be employed and disposed for and towards the rebuilding, erecting, and repairing of the said respective parish churches, by such order and direction, and to be issued and paid by such warrant, of the said lord archbishop of Canterbury, lord bishop, and lord mayor of London for the time being, as aforesaid; and the other moiety thereof shall from time to time be employed and disposed for the giving of satisfaction for ground set out and employed as aforesaid, and such other public uses and purposes as in this and the aforesaid act are mentioned and appointed.

One-fourth part of the whole may be employed in the repair of St. Paul's church.

"XLI. Provided always, and be it enacted, that it shall and may be lawful for the lord archbishop of Canterbury, the lord bishop of London, and lord mayor of London for the time being, or any two of them, as aforesaid, to employ or dispose for and towards the building or repairing the cathedral church of St. Paul, one fourth part of the money by this act given and appointed for the building, erecting, or repairing of the parish churches aforesaid.

Farther provisions relating hereto, 1 Jac. 2, c. 15.

Paul's school new built by the company of mercers upon part of St. Paul's churchyard, and confirmed to them.

"LVIII. And whereas the wardens and commonalty of the mystery of the mercers of the city of London are now building, pursuant to a design approved of by his majesty, a new school-house, with houses thereto adjoining, for the accommodation of the master, sub-master, and chaplain thereof, partly upon the sites and tofts of the late school called Saint Paul's School, and the former houses of the said masters and chaplain, and partly upon some ground next adjoining, being part of the churchyard belonging to the cathedral church of Saint Paul's, London: and whereas other parts of the former site of the said late school, and of other houses adjoining, have been also by his majesty's directions cut off and laid into the said churchyard, for the enlargement and accommodation of the passage at the east end of the said cathedral; be it therefore enacted, that so much of the said ground

adjoining to the site of the said late school and former houses, as is comprised within the foundation of the said new school and houses now building for the said masters and chaplain, be and are hereby vested and settled on the said wardens and commonalty, and their successors for ever, as the said late school and former houses were before the said fire; and that the said other parts of the former site of the said late school, and other houses adjoining, laid unto the churchyard as aforesaid for the enlargement of the late passage, shall continue a passage for ever, and be and are hereby vested and settled on the dean and chapter of the cathedral church of Saint Paul's aforesaid, and their successors for ever, as the residue of the said churchyard is and was heretofore; any thing in this act to the contrary notwithstanding.

STAT. 22 CAR.
2, c. 11.

“LIX. Provided always, that nothing in this act contained shall extend, or be taken to vest or settle the church of Saint Paul and Saint Faith, or any part thereof, or the church of Saint Gregory by Saint Paul's, or any of them, or the churchyards to any of them belonging or appertaining, or any part of any of them in the mayor, aldermen, and commons of the city of London, or any of them, or in any other person or persons, bodies politic or corporate, other than the ground whereupon Saint Paul's school and houses thereunto belonging, are by this act appointed to be rebuilt; any thing in this act notwithstanding.

Proviso for the churches of St. Faith and St. Paul, and St. Gregory.

“LXII. And whereas by a late act of this present parliament, intituled, ‘An Act for rebuilding the City of London,’ it was enacted, that the parish churches to be rebuilt within the said city of London, in lieu of those which were demolished by the late dreadful fire, should not exceed the number of thirty-nine: but forasmuch as upon an exact survey taken of the number of houses to be rebuilt, and of the extent of the respective parishes necessary to be settled and continued within the said city, it doth appear that the parishes to be settled and continued, and the parish churches to be rebuilt within the said city of London, in lieu of those demolished or consumed by the said late fire, cannot conveniently, by union or otherwise, be reduced to a less number than fifty-one; be it further enacted by the authority aforesaid, that the number of parishes to be settled, and of parish churches to be rebuilt, within the said city of London, shall be fifty-one; the aforesaid act, or any thing therein contained, to the contrary notwithstanding.

19 Car. 2,
c. 3, s. 31.

“LXIII. And that the fifty-one parishes so to be continued shall be as hereafter followeth, that is to say, Allhallows, Lombard street, Saint Bartholomew Exchange, Saint Bridget alias Brides, Saint Bennet's Fink, Saint Michael's Crooked lane, Saint Christopher's, Saint Dionis Backchurch, Saint Dunstan's in the East, Saint James Garlick-hithe, Saint Michael Cornhill, Saint Michael Bassishaw, Saint Margaret Loathbury, Saint Mary Aldermanbury, Saint Martin Ludgate, Saint Peter's Cornhill, Saint Steven's Coleman street, and Saint Sepulchre's, shall remain and continue as heretofore they were: and that the respective parish churches to each of the said parishes belonging shall be rebuilt and continued for the use of the said parishes; and that the several parishes hereafter mentioned shall be respectively united into one parish, in manner hereafter following, that is to say, the parishes of Allhallows Bread street and Saint John Evangelist shall be united into one parish, and the church heretofore belonging to the said parish of Allhallows Bread street, shall be rebuilt, and shall be the *parish church* (1) of the said parishes so *united* (2): the parishes of Allhallows the Great and Allhallows the Less shall be united into one parish, and the church heretofore belonging to the said parish of Allhallows the Great shall be the parish church of the said parishes so united: the parishes of Saint Alban's Wood street, and Saint Olave's

Fifty-one parishes to be within the city of London.

The names of the fifty-one parishes.

Parishes united and joined, and which shall be parish churches.

(1) *Parish church*.—In other unions, the inhabitants of the parishes united, not only remain parishioners of the same distinct parishes as before, but divine service is to be performed in each, and each is to repair to his own church; but here, the other church is extinguished, and this is become the parish church to both, in which both hear divine service *jointly*; and therefore both

shall be contributory to the repairs. *Case of the Parish of St. Swithin & St. Mary Bothaw*, Skin. 588, 616.

(2) *United*.—It was held in *Wilson q. t. v. Van Mildert (Clerk)*, (2 B. & P. 394,) where three parish churches have been united by Stat. 22 Car. 2, c. 11, the benefice might be described in pleading as one rectory.

STAT. 22 CAR.
2, c. 11.

Silver street, shall be united into one parish, and the church heretofore belonging to the said parish of Saint Alban's Wood street, shall be the parish church of the said parishes so united: the parishes of Saint Anne and Agnes, and Saint John, Zachary, shall be united into one parish, and the church heretofore belonging to the said parish of Saint Anne and Agnes shall be the parish church of the said parishes so united: the parishes of Saint Austin's and Saint Faith's shall be united into one parish, and the church heretofore belonging to the said parish of Saint Austin's shall be the parish church of the said parishes so united: the parishes of Saint Andrew Wardrobe, and Saint Anne Blackfriars, shall be united into one parish, and the church heretofore belonging to the said parish of Saint Andrew Wardrobe shall be the parish church of the said parishes so united: the parishes of Saint Antholin's and Saint John Baptist shall be united into one parish, and the church heretofore belonging to the said parish of Saint Antholin's shall be the parish church of the said parishes so united: the parishes of Saint Bennet Gracechurch, and Saint Leonard Eastcheap, shall be united into one parish, and the church heretofore belonging to the said parish of Saint Bennet Gracechurch, shall be the parish church of the said parishes so united: the parishes of Saint Bennet Paul's wharf, and Saint Peter Paul's wharf, shall be united into one parish, and the church heretofore belonging to the said parish of Saint Bennet Paul's wharf, shall be the parish church of the said parishes so united: the parishes of Christchurch and Saint Leonard Foster lane, shall be united into one parish, and the church heretofore belonging to the said parish of Christchurch shall be the parish church of the said parishes so united: the parishes of Saint Edmund the King and Saint Nicholas Acons shall be united into one parish, and the church heretofore belonging to the said parish of Saint Edmund the King shall be the parish church of the said parishes so united: the parishes of Saint George Botolph lane, and Saint Botolph Billingsgate, shall be united into one parish, and the church heretofore belonging to the said parish of Saint George Botolph lane, shall be the parish church of the said parishes so united: the parishes of Saint Lawrence Jury, and Saint Magdalen's Milk street, shall be united into one parish, and the church heretofore belonging to the said parish of Saint Lawrence Jury shall be the parish church of the said parishes so united: the parishes of Saint Magnus and Saint Margaret, New Fish street, shall be united into one parish, and the church heretofore belonging to the said parish of Saint Magnus shall be the parish church of the said parishes so united: the parishes of Saint Michael Royal, and Saint Martin's Vintry, shall be united into one parish, and the church heretofore belonging to the said parish of Saint Michael Royal shall be the parish church of the said parishes so united: the parishes of Saint Matthew Friday street, and Saint Peter's Cheap, shall be united into one parish, and the church heretofore belonging to the said parish of Saint Matthew Friday street, shall be the parish church of the said parishes so united: the parishes of Saint Margaret Patten's, and Saint Gabriel Fenchurch, shall be united into one parish, and the church heretofore belonging to the said parish of Saint Margaret Patten's shall be the parish church of the said parishes so united: the parishes of Saint Mary Atthill, and Saint Andrew Hubbard, shall be united into one parish, and the church heretofore belonging to the said parish of Saint Mary Atthill shall be the parish church of the said parishes so united: the parishes of Saint Mary Wolnoth, and Saint Mary Woolchurch, shall be united into one parish, and the church heretofore belonging to the said parish of Saint Mary Wolnoth, shall be the parish church of the said parishes so united: the parishes of Saint Clement Eastcheap, and Saint Martin's Orgars, shall be united into one parish, and the church heretofore belonging to the said parish of Saint Clement Eastcheap, shall be the parish church of the said parishes so united: the parishes of Saint Mary Abchurch, and Saint Lawrence Pountney, shall be united into one parish, and the church heretofore belonging to the said parish of Saint Mary Abchurch, shall be the parish church of the said parishes so united: the parishes of Saint Mary Aldermanbury, and Saint Thomas Apostle, shall be united into one parish, and the church heretofore belonging to the said parish of Saint Mary Aldermanbury, shall be the parish church of the said parishes

so united: the parishes of Saint Mary le Bow, Saint Pancras Soaper lane, and Alhallows Honey lane, shall be united into one parish, and the church heretofore belonging to the said parish of Saint Mary le Bow shall be the parish church of the said parishes so united: the parishes of Saint Mildred's Poultry, and Saint Mary Cole-church, shall be united into one parish, and the church heretofore belonging to the said parish of Saint Mildred's Poultry, shall be the parish church of the said parishes so united: the parishes of Saint Michael Wood street, and Saint Mary Staining, shall be united into one parish, and the church heretofore belonging to the said parish of Saint Michael Wood street, shall be the parish church of the said parishes so united: the parishes of Saint Mildred Bread street, and Saint Margaret Moses, shall be united into one parish, and the church heretofore belonging to the said parish of Saint Mildred Bread street, shall be the parish church of the parishes so united: the parishes of Saint Michael Queenhithe, and Trinity, shall be united into one parish, and the church heretofore belonging to the said parish of Saint Michael Queenhithe, shall be the parish church of the said parishes so united: the parishes of Saint Mary Magdalen's Old Fish street, and Saint Gregory's, shall be united into one parish, and the church heretofore belonging to the said parish of Saint Mary Magdalen's Old Fish street, shall be the parish church of the said parishes so united: the parishes of Saint Mary Somerset, and Saint Mary Munthaw, shall be united into one parish, and the church heretofore belonging to the said parish of Saint Mary Somerset, shall be the parish church of the said parishes so united: the parishes of Saint Nicholas Cole Abby, and Saint Nicholas Olave's, shall be united into one parish, and the church heretofore belonging to the said parish of Saint Nicholas Cole Abby, shall be the parish church of the said parishes so united: the parishes of Saint Olave's Jury, and Saint Martin's Pomroy, alias Ironmonger lane, shall be united into one parish, and the church heretofore belonging to the said parish of Saint Olave's Jury shall be the parish church of the said parishes so united: the parishes of Saint Stephen Walbrook, and Saint Bennet Sherhog, shall be united into one parish, and the church heretofore belonging to the said parish of Saint Stephen Walbrook, shall be the parish church of the said parishes so united: the parishes of Saint Swithin and Saint Mary Bothaw shall be united into one parish, and the church heretofore belonging to the said parish of Saint Swithin shall be the parish church of the said parishes so united: the parishes of Saint Vedast, alias Saint Foster's, and Saint Michael Quern, shall be united into one parish, and the church heretofore belonging to the said parish of Saint Vedast, alias Saint Foster's, shall be the parish church of the said parishes so united.

“LXIV. And it is hereby further enacted and declared, that the said respective churches to be rebuilt within the said city of London and liberties thereof, shall be built and erected according to such models, and of such dimensions, and in such manner and form in all respects, as by the said lord archbishop of Canterbury, lord bishop of London, and lord mayor of London for the time being, (with his majesty's approbation thereof,) shall be directed and appointed: and the said respective parishes herein before mentioned and appointed to be united as aforesaid, shall for ever hereafter remain and continue so united and consolidated and annexed unto the several and respective parish churches by this act appointed to be rebuilt as aforesaid; and the respective parishioners, and the inhabitants of the said several parishes so to be united as aforesaid by force of this present act, shall hereafter resort to the said churches respectively, as to their proper parish church: and all tithes and other duties heretofore due and payable to the respective incumbents of the said parish churches respectively, shall hereafter be paid and payable to the incumbent of that church only, which by this act is appointed to be rebuilt and established for the parish church of the parishes so united as aforesaid.

“LXV. And be it further enacted, that all plate and goods heretofore belonging to any of the churchwardens of any of the parishes of those burnt down, which are not now to be rebuilt, for the use of the said churches, shall be enjoyed by the respective churchwardens, and their successors, of the respective parishes of such churches to be rebuilt respectively, whereunto the said other churches burnt

STAT. 22 CAR.
2, c. 11.

The same parish churches shall be rebuilt according to models appointed by the archbishop of Canterbury, bishop of London, and lord mayor of London, with the king's approbation.

Plate and goods belonging to churches not to be rebuilt, shall be enjoyed by the churchwardens, &c. of those rebuilt.

STAT. 22 CAR. 2, c. 11. down are united by this act, to the use of the said churches and parishes respectively.

Churchyards to be inclosed "LXVI. Provided always, that the *sites of the churches* (1) to be demolished, and the churchyards belonging to the same, shall be inclosed with brick or stone

(1) *Sites of the churches*:—It has been previously stated in the text, (s. 63,) that the parish church of St. Martin Orgars, [This epithet, "Orgars," is derived by Newcourt, from Odgarus, or Ordgarus, the probable founder of the church; who gave it to the Dean and Chapter of St. Paul's, still its patrons, about the year 1185.] together with that of the adjoining parish, St. Clement, Eastcheap, was destroyed by the fire of London, in 1666; and that the parishes of St. Clement, Eastcheap, and St. Martin Orgars, were to be united into one parish; and that the church thenceforth belonging to St. Clement, Eastcheap, was to be the parish church of the said parishes so united. And by this section, (66,) it was in effect provided, that the site of the church of St. Martin Orgars, and the churchyard belonging to the same, should be inclosed with brick or stone walls for a burial place for the said united parishes, and should not be used or employed for any other purpose.

From *Steeven & Hollak v. St. Martin Orgars (Parish of)*, (2 Add. 255,) it appears, that the rector and churchwardens of such parish, by lease, bearing date the 3rd of February, 1699, demised or granted the piece of ground whereon the church of St. Martin Orgars had formerly stood, to certain persons, (as trustees for certain French refugees of the protestant religion, who had previously assembled, first, at a house in Jewin Street, and afterwards, at a house on College Hill, in virtue of letters patent under the great seal of England, [Granted originally to Peter Alix, clerk, and such other French refugees of the protestant religion, (very numerous, and becoming daily more so, at that time, in consequence of the then recent revocation of the Edict of Nantz), "as should join themselves with him."]) bearing date the 16th of June, in the 2nd year of King James 2,) in order to erect a church for the performance of divine service, and the celebration of the holy sacraments, or other rites of the church, in the French language, but according to the liturgy of the church of England; saving to the rector and churchwardens of the said parish, their right of burial therein, and all fees in respect thereof. This lease, which was for fifty years, with powers of renewal, as covenanted in the same, and at a reserved rent of 35*l.* per annum, was confirmed by a private act, 11 & 12 Gul. 3, No. 54.

A church was, accordingly, built, partly, it should seem, upon the old foundation: and continued from that time, in the occupation of French protestants, descendants, probably, of those for whose use it was originally erected, at first, by renewal of their lease, and, latterly, as yearly tenants, till Christmas, 1823, when possession of the same was delivered up to the churchwardens

of St. Martin Orgars; who, in consequence of the dilapidated state of the building, were authorized, by order of vestry, to take down the same, preserving the vaults beneath, so as still to form part of the burial-place of the inhabitants of the said parish.

Under these circumstances, a decree had issued, at the promotion of the said churchwardens, calling upon the rector, parishioners, and inhabitants, of the parish of St. Martin Orgars, in special, and all others in general, having or pretending to have any right, title, or interest in the premises, to appear and show cause, why a *licence*, or *faculty*, should not be granted to the churchwardens for the purpose aforesaid, with the usual intimation: which citation having been duly published in the church of St. Clement, Eastcheap, and returned without any appearance given, the judge was now moved to decree a faculty pursuant to the said intimation.

Upon these facts, the judge, Sir Christopher Robinson, observed, "The court is disposed, on the whole, to accede to the present application, unwilling as it is, upon general considerations, to sanction the utter demolition of any building, which has something, at least, of the character of a national church. [The court observed, that the act of King William had scarcely impressed that character permanently upon it, although, in confirming the lease, &c. it provided, 'that before the building to be erected should be made use of for purposes of divine worship, it should be decently fitted and accommodated; and so furnished and adorned as the Archbishop of Canterbury and the Bishop of London, for the time being, or one of them, should direct and appoint.' Quære, however, such being the character of the building, the necessity for any faculty to justify the parishioners in taking it down?] At the same time, it could wish this matter to stand over, in order to afford the parish time to consider, whether this building, which is a spacious building, and not, as the court has ascertained by its own inspection, in a state of visible decay, might not be repaired, and made subservient in some way, (for instance, as a national school,) to the church establishment: its appropriation in this sort the court might feel itself justified in sanctioning, under, at least, the implied authority of the private act of King William the Third. In the event of the building itself being wholly demolished, the site can only be used for a burial-place; and can be devoted to no other use whatever, under the express provisions of the act of Car. 2, s. 66.

"Let this matter stand over till next term; in which interval, an accurate survey may be made of the state of the building; and the parish may have time to consider, or to reconsider, the propriety of applying it, and the capacity of the building to be applied, in some

walls for burial places for the parishes formerly belonging to the same, and the parishes to which they are respectively united as aforesaid, and not used or employed for any other purpose whatsoever; excepting such of the sites and churchyards, or parts of sites and churchyards of the said parish churches so demolished as aforesaid, as are already laid into the streets and market-places so set out for that purpose, or such other as shall within two years now next following be thought fit by the mayor and aldermen of the said city, with the consent of the lord archbishop of Canterbury and lord bishop of London, and by his majesty's approbation, to be laid into the streets and markets for enlargement and accommodation thereof, or for public store-places.

"LXVII. Provided always, that where any part of the churches or churchyards of any of the said parish churches hereby appointed to be rebuilt and continued, have been thought fit by the mayor and court of aldermen of the said city, to be laid into any of the streets within the said city for enlargement thereof; and by order of the said mayor and court of aldermen, shall have been before the five and twentieth day of March, one thousand six hundred and seventy, staked and set out accordingly: it is hereby further enacted and declared, that the grounds so staked out shall be made use of for the enlarging of the said streets, according as the same were for that purpose staked and set out as aforesaid; this present act, or any thing therein contained, to the contrary notwithstanding.

"LXVIII. Provided always, and it is hereby enacted and declared, that notwithstanding such union as aforesaid, each and every of the parishes so united, as to all rates, taxes, *parochial rights* (1), charges, and duties, and all other privileges, liberties, and respects whatsoever, other than what are herein before mentioned and specified, shall continue and remain distinct, and as heretofore they were, before the making of this present act: and that the several respective patrons of the said churches so united shall and may present by turns to that church only which by this act is appointed to be rebuilt and established for the parish church of the parishes so united as aforesaid: the first presentment to be made by the patron of

STAT. 22 CAR. 2, c. 11.

with walls to make burial places.

Notwithstanding the union, the parishes, as to all rates, charges, and privileges, to remain distinct.

such manner as that which I have suggested. But if they think it ultimately expedient, as there are great dilapidations, though principally, it seems to me, in the roof, and which nobody is compellable to repair, I think that they are entitled to have the site of the old church restored to the state contemplated by the fire act; under which impression, I shall be disposed to accede to their renewed application for a faculty to take this building down, unconditionally. I understand that the Dean and Chapter of St. Paul's, the patrons of the living, have been consulted; and have intimated that it is not their intention to offer any objection."

(1) *Parochial rights*:—After the great fire of London, in 1666, the parish of St. Mary, Colechurch, was united with that of St. Mildred the Virgin, by Stat. 22 Car. 2, c. 11. By custom, in each of the parishes before their union, the right of appointment to the office of parish clerk, was in the rector and parishioners. In the year 1831, the parishioners of the united parishes, in vestry assembled, elected a parish clerk, but the rector at first refused to sanction the appointment, and himself appointed another person; afterwards, however, he appointed the person elected, with the assent of the parishioners. But the person whom he had previously appointed, one Sunday morning placed himself in the clerk's desk in the church of the united parishes, and, refusing to retire upon request, was laid hold of by one of the churchwardens and the vestry clerk, and an

attempt was made to remove him by force, but which was not successful. For the purpose of trying the right to the office, he brought an action of assault against those officers, who pleaded specially two sets of justifications; one set alleging the legal appointment of the person elected by the parishioners, to place whom in the desk they sought to remove the plaintiff; and the other set treating the plaintiff himself as an intruder. The jury were of opinion, that the custom was for the rector to appoint with the assent of the parishioners, and found a verdict for the defendants. A rule was afterwards obtained for a new trial, which, after argument, and time taken to consider, was discharged; the court being of opinion, that the plaintiff was not lawful parish clerk, as he was appointed by the rector alone, without the concurrence of *either* of the parishes, but they did not decide whether the election by the *united* vestries was right or not, though they said that it appeared to be the natural mode.

In the course of the trial it was ruled, that old entries in the vestry books of the parishes were not evidence to show the right of election, as it did not appear whether the incumbent was present at the meetings they related to. But extracts from the register of the bishop of the diocese were received in evidence to prove the same appointments, as were also several entries of vestry meetings at which the rector was present. *Hartley v. Cook*, 5 C. & P. 441. 9 Bing. 728.

STAT. 22 CAR. 2, c. 11. such of the said churches, the endowments whereof are of the greatest yearly value.

Proviso for the present incumbents of churches not to be rebuilt.

“LXIX. Provided always, and it is hereby declared, that this act, nor any thing therein contained, shall not extend or be construed to deprive the present incumbents, which at the time of the said late fire were or now are in possession of any of the said parish churches not to be rebuilt, or any of them, of the tithes or other profits heretofore belonging to their respective churches, so long as they shall assist in serving the cure, and other offices belonging to their duty in the parish church whereunto their respective parishes shall be united and annexed by virtue of this act, according to the direction of the ordinary; any thing in this present act contained to the contrary notwithstanding: saving to the king’s majesty, his heirs and successors, the tenths and first-fruits of all such parish churches as by force of this present act shall be united and consolidated as aforesaid, according to such rates and valuations as the same do respectively stand rated and valued at, in his majesty’s court of first-fruits and tenths; any thing in this present act notwithstanding: saving also to all other person and persons, bodies politic and corporate, ecclesiastical and civil, their heirs and successors, all pensions, annuities, and payments whatsoever, heretofore due from and payable by any of the rectors, vicars, and curates of any of the said churches united or consolidated as aforesaid; anything in this present act notwithstanding.

“LXX. Provided always, that it shall and may be lawful to and for the warden and minor canons of Saint Paul’s Church, London, parson and proprietors of the rectory of the parish of Saint Gregory’s aforesaid, to receive and enjoy all tithes, oblations, and duties arising or growing due within the said parish, in as large and beneficial manner as formerly they have or lawfully might have done; anything herein to the contrary notwithstanding.

Saint Mary Colechurch.

A free school.

“LXXI. And whereas the wardens and commonalty of the mystery of the mercers of the city of London, at the time of the said fire, were seized in fee of the rectory and parish church impropriate of Saint Mary Colechurch, (the said church being an upper room about ten foot higher than the street, and lying over certain rooms and arched vaults or cellars of the said wardens and commonalty,) upon the site of which church they have designed to build a free school, and other buildings conformable to the rules of the said former act, and to remove the dead bodies and bones of such as have been buried upon the arches, and to cause them to be decently reposed within the body of their chapel, commonly called Mercers’ Chapel: be it therefore hereby enacted, that the site of the said parish church, and the materials thereof remaining upon the said site, be and are hereby settled upon the said wardens and commonalty, and their successors for ever; and that the said wardens and commonalty shall pay to the lord mayor and aldermen of the city of London for the same, such sum of money towards the rebuilding of the church whereunto the same is by this act appointed to be united, as shall be agreed upon between the said lord mayor and aldermen, and the said wardens and commonalty, or be assessed by a jury impaneled and sworn, as by the said former act is directed in any other case; anything in this act to the contrary notwithstanding.

Provision that parsons may not be sued for dilapidations.

“LXXII. And whereas several parish churches, chancels, parsonage and vicarage houses were consumed in the late dismal fire; to the end therefore the incumbents, parsons, and vicars, may not be liable to the rebuilding of their chancels, parsonage and vicarage houses, nor to be sued for dilapidations: be it enacted by the authority aforesaid, that the incumbent, parsons, and vicars of the aforesaid churches, their executors and administrators, shall be and are hereby indemnified, as to the rebuilding of their respective chancels, parsonage and vicarage houses, and shall not be liable to any suits, troubles, or molestations that may arise for dilapidations aforesaid; and that no process shall be issued out of any court whatsoever against the persons aforesaid, for their not rebuilding their respective chancels and parsonage and vicarage houses; any law or statute to the contrary in any wise notwithstanding.

“LXXIII. And whereas first-fruits, tenths, and several pensions are from the

said parsons and vicars to be yearly paid to his majesty, and several duties to the ordinary and archdeacon, that his majesty will be graciously pleased, that it may be enacted; and be it further enacted by the authority aforesaid, that the said parsons and vicars be indemnified, and are hereby indemnified, from the payment of all first-fruits, tenths, and pensions due, and which shall be due to his majesty, and from all dues to the ordinary and archdeacon, and all other dues whatsoever chargeable upon them respectively, until such time as they shall receive the profits arising from the same as formerly: and that no process shall be issued out of any court whatsoever against the persons aforesaid, for their nonpayment of first-fruits, tenths, pensions, or any other the dues aforesaid; any law or statute to the contrary in any wise notwithstanding.

STAT. 22 CAR. 2, c. 11.

Parsons and vicars exempted from first-fruits, tenths, and pensions.

“LXXIV. And whereas divers ministers have been already since the fire, and may be from time to time presented and instituted, and being so are liable to the forfeitures of their several livings for not reading the Thirty-nine Articles, and for not doing other things enjoined by law in their several parish churches: be it enacted by the authority aforesaid, that all such ministers as have been or shall be from time to time presented and instituted since the said fire, be and are hereby indemnified from the several penalties and forfeitures incurred and to be incurred by or for not reading of the Thirty-nine Articles, or not doing other things enjoined by law as aforesaid, until such time as the said several churches be re-edified or made fit for public worship.

Indemnified for not reading the Thirty-nine Articles.

“LXXV. And whereas the said parsons and vicars, or some of them, are interested in several glebe lands or grounds, the which they cannot rebuild themselves, nor let such lease or leases as may be an encouragement for others to rebuild the same: be it enacted by the authority aforesaid, that the said parsons and vicars, and every of them respectively, be empowered and are hereby empowered to let such lease or leases of their said glebe lands or grounds, with the consent and approbation of the patron or patrons and ordinary, for any term not exceeding forty years, and at such yearly rents, without fine, as can be obtained for the same; and that no lapses incurred upon any non-presentation in due time of any of the patrons of the said livings since the said fire shall any ways prejudice or make void the presentations that the said patrons have since made, whereupon any incumbent is since instituted and inducted; any law or statute to the contrary in any wise notwithstanding.

Empowered to let leases of their glebe lands.

“LXXVI. Provided always, and it is hereby declared and enacted, that if the mayor and commonalty and citizens of the said city of London shall be concerned in estate or title in any controversy or difference, whereof the determination is by this or the aforesaid act referred to the hearing and judgment of the said mayor and court of aldermen; that then and in every such case the justices of the courts of King’s Bench and Common Pleas, and the barons of the coif of the Exchequer for the time being, or any three or more of them, upon complaint to them made, shall be and are hereby authorized to hear and finally order and determine the same; anything in this or the aforesaid act to the contrary notwithstanding.”

XLII. STAT. 22 & 23 CAROLI 2, c. 3(1). A.D. 1670.

STAT. 22 & 23 CAR. 2, c. 3.

“*An Act for granting a Subsidy to His Majesty.*”

[Nothing in this lay subsidy shall prejudice the rights of the clergy.]

XLIII. STAT. 22 & 23 CAROLI 2, c. 10[6]. A.D. 1670.

STAT. 22 & 23 CAR. 2, c. 10.

“*An Act for the better settling of Intestate Estates.*”

“Be it enacted (2) by the king’s most excellent majesty, with the advice and consent of the lords spiritual and temporal, and the commons in this present parliament assembled, and by the authority of the same, that all ordinaries, as well

All ordinaries who have power to grant

(1) Expired.

(2) Enacted:—It was said by the Chief Justice in *Palmer v. Alicock*, (Skin. 213.)

that this statute was made in imitation of the custom of London.

STAT. 22 & 23
CAR. 2, c. 10.

administra-
tions, have
power to take
bond.

Vaugh. 96.
31 Edw. 3,
c. 11.

The condition
of the bonds.

the judges of the prerogative courts of Canterbury and York for the time being, as all other ordinaries and ecclesiastical judges, and every of them, having power to commit administration of the *goods* (1) of persons dying intestate, shall and may, upon their respective granting and committing of administration of the goods of persons dying intestate, after the first day of June, one thousand six hundred seventy and one, of the respective person or persons to whom any administration is to be committed, take sufficient bonds with two or more able sureties, respect being had to the value of the estate, in the name of the ordinary, with the condition in form and manner following, *mutatis mutandis*, viz.:

“II. ‘*The condition of this obligation*’ (2) is such, that if the within-bounden *A. B.*, administrator of all and singular the goods, chattels, and credits, of *C. D.*

(1) *Goods*:—Although an estate *pur auter vie* was made assets by Stat. 29 Car. 2, c. 3, it was not distributable within this statute, inasmuch as it still remained a freehold, and distribution was not necessarily included in the notion of assets.

(2) *The condition of this obligation*:—Respecting the taking of sureties under this statute, the ecclesiastical commissioners, in their Report, (dated February 15th, 1832, p. 40,) state: “Connected with this branch of the subject, is the taking of sureties, for the due administration of intestate’s effects, and also when administration with the will annexed is granted.

“Two things are essential to the security and due distribution of the property; namely, that the sureties should be responsible, and that an easy mode should exist of enforcing the penalty of the bond.

“Some delays, difficulties, and inconveniences arise from requiring two sureties to justify to the amount of the property to be administered; and we therefore propose, that the judge should have full authority, in all cases, to moderate the amount for which the bonds shall be given; and also, instead of taking two sureties only, to allow the party to give security for the amount required, by several sureties, two being bound for each portion of the sum.

“By the statute passed in the reign of Charles 2, (Stat. 22 & 23 Car. 2, c. 10,) the judge upon granting administration, is required to take good and sufficient security. It is impossible to carry this provision of the law into complete effect, without compelling the sureties to justify. At present this is not done in ordinary cases; but according to the practice of the court, justifying security is required where one of the next of kin, or of the parties entitled in distribution, apply for it, or where there has been a citation or decree without personal service. The judge also may direct the sureties to justify, where he thinks that the circumstances of the case render it expedient.

“To obviate inconvenience, we think some modification may be introduced. The amount for which the sureties are to justify may be limited to the amount of the debts of the intestate, in cases where the party taking the administration is solely entitled to the property, or where all other persons entitled in distribution, may consent to waive such justification. Where some may consent and others either decline, or be legally incapable

of consenting, then the sum for which sureties should justify might be limited to the amount of the shares of the individuals so dissenting, or incapable of assenting, and the amount of debts due.

“The next point for consideration is the due enforcement of the security, when the conditions of the bond have been broken.

“The ecclesiastical court has no jurisdiction, in any case, to enforce payment of the penalty by the exercise of its own authority.

“According to the present practice, application must be made to the ecclesiastical judge for permission that, upon an action being brought at common law for a breach of the bond, the bond shall be ‘attended with,’ for the purpose of being produced as evidence on the trial: and in this preliminary proceeding, the sureties are allowed to state any circumstances they may deem material, to induce the court not to grant the prayer of the party proceeding against them. Sometimes the court was called upon to pronounce the bond forfeited: but, in substance, this amounted to no more than a direction that the bond should be ‘attended with,’ for the courts of common law alone could enforce payment of the bond.

“Considerable difficulty, however, exists with respect to the effectual administration of justice in these cases. When the breach of the bond consists in the non-exhibition of the inventory and account, there is no unnecessary impediment. But this is not the most important condition of the bond, though one of great utility; and it is a condition which may be easily complied with, without effectual justice being done, it being apparent, that the production of a statement of the property, and an account of the payment of debts, does not necessarily lead to a distribution amongst the next of kin of the residue of the intestate’s effects.

“The most essential provision is, the due administration of the property; but when the bond is given under the statute of Charles 2, it is now settled by a recent decision of the court of King’s Bench, that the failure duly to administer the property is not a breach of the bond, unless the judge of the ecclesiastical court shall first have allowed the account, and by his decree have directed payment to be made to the persons entitled according to the act. *Canterbury (Archbishop of) v. Tappen*, 8 B. & C. 151.

“It is, therefore obvious that before the

deceased, do make or cause to be made, a true and perfect inventory of all and singular the goods, chattels, and credits, of the said deceased, which have or shall come to the hands, possession, or knowledge of him the said *A. B.*, or into the hands and possession of any other person or persons for him, and the same so made do exhibit or cause to be exhibited into the registry of _____ court, at or before the _____ day of _____ next ensuing; and the same goods, chattels, and credits, and all other the goods, chattels, and credits of the said deceased at the time of his death, which at any time after shall come to the hands or possession of the said *A. B.*, or into the hands and possession of any other person or persons for him, do well and truly administer according to law; and further do make, or cause to be made, a true and just account of his said administration, at or before the _____ day of _____. And all the rest and residue of the said goods, chattels, and credits, which shall be found remaining upon the said administrator's account, the same being first examined and allowed of by the judge or judges for the time being of the said court, shall deliver and pay unto such person or persons respectively, as the said judge or judges by his or their decree or sentence, pursuant to the true intent and meaning of this act, shall limit and appoint. And if it shall hereafter appear, that any last will and testament was made by the said deceased, and the executor or executors therein named do exhibit the same into the said court, making request to have it allowed and approved accordingly, if the said *A. B.*, within-bouden, being thereunto required, do render and deliver the said letters of administration, (approbation of such testament being first had and made,) in the said court; then this obligation to be void and of none effect, or else to remain in full force and virtue.'

STAT. 22 & 23
CAR. 2, c. 10.

1 Salk. 315,
316.

"III. Which bonds are hereby declared and enacted to be good to all intents and purposes, and pleadable in any courts of justice; and also that the said ordinaries and judges respectively shall and *may* and are enabled to proceed and *call such administrators to account* (1), for and touching the goods of any person dying intestate; and upon hearing and due consideration thereof, to *order* and make just and equal *distribution* (2) of what remaineth clear, (after all debts, funerals, and just expenses of every sort, first allowed and deducted,) amongst the wife and children, or children's children, if any such be, or otherwise to the next of kindred to the dead person, in equal decree, or legally representing their stocks *pro suo quique jure*, according to the laws in such cases, and the rules and limitation hereafter set down; and the same distributions to decree and settle, and to compel such administrators to observe and pay the same, by the due course of his majesty's ecclesiastical laws; saving to every one, supposing him or themselves agreed, their right of appeal as was always in such cases used.

Ordinaries
have power to
call adminis-
trators to
account, and
to make dis-
tribution, &c.
14 Vin. 464.

bond against sureties can be enforced for a breach of this description, the judge must examine the whole administration of the property; must ascertain the clear amount of the residue after payment of the debts and expenses; and have a legal *constat* of the persons entitled in distribution. To do this effectually, there must be a power of examining the legality and justice of the alleged debts and expenses; and doubts may be entertained, whether the ecclesiastical court is vested with sufficient authority for this purpose. The Prerogative court possesses means quite adequate to this investigation; but the mode of proceeding, in addition to the doubt of the extent of the power, is at present dilatory and difficult, principally in consequence of the apprehension that the jurisdiction may be exceeded, or some want of form occur, fatal to proceedings elsewhere.

"It is evident that, if it be fitting that these bonds should be taken at all, due facility should be afforded for enforcing them, when the conditions have been violated. In

our judgment the provisions of the statute of Charles the Second, requiring these bonds, are wise and salutary; and we recommend that the ecclesiastical courts be furnished with more extensive powers than they now possess, and that the present course of proceeding be altered, so as to provide a convenient mode of enforcing these bonds in proper cases."

(1) *May*. . . . *call such administrators to account*:—Previously to this statute it was held, that the ordinary, after administration granted, could not compel the administrator to make administration. *Slawney's case*, Hob. 83. *Fotherbies' case*, Cro. Car. 62. *Vandam v. Deconell*, Jon. (Sir W.), 228.

(2) *Order*. . . . *distribution*:—The spiritual court has power to make distribution of the estate of the deceased when it is come in, but not to collect it. *Clerke v. Clerke*, 1 Ld. Raym. 585. And the spiritual court cannot, under this statute, compel an executor to distribute; it is only where the party dies intestate. *Petit v. Smith*, Ibid. 86.

STAT. 22 & 23
CAR. 2, c. 10.

Customs of
London and
York saved.

Explained by
1 Jac. 2, c. 17,
s. 8.

Skin. 26.
How, and to
whom, the sur-
plusage is to be
distributed.

2 Mod. 20,
101.

3 Mod. 58.

1 Vern. 465.

Advancement
by portion.

1 Show. 25.

Heir at law to
have an equal
part.

“IV. Provided, that this act, or anything herein contained, shall not any ways prejudice or hinder the customs observed within the city of London, or within the province of York, or other places having known and received customs peculiar to them, but that the same customs may be observed as formerly; anything herein contained to the contrary notwithstanding.

“V. Provided always, and be it enacted by the authority aforesaid, that all ordinaries, and every other person who by this act is enabled to make distribution of the surplusage of the estate of any person dying intestate, *shall distribute* the whole surplusage of such estate or estates in manner and form following: that is to say, one-third part of the said surplusage to the wife of the intestate, and *all the residue by equal portions, to and amongst the children of such persons dying intestate, and such persons as legally represent such children, in case any of the said children be then dead* (1), *other than such child or children, (not being heir at law), who shall have any estate by the settlement of the intestate, or shall be advanced by the intestate in his life-time, by portion or portions equal to the share which shall by such distribution be allotted to the other children to whom such distribution is to be made: and in case any child, other than the heir at law, who shall have any estate by settlement from the said intestate, or shall be advanced by the said intestate in his life-time by portion not equal to the share which will be due to the other children by such distribution as aforesaid; then so much of the surplusage of the estate of such intestate, to be distributed to such child or children as shall have any land by settlement from the intestate, or were advanced in the life-time of the intestate, as shall make the estate of all the said children to be equal as near as can be estimated; but the heir at law, notwithstanding any*

(1) *Shall distribute . . . all the residue by equal portions, to and amongst the children of such persons dying intestate, and such persons as legally represent such children, in case any of the said children be then dead:*—The foregoing language will be best comprehended if treated of under three divisions. i. Where none of the intestate's children are dead. ii. Where the intestate's children are all dead, all of them having left children. iii. Where some of the intestate's children are living, and some dead, and such as are dead, have each of them left children.

i. *Where none of the intestate's children are dead.* After the wife has had her third allotted to her, the remaining two-thirds must be equally divided among all the children of the intestate, because they claim in their own right. A brother or sister of the half-blood will be equally entitled to a share with one of the whole blood, as they are both equally near of kin to the intestate. Com. Dig. *Administration* (H). *Smith v. Tracy*, 1 Mod. 209. 2 Ibid. 204. 1 Vent. 316. *Newton v. Shafto*, 2 Lev. 173. *Winchelsea (Earl of) v. Norcliffe*, 1 Vern. 437. *Crooke v. Watt*, 2 Ibid. 124. *Brown v. Farndell*, Carth. 51. Nor will their being posthumous make any difference, (*Edwards v. Freeman*, 2 P. Wms. 446,) because a child *en ventre de sa mère* at the time of the father's death, is by the rules of the common and civil law, a child, as much as if born in the father's life-time. *Wallis v. Hodson*, 2 Atk. 117. *Thellusson v. Woodford*, 11 Ves. 139. If the intestate leave only one child, such case is not to be considered as omitted by the statute: therefore, in case he also leave a wife, she will have only a third part, and the other two-thirds will go to such

child. *Brown v. Farndell*, Carth. 52. *Palmer v. Alicock*, Skin. 212. So, where there is only one to claim under the statute, and therefore, strictly speaking, there can be no distribution, yet such individual will be entitled to the property. 3 P. Wms. 49, n.(d). *Palmer v. Garrard*, Pre. Ch. 21.

ii. *Where the intestate's children are all dead, all of them having left children.* If A. have three children, B. C. and D., and they all die, B. leaving for instance two children, C. three, and D. four, and A. afterwards die intestate; in that case, all his grandchildren will have an equal share; for as his children are all dead, their children will take *per capita* as next of kin. Such also would be the case with respect to the great-grandchildren of the intestate, if both his children and grandchildren had all died before him. Eq. Ca. Abr. 249 (E). *Walsh v. Walsh*, Pre. Ch. 54. *Bowers v. Littlewood*, 1 P. Wms. 595. *Davies v. Dewes*, 3 Ibid. 50. *Durant v. Prestwood*, 1 Atk. 454. *Janson v. Burry*, Bunb. 159. 2 Black. Com. by Chitty, 517.

iii. *Where some of the intestate's children are living, and some dead, and such as are dead have each of them left children.* Under such circumstances, the grandchildren take *per stirpes*: i. e. not in their own right, but by representation. Thus, if A. have three sons, B. C. and D., and B. die leaving four children, and C. die leaving two; on A. dying intestate, one third will be allotted to D., one third to B.'s four children, and the remaining third to C.'s two children; for these grandchildren are entitled as representing their respective parents. Eq. Ca. Abr. 249 (E). *Walsh v. Walsh*, Pre. Ch. 54. 2 Black. Com. by Chitty, 517.

land that he shall have by descent or otherwise from the intestate, is to have an equal part in the distribution with the rest of the children, without any consideration of the value of the land which he hath by descent, or otherwise, from the intestate (1).

STAT. 22 & 23
CAR. 2, c. 10.

(1) *Other than such child or children, (not being heir at law,) who shall have any estate by the settlement of the intestate, or shall be advanced by the intestate in his life-time, by portion or portions equal to the share which shall by such distribution be allotted to the other children, to whom such distribution is to be made: and in case any child, other than the heir at law, who shall have any estate by settlement from the said intestate, or shall be advanced by the said intestate in his life-time by portion not equal to the share which will be due to the other children by such distribution as aforesaid; then so much of the surplusage of the estate of such intestate, to be distributed to such child or children as shall have any land by settlement from the intestate, or were advanced in the life-time of the intestate, as shall make the estate of all the said children to be equal, as near as can be estimated; but the heir at law, notwithstanding any land that he shall have by descent or otherwise from the intestate, is to have an equal part in the distribution with the rest of the children, without any consideration of the value of the land which he hath by descent, or otherwise, from the intestate:*

—The statute does not divest the child of any property which has thus been given to him, however unequal it may have been, or how much soever it may exceed the residue; he may, if he please, keep it all; and if he be not contented, but would have more, then he must bring what he has before received, (*Gilbert v. Wetherell*, 2 S. & S. 254,) into hotchpot, that is, into the general mass of the property so to be divided.

This is the intention of the statute grounded on that principle of equality, to which a court of equity is ever inclined.

Therefore, before a younger child has any claim to a share of the distribution, he must first bring his advancement into hotchpot.

In *Walton v. Walton*, (14 Ves. 324,) Sir William Grant observed, "I conceive, the provision in the Statute of Distributions applies only to the case of actual intestacy; and, where there is an executor, and consequently a complete will, though the executor may be declared a trustee for the next of kin, they take, as if the residue had been actually given to them. Therefore, the child advanced by her father in his life, could not be called on to bring her share into hotchpot."

Respecting what will constitute such advancement, it may be stated, that if a father purchase for a son an advowson, or any other ecclesiastical benefice, or if he buy him any office, civil or military, these are held to be such advancements, either partial or complete, according to the comparative value or the estate to be distributed. 3 P. Wms. 316, n. (o). *Sed vide* Swinburne, pt. 13, s. 18. And although the office be only at will, as a gentleman pensioner's place, or a commis-

sion in the army, it is regarded in the same light. 3 P. Wms. 316, n. (o).

A provision made for a child by a settlement, either voluntary or for a good consideration, as that of marriage, is an advancement *pro tanto*. *Edwards v. Freeman*, 2 P. Wms. 440, 444. *Phiney v. Phiney*, 2 Vern. 638.

Nor does the statute extend only to land itself, (11 Vin. Abr. *Executors* (Z. 10), 192;) when settled on a younger child by the father, but also to a charge on the land, created by him for the benefit of such child; therefore, if a father settle rent out of his lands on a younger child, this also is such an advancement as is intended by the statute. Nor is it necessary, that the provisions should take place in the father's life-time. If by deed he settle an annuity, to commence after his death on such child, it is of the same description. Swinburne, pt. 3, s. 4. *Edwards v. Freeman*, 2 P. Wms. 440-449. So a reversion settled on a child, as it is capable of being valued, is of the same nature. A portion secured to a child, although *in futuro*, is also an advancement. And were it only contingent, yet when the contingency has happened, it will be so considered.

A portion for a daughter to be raised out of lands on her attaining the age of eighteen, or the day of her marriage, was accordingly held to be an advancement to him whom she married, although she were under that age, and unmarried, at the time of the intestate's death. Eq. Ca. Abr. 249 (E).

A portion also, while contingent, is capable of a valuation, and may, it seems, be brought into hotchpot, (*Edwards v. Freeman*, 2 P. Wms. 442,) or the court may order, that, in case the contingency should happen, the portion shall be so distributed, as to make the rest of the children equal with the child on whom it was settled. *Ibid.* 446. But the contingency must be so limited, as necessarily to arise within a reasonable time, as in the above case, where the portion was secured for the daughter, on her attaining the age of eighteen, or on her marriage. *Ibid.* 440, 445, 449. A child advanced in part, must bring in his advancement only among the other children; for no benefit will accrue from it to the widow. *Ward v. Lant*, Pre. Ch. 182, 184. If a child who has received any advancement from his father, die in his father's life-time, leaving children, such children will not be admitted to their father's distributive share, unless they bring in his advancement; since, as his representatives, they can have no better claim than he would have had, if living. *Proud v. Turner*, 2 P. Wms. 560.

By this statute, although the heir at law shall not abate in respect of the land which came to him by descent, or otherwise, from the intestate; yet if he have had an advancement from his father in his life-time out of

STAT. 22 & 23
CAR. 2, c. 10.

1 Ven. 316.

2 Lev. 173.

2 Ven. 317.

1 Mod. 209.

2 Mod. 204.

“VI. And in case there be no children, nor any legal representatives of them, then one moiety of the said estate to be allotted to the wife of the intestate, the residue of the said estate to be distributed equally to every of the next of kindred of the intestate, who are in equal degree, and those who legally represent them (1).”

the personal estate, he must abate for it in the same manner as the other children. And, were it merely the use of furniture for his life, it will be regarded as an advancement *pro tanto*. Com. Dig. *Administration* (H). So where A. on his marriage covenanted, in case of a second marriage, to pay his eldest son by his first wife 500*l.*; she died, leaving a son and other children, and A. after a second marriage died intestate: it was decreed, that his heir should bring in the money, although he were in the nature of a purchaser, under a marriage settlement. *Phiney v. Phiney*, 2 Vern. 638.

Co-heiresses will also, it seems, bring in such advancement, not being land, as they may have respectively received from their father, before they will be entitled to their distributive shares, agreeably to the principle of the statute, and to the object of a just and impartial father to promote an equality among his children. *Edwards v. Freeman*, 2 P. Wms. 440, 443.

Small inconsiderable sums of money given to a child by the father, or mere trivial presents, such as a gold watch or wedding clothes; (3 P. Wms. 316, n. (o); *Elliot v. Collier*, 1 Ves. Sen. 16; 3 Atk. 328; *Garon v. Trippet*, Ambl. 189;) money expended by the father for the maintenance of his son; money given to bind him an apprentice; money laid out in his education, at school, at the university, or on his travels; will not be deemed an advancement. Swinburne, pt. 3, s. 18. *Edwards v. Freeman*, 2 P. Wms. 449. Nor can what a child receives out of his mother's estate be so regarded, for the Statute of Distributions was grounded on the custom of London, which never affected a widow's personal estate, and seems to include those only within the clause of hotchpot, who are capable of having a wife as well as children, which must be husbands only. *Holt v. Frederick*, Ibid. 356. Nor shall a provision which a father may make for his child by will, (for a case may occur where a testator may die intestate as to part of his personal estate,) be considered in that light. Nor land given by the father's will to a younger child. *Edwards v. Freeman*, Ibid. 440, 446.

Such a provision as shall be construed an advancement, must result from a complete act of the intestate in his life-time, (Ibid.; *Gilbert v. Wetherell*, 2 S. & S. 254,) by which he divested himself of all property in the subject, though it may not take effect in possession till after his death. Still less will property given or bequeathed to the child by any other person be so denominated; and least of all, will a fortune of his own acquisition. Swinburne, pt. 3, s. 18.

Respecting borough English lands, which descend to the youngest son, it was held, in *Pratt v. Pratt*, (Str. 935,) that such lands must be allowed for on the ground,

that the statute intended merely to provide for the heir of the family, that is, the heir by the common law, and not one who is heir only by custom in some particular places. But such decision has been over-ruled, and it is now settled, that such youngest son shall have an equal share of the distribution with the other children, without regard to this species of estate; for although the exception in the statute extends only to the eldest son, yet no laws exist to oblige the heir in borough English to bring in his lands. The statute contains no such requisition. It speaks merely of such estate as a child hath by settlement, or by advancement of the intestate in his life-time. *Lutwyche v. Lutwyche*, C. T. T. 276.

(1) In case there be no children, nor any legal representatives of them, then one moiety of the said estate to be allotted to the wife of the intestate, the residue of the said estate to be distributed equally to every of the next of kindred of the intestate, who are in equal degree, and those who legally represent them:—The next of kin referred to by the statute are to be traced by the same rules of consanguinity as those who are entitled to letters of administration. *Lloyd v. Tench*, 2 Ves. Sen. 214.

The mother, therefore, as well as the father, succeeded to all the personal effects of the children who died intestate without wife or issue, in exclusion of the other sons and daughters, the brothers and sisters of the deceased; and such is the law still with respect to the father; (2 Black. Com. by Chitty, 513, 516; *Evelyn v. Evelyn*, Ambl. 192;) but by Stat. 1 Jac. 2, c. 17, s. 7, (*post*. 625,) if, after the death of the father, and in the life-time of the mother, any of the children die intestate, without wife or children, every brother and sister, and their representatives, will have an equal share with her. The principle of which provision is this, that otherwise the mother might marry, and transfer all to another husband. *Blackborough v. Davies*, 1 Salk. 251. 1 P. Wms. 48. 1 Ld. Raym. 684.

And brothers and sisters of the half blood of an intestate, are equally entitled with brothers and sisters of the whole blood. *Jessopp v. Watson*, 1 M. & K. 665.

Where a testator devised real estate in trust, for the persons who at his decease should be the next of kin of *R. D.* deceased, according to the Statute of Distributions, and their heirs as tenants in common; and the next of kin consisted of great grandchildren's children, and the children of great grandchildren's children: it was held, that they took *per stirpes* and not *per capita*. *Mattison v. Tanfield*, 3 Beav. 13.

And it may be here observed, that under Stat. 1 Jac. 2, c. 17, it has been held, that if A. die intestate, and without issue, leaving a wife, and several brothers and sisters, and

“VII. *Provided, that there be no representations admitted among collaterals after brothers' and sisters' children; and in case there be no wife, then all the said estate to be distributed equally to and amongst the children; and in case there be no child, then to the next of kindred in equal degree of or unto the intestate, and their legal representatives as aforesaid, and in no other manner whatsoever* (1). STAT. 22 & 23 CAR. 2, c. 10. If no wife amongst the children. 1 Salk. 250. Raym. 496.

Carth. 51. Jones (Sir T.), 93. 2 Ver. 169, 170, 233.

his mother living, the mother shall have no more than an equal share of a moiety of the estate with the brothers and sisters. And although there should be no brother or sister, yet if there be no children of a deceased brother or sister, they shall partake with their grandmother to the same extent as their parent would have been entitled. *Keyway v. Keyway*, 2 P. Wms. 344. Str. 710. *Stanley v. Stanley*, 1 Atk. 455. But if there be neither brother nor sister, nor representative of a brother or sister, the case is without the statute, and the whole of such intestate's effects shall devolve, as before, to his mother. 11 Vin. Abr. *Executors* (Z. 12), 196. Also, by analogy to the Statute of Distributions, such representations shall not be carried beyond brothers' and sisters' children. *Stanley v. Stanley*, 1 Atk. 457. A mother-in-law of the intestate, it is clear, can claim no share in the distribution, she not being of his blood. *Rutland (Duke of) v. Rutland (Duchess of)*, 2 P. Wms. 216.

(1) *Provided, that there be no representations admitted among collaterals after brothers' and sisters' children; and in case there be no wife, then all the said estate to be distributed equally to and amongst the children; and in case there be no child, then to the next of kindred in equal degree of or unto the intestate, and their legal representatives as aforesaid, and in no other manner whatsoever*:—That there shall be no representations among collaterals beyond brothers' and sisters' children, must be construed to mean brothers and sisters of the intestate, and not as admitting representation, when the distribution happens to fall among brothers and sisters who are remotely related to the intestate; for the intestate is the subject of the act, it is his estate, his wife, his children, and for the same reason, his brothers' and sisters' children, for he is equally correlative to all. *Carter v. Crawley*, Raym. (Sir. T.), 496. *Caldicot v. Smith*, 2 Show. (Sir B.), 295. *Beeton v. Darkin*, 2 Vern. 168. *Maw v. Harding*, Ibid. 233. *Pett v. Pett*, 1 Salk. 250. 1 Ld. Raym. 571. Com. 87. 1 P. Wms. 25. *Bowers v. Littlewood*, Ibid. 595. Therefore it has been held, that if the brother of an intestate hath a grandson, and a sister has a son, or daughter, the grandson shall not have distribution with the son, or daughter of the sister. *Pett v. Pett*, 1 Salk. 250. 1 Ld. Raym. 571. 1 P. Wms. 25. Com. 87. So it has been decreed, that if an intestate leave an uncle, and a deceased aunt's son, the latter shall have no distributive share. *Bowers v. Littlewood*, 1 P. Wms. 594. Thus, though among lineals, representatives *ad infinitum*

shall share in the distribution of an intestate's personal estate, yet among collaterals, except only in the instance of the intestate's brothers' and sisters' children, proximity of blood can alone give a title to it.

The children of an intestate's brothers and sisters, who were deceased at his death, will take *per capita*. Therefore, if an intestate leave a deceased brother's only son, and ten children of a deceased half-sister, the ten children of the deceased half-sister will take ten parts in eleven with the son of the deceased brother. Ibid. 595.

The words of the statute must be taken together. The expression *pro suo cuique jure*, will let in any advantage of equality or preference to which a person was entitled by our law before the statute. Therefore, a grandfather, although he be in an equal degree of consanguinity with the brother of the deceased, shall have no share with him in the distribution; for, by the common law, there was but one degree between brother and brother, and it would be unnatural to carry the personal estate up to the grandfather, who must be presumed to have been long before provided for, and to be going out of life. *Evelyn v. Evelyn*, Amb. 191.

So a grandfather will exclude an uncle; and, independently of the provisions of the statute, by the common law the former was entitled to a preference, as being of the right line, whereas the latter is only of the collateral line; in other words, the grandfather is the root of the kindred, and the uncle is only the branch. *Blackborough v. Davies*, 1 Salk. 251. 1 P. Wms. 41. 1 Ld. Raym. 684. Com. 108. 12 Mod. 615. *Lloyd v. Tench*, 2 Ves. Sen. 215.

The law, of course, is the same in respect to grandmothers and aunts. Com. Dig. *Administration* (H). *Blackborough v. Davies*, 1 Salk. 38, 251. *Woodroff v. Wickworth*, Pre. Ch. 527.

Where the next of kin are, a grandfather by the father's side, and a grandmother by the mother's, they will take in equal moieties, as being in equal degree; for, in respect of such claims, dignity of blood makes no difference. *Blackborough v. Davies*, 1 P. Wms. 53.

Uncles and nephews, aunts and nieces, are in equal degree. And where the intestate left two aunts, and a nephew and a niece, children of a deceased brother, Lord Hardwicke ordered the surplus to be divided into four parts equally among them, holding, that as they were all in equal degree, the children were to take in their own right, and not by representation; but that if their father had been living, he would have been entitled to the whole. *Durant v. Prestwood*, 1 Atk. 454.

STAT. 22 & 23
CAR. 2, c. 10.
No distribu-

“VIII. Provided also, and be it likewise enacted by the authority aforesaid, to the end that a due regard be had to creditors, that no such distribution of the goods of any person dying intestate be made till after one year be fully expired

The granddaughter of a sister, and the daughter of an aunt of the intestate, are also in equal degree, and entitled to equal distribution. Com. Dig. *Administration* (H). *Thomas v. Ketteriche*, 1 Ves. Sen. 333.

The next of kin, though collateral, is preferred before a relation, though lineal, if he be of the ascending line, and more remote. *Blackborough v. Davies*, 1 P. Wms. 51.

Although the statute direct, that no distribution shall be made till a year be elapsed from the death of the intestate, yet, if a person entitled to a distributive share shall die within the year, such interest will be considered as vested in him, and will go to his personal representative; for this proviso makes no suspension or condition, precedent to the interest of the parties, but was inserted merely with a view to creditors.

The statute, also, is in the nature of a will framed by the legislature for all such persons as die, without having made one for themselves; and, by consequence, the parties entitled in distribution resemble a residuary legatee; and it has been always held, that if such legatee die before the amount of the surplus be ascertained, still his representative shall have the whole residue, and not the representative of the first testator. *Brown v. Farnell*, Carth. 51. *Freke v. Thomas*, Comb. 109. *Taylor v. Ames*, 2 Show. (Sir B.), 294. *Palmer v. Alicoek*, Skin. 212, 218. 3 Mod. 58. 11 Vin. Abr. *Executors* (K. 3), 92. *Wilcocks v. Wilcocks*, 2 Vern. 559. 3 P. Wms. 49, n. (d). *Lee v. Cox*, 3 Atk. 422.

Affinity or relationship by marriage, except in the instance of the wife of the intestate, gives no title to a share of his property, as if A. have a son and a daughter, B. and C., and they both die, the former leaving a wife, and the latter a husband; on A.'s dying afterwards intestate, such husband and wife have neither of them any claim on his estate.

Under a will, a wife is not one of the next of kin in the ordinary sense. Therefore, where a testator gave the residue of his property “to be divided amongst my next of kin, as if I had died intestate,” the widow was held not to be entitled to any share of such residue. *Garrick v. Camden* (Lord), 14 Ves. 372. And where an intestate leaves a widow, but no next of kin, the widow is not entitled to the whole of the personal estate; but one moiety belongs to her, and the other to the crown. *Cave v. Roberts*, 8 Sim. 214.

A gift of property to *my nearest surviving relations*, has been held to mean the testator's brothers and sisters, to the exclusion of nephews and nieces. *Smith v. Campbell*, Coop. C. C. 275.

If a bastard, or any other person having no kindred, die intestate, without wife or child, his effects belong to the crown, who, with the exception of a small part, usually grants

them by letters patent, or otherwise; and then such grantee seems of course entitled to the administration, and consequently to the sole enjoyment of the property. 2 Black. Com. by Chitty, 505. *Megit v. Johnson*, Doug. 542.

The personal property of an intestate, wherever situated, must be distributed according to the law of the country where his domicile was, and such is *primâ facie* the place of his residence, but that may be rebutted, or supported by circumstances; (*Teynham* (Lord) v. *Webb*, 2 Ves. Sen. 198;) for although the locality of the party's abode at the time of his death determines the rule of distribution, yet it must be a stationary, not an occasional, residence, in order that the municipal institutions may attach on the property. *Pipon v. Pipon*, Ambl. 25. *Burn v. Cole*, Ibid. 415. In fact, the domicile of origin is that arising from a man's birth and connexions. *Somerville v. Somerville* (Lord), 5 Ves. 787. Such a domicile cannot be lost by mere abandonment; it is not to be defeated *animo* merely, but *animo et facto*, unless the party die *in itinere* towards an intended domicile. *De Bonneval v. De Bonneval*, 1 Curt. 857. *Attorney-General v. Dunn*, 6 M. & W. 511. *Munroe v. Douglas*, 5 Madd. 405. If an Englishman be settled, and die in this country, and administration be taken out to him here, debts due to him, or other of his personal effects in Scotland or abroad, must be distributed according to the law of England. *Thorne v. Watkins*, 2 Ves. Sen. 35. But if an alien resident abroad die intestate, his whole property here is distributable according to the laws of the country where he so resides, otherwise no foreigner could deal in our funds but at the peril of his effects going according to our laws, and not to those of his own country. *Pipon v. Pipon*, Ambl. 27.

In *Pottinger v. Wightman*, (3 Meriv. 67,) it appeared, that a native of England domiciled in Guernsey died intestate, leaving a widow and infant children, and the widow was appointed guardian of the children by the royal court of Guernsey; she sold the property of the intestate, invested the produce in the English funds, and afterwards came to England with her children, where she became domiciled. A question arose on the death of some of the children under age, whether their shares of the property became distributable according to the law of England or of Guernsey: and it was held, that the law of England was to govern the succession, the domicile of the children being, (according to the opinion of foreign jurists, our own law being silent on the subject,) to follow the domicile of the surviving parent, where no fraudulent intention can be imputed. But fraud may be imputed where no reasonable cause appears for the removal. *Vide* Toller on Executors by Whitmarsh, 372-388. Williams on Executors, 1168 *et seq.*

after the intestate's death; and that such and every one to whom any distribution and share shall be allotted, shall give bond with sufficient sureties in the said courts, that if any debt or debts truly owing by the intestate shall be afterwards sued for and recovered, or otherwise duly made to appear; that then and in every such case he or she shall respectively refund and pay back to the administrator his or her rateable part of that debt or debts, and of the costs of suit and charges of the administrator by reason of such debt, out of the part and share so as aforesaid allotted to him or her, thereby to enable the said administrator to pay and satisfy the said debt or debts so discovered after the distribution made as aforesaid.

"IX. Provided always, and be it enacted by the authority aforesaid, that in all cases where the ordinary hath used heretofore to grant administration *cum testamento annexo*, he shall continue so to do, and the will of the deceased in such testament expressed shall be performed and observed in such manner as it should have been if this act had never been made.

"X. Provided also, that this act shall continue in force for seven years, and from thence to the end of the next session of parliament, and no longer."

XLIV. STAT. 22 & 23 CAROLI 2, c. 15 [11]. A.D. 1670.

"*An Act for the better Settlement of the Maintenance of the Parsons, Vicars, and Curates, in the Parishes of the City of London burnt by the late dreadful Fire there.*"

STAT. 22 & 23 CAR. 2, c. 10.
tion till after one year.
If debts afterwards appear, then all to refund proportionably.

Act not extend to administration *cum testamento annexo*.

STAT. 22 & 23 CAR. 2, c. 15.

XLV. STAT. 22 & 23 CAROLI 2, c. 20 [7, 16]. A.D. 1670.

"*An Act for the Relief and Release of poor distressed Prisoners for Debt.*"
[Inquiry as to charities for the benefit of poor prisoners.]

STAT. 22 & 23 CAR. 2, c. 20.

XLVI. STAT. 25 CAROLI 2, c. 2 (1). A.D. 1672.

"*An Act for preventing Dangers which may happen from Popish Recusants.*"

"For preventing dangers which may happen from popish recusants, and quieting the minds of his majesty's good subjects; be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, that all and every person or persons, as well peers as commoners, that shall bear any office or offices civil or military, or shall receive any pay, salary, fee, or wages, by reason of any patent or grant from his majesty, or shall have command or place of trust from or under his majesty, or from any of his majesty's predecessors, or by his or their authority, or by authority derived from him or them, within the realm of England, dominion of Wales, or town of Berwick upon Tweed, or in his majesty's navy, or in the several islands of Jersey and Guernsey, or shall be of the household, or in the service or employment of his majesty, or of his royal highness the Duke of York, who shall inhabit, reside, or be within the city of London or Westminster, or within thirty miles distant from the same, on the first day of Easter term that shall be in the year of our Lord one thousand six hundred seventy-three, or at any time during the said term, all and every the said person and persons shall personally appear before the end of the said term, or of Trinity term next following, in his majesty's high court of Chancery, or in his majesty's court of King's Bench, and there in public and open court, between the hours of nine of the clock and twelve in the forenoon, take the several oaths of supremacy and allegiance, (which oath of allegiance is contained in the statute made in the third year of King James,) by law established; and during the time of the taking thereof by the said person and persons, all pleas and proceedings in the said respective courts shall cease; and that all and every of the

STAT. 25 CAR. 2, c. 2.

Lutw. 159.
2 Jac. 1, c. 5.
7 Jac. 1, c. 6.

All persons that bear any offices or places, &c. must take the oaths of allegiance and supremacy, and the following oaths, &c.
18 Vin. 240.

When and where to appear and make oath.

This act extended to depe-

(1) Stat. 7 & 8 Gul. 3, c. 24. Stat. 13 Gul. 3, c. 6. Stat. 10 Ann. c. 2. Stat. 2 Geo. 3, c. 128. Stat. 9 Geo. 4, c. 17. Stat. 1 Geo. 2, c. 31. Stat. 9 Geo. 2, c. 26. Stat. Gul. 4, c. 26. Stat. 3 & 4 Gul. 4, c. 102. 16 Geo. 2, c. 30. Stat. 31 Geo. 3, c. 32. Stat. 5 & 6 Gul. 4, c. 28.

STAT. 25 CAR.
2, c. 2.

ties by 1 Geo.
1, St. II. c. 13,
s. 18.

To receive the
sacrament ac-
cording to the
usage of the
church of
England.

All persons to
be admitted
into any office,
&c. after the
first day of
Easter term,
to take the said
oaths, &c.
See 2 Geo. 2,
c. 31, s. 9.
Carth. 478.
2 Mod. 209
Comb. 21.
The time en-
larged to six
months, 9 Geo.
2, c. 26.
Persons beyond
sea helped by
13 Geo. 1,
c. 29, s. 1.

When and
where to be
taken.

Jon. (Sir T.)
81.

Explained by
1 Geo. 2,
St. II. c. 23,
s. 6.
Carth. 320.

Certificate.

Whosoever
shall refuse to
take the oaths
shall be ad-
judged inca-
pable of any
other office.

said respective persons and officers, not having taken the said oaths in the said respective courts aforesaid, shall, on or before the first day of August, one thousand six hundred seventy-three, at the quarter sessions for that county or place where he or they shall be, inhabit, or reside on the twentieth day of May, take the said oaths in open court between the said hours of nine and twelve of the clock in the forenoon; and the said respective officers aforesaid shall also receive the sacrament of the Lord's supper, according to the usage of the church of England, at or before the first day of August in the year of our Lord one thousand six hundred and seventy-three, in some parish church, upon some Lord's day, commonly called Sunday, immediately after divine service and sermon.

"II. And be it further enacted by the authority aforesaid, that all and every person or persons that shall be admitted, entered, placed, or taken into any office or offices civil or military, or shall receive any pay, salary, fee, or wages, by reason of any patent or grant of his majesty, or shall have command or place of trust from or under his majesty, his heirs or successors, or by his or their authority, or by authority derived from him or them, within this realm of England, dominion of Wales, or town of Berwick upon Tweed, or in his majesty's navy, or in the several islands of Jersey and Guernsey, or that shall be admitted into any service or employment in his majesty's or royal highness's household or family, after the first day of Easter term aforesaid, and shall inhabit, be, or reside, when he or they is or are so admitted or placed, within the cities of London or Westminster, or within thirty miles of the same, shall take the said oaths aforesaid in the said respective court or courts aforesaid, in the next term after such his or their admittance or admittances into the office or offices, employment or employments aforesaid, between the hours aforesaid, and no other, and the proceedings to cease as aforesaid; and that all and every such person or persons to be admitted after the said first day of Easter term as aforesaid, not having taken the said oaths in the said courts aforesaid, shall, at the quarter sessions for that county or place where he or they shall reside, next after such his admittance or admittances into any of the said respective offices or employments aforesaid, take the said several and respective oaths as aforesaid; and all and every such person and persons so to be admitted as aforesaid, shall also receive the sacrament of the Lord's supper, according to the usage of the church of England, within three months after his or their admittance in or receiving their said authority and employment, in some public church, upon some Lord's day, commonly called Sunday, immediately after divine service and sermon.

"III. And every of the said persons in the respective court where he takes the said oaths, shall first deliver a certificate of such his receiving the said sacrament as aforesaid, under the hands of the respective minister and churchwarden, and shall then make proof of the truth thereof by two credible witnesses at the least, upon oath; all which shall be inquired of, and put upon record, in the respective courts.

"IV. And be it further enacted by the authority aforesaid, that all and every the person or persons aforesaid, that do or shall neglect or refuse to take the said oaths and sacrament in the said courts and places, and at the respective times aforesaid, shall be (*ipso facto*) adjudged incapable and *disabled in law* (1), to all intents and purposes whatsoever, to have, occupy, or enjoy the said office or offices, employment or employments, or any part of them, or any matter or thing aforesaid, or any profit or advantage appertaining to them, or any of them; and every such office and place, employment and employments, shall be void, and is hereby adjudged void.

(1) *Disabled in law*.—The strict interpretation given to these words will receive illustration from *Hippisly v. Tucke*, (2 Lev. 184; 3 Keb. 682,) in which case, a mayor was judge, and error was assigned upon a judgment delivered by him, because he had not qualified himself according to this statute; that, consequently, the office was void

before the judgment given, and that the cause was *coram non jndice*: the court held, that the executing his office without qualifying himself, did not only make him liable to the penalty of the law, but that by the neglect, the office was void to all intents and purposes, as to the jurisdiction itself; for which reason, the judgment was reversed.

“V. And be it further enacted, that all and every such person or persons that shall neglect or refuse to take the said oaths or the sacrament as aforesaid, within the times, and in the places aforesaid, and in the manner aforesaid, and yet after such neglect or refusal shall execute any of the said offices or employments after the said times expired, wherein he or they ought to have taken the same, and being thereupon lawfully convicted, in or upon any information, presentment or indictment, in any of the king’s courts at Westminster, or at the assizes, every such person and persons shall be disabled from thenceforth to sue or use any action, bill, plaint or information in course of law, or to prosecute any suit in any court of equity, or to be guardian of any child, or executor or administrator of any person, or capable of any legacy or deed of gift, or to bear any office within this realm of England, dominion of Wales, or town of Berwick upon Tweed; and shall forfeit the sum of five hundred pounds, to be recovered by him or them that shall sue for the same, to be prosecuted by any action of debt, suit, bill, plaint, or information, in any of his majesty’s courts at Westminster, wherein no essoin, protection, or wager of law, shall lie.

STAT. 25 CAR. 2, c. 2.

No person shall execute any office, after refusal, &c. 1 Lutw. 159, 162.

“VI. And be it further enacted by the authority aforesaid, that the names of all and singular such persons and officers aforesaid, that do or shall take the oaths aforesaid, shall be in the respective courts of Chancery and King’s Bench, and the quarter sessions enrolled, with the day and time of their taking the same, in rolls made and kept only for that intent and purpose, and for no other; the which rolls, as for the court of Chancery, shall be publicly hung up in the office of the petty bag, and the roll for the King’s Bench in the crown office of the said court, and in some public place in every quarter sessions, and there remain during the whole term, every term, and during the whole time of the said sessions, in every quarter sessions, for every one to resort to and look upon without fee or reward; and likewise none of the person or persons aforesaid, shall give or pay as any fee or reward to any officer or officers belonging to any of the courts as aforesaid, above the sum of twelve pence for his or their entry of his or their taking of the said oaths aforesaid.

The names of persons taking the oaths, where to be registered.

The fees allowed.

“VII. And further, that it shall and may be lawful to and for the respective courts aforesaid, to give and administer the said oaths aforesaid to the person or persons aforesaid, in manner as aforesaid, and upon the due tender of any such person or persons to take the said oaths, the said courts are hereby required and enjoined to administer the same.

Upon due tender made to the courts, they are to administer the oaths.

“VIII. And be it further enacted, that if any person or persons, not bred up by his or their parent or parents from their infancy in the popish religion, and professing themselves to be popish recusants, shall breed up, instruct, or educate his or their child or children, or suffer them to be instructed or educated in the popish religion, every such person being thereof convicted, shall be from thenceforth disabled of bearing any office or place of trust or profit in church or state: and all such children as shall be so brought up, instructed, or educated, are and shall be hereby disabled of bearing any such office or place of trust or profit, until he and they shall be perfectly reconciled and converted to the church of England, and shall take the oaths of supremacy and allegiance aforesaid before the justices of the peace in the open quarter sessions of the county or place where they shall inhabit, and thereupon receive the sacrament of the Lord’s supper after the usage of the church of England, and obtain a certificate thereof under the hands of two or more of the said justices of the peace.

No person shall breed up his children in the popish religion, &c.

“IX. And be it further enacted by the authority aforesaid, that at the same time when the persons concerned in this act shall take the aforesaid oaths of supremacy and allegiance, they shall likewise make and subscribe this declaration following, under the same penalties and forfeitures as by this act is appointed:

At the taking of the oaths to subscribe the declaration following.

“I, A. B., do declare, that I do believe that there is not any transubstantiation in the sacrament of the Lord’s supper, or in the elements of bread and wine, at or after the consecration thereof by any person whatsoever.”

“X. Of which subscription there shall be the like register kept, as of the taking the oaths aforesaid.

STAT. 25 CAR.
2, c. 2.

This act not to
extend to
peerage, &c.

Popish officers
must appoint
deputies, who
must take the
oaths, &c.

and subscribe.

The peers may
take the oaths,
&c. in parlia-
ment.

Married
women, &c.

“XI. Provided always, that neither this act, nor any thing therein contained, shall extend, be judged, or interpreted any ways to hurt or prejudice the peerage of any peer of this realm, or to take away any right, power, privilege, or profit, which any person (being a peer of this realm) hath or ought to enjoy by reason of his peerage, either in time of parliament or otherwise; or to take away creation money or bills of impost, nor to take away or make void any pension or salary granted by his majesty to any person for valuable and sufficient consideration for life, lives, or years, other than such as relate to any office, or to any place of trust under his majesty, and other than pensions of bounty or voluntary pensions; nor to take away or make void any estate of inheritance granted by his majesty, or any his predecessors, to any person or persons of or in any lands, rents, tithes, or hereditaments, not being offices; nor to take away or make void any pension or salary already granted by his majesty to any person who was instrumental in the happy preservation of his sacred majesty after the battle at Worcester in the year one thousand six hundred fifty-one, until his majesty's arrival beyond the seas; nor to take away or make void the grant of any office or offices of inheritance, or any fee, salary, or reward, for executing such office or offices, or thereto any way belonging, granted by his majesty or any his predecessors, to, or enjoyed or which hereafter shall be enjoyed by, any person or persons who shall refuse or neglect to take the said oaths, or either of them, or to receive the sacrament, or to subscribe the declaration mentioned in this act, in manner therein expressed: nevertheless so as such person or persons, having or enjoying any such office or offices of inheritance, do or shall substitute and appoint his or their sufficient deputy or deputies, (which such officer or officers respectively are hereby empowered from time to time to make or change, any former law or usage to the contrary notwithstanding,) to exercise the said office or offices, until such time as the person or persons having such office or offices shall voluntarily in the court of Chancery, before the lord chancellor or lord keeper for the time being, or in the court of King's Bench, take the said oaths, and receive the sacrament according to law, and subscribe the said declaration, and so as all and every the deputy and deputies so as aforesaid to be appointed, take the said oaths, receive the sacrament, and subscribe the said declaration from time to time, as they shall happen to be so appointed, in manner as by this act such officers, whose deputies they be, are appointed to do; and so as such deputies be from time to time approved of by the king's majesty under his privy signet; but that all and every the peers of this realm shall have, hold, and enjoy what is provided for as aforesaid, and all and every other person or persons before-mentioned, denoted, or intended within this proviso, shall have, hold, and enjoy what is provided for as aforesaid, notwithstanding any incapacity or disability mentioned in this act.

“XII. Provided also, that the said peers and every of them may take the said oaths, and make the said subscription, and deliver the said certificates, before the peers sitting in parliament, if the parliament be sitting within the time limited for doing thereof, and in the intervals of parliament in the high court of Chancery; in which respective courts all the said proceedings are to be recorded in manner aforesaid.

“XIII. Provided always, that no married woman, or person under the age of eighteen years, or being beyond or upon the seas, or found by the lawful oaths of twelve men to be *non compos mentis*, and so being and remaining at the end of Trinity term in the year of our Lord one thousand six hundred seventy-three, having any office, shall by virtue of this act lose or forfeit any such his or her office (other than such married woman during the life of her husband only) for any neglect or refusal of taking the oaths, and doing the other things required by this act to be done by persons having offices, so as such respective persons within four months after the death of the husband, coming to the age of eighteen years, returning into this kingdom, and becoming of sound mind, shall respectively take the said oaths, and perform all other things in manner as by this act is appointed for persons to do, who shall happen to have any office or offices to them given or fallen after the end of the said Trinity term.

“XIV. Provided also, that any person who by his or her neglect or refusal, according to this act, shall lose or forfeit any office, may be capable by a new grant of the said office, or of any other, and to have and hold the same again, such person taking the said oaths, and doing all other things required by this act, so as such office be not granted to, and actually enjoyed by, some other person at the time of the regranting thereof.

STAT. 25 CAR. 2, c. 2.

Any person forfeiting his office, upon taking the oaths, &c. capable of a new grant thereof. Not to extend to non-commission officers in the navy, &c. Earl of Bristol and his lady.

“XV. Provided also, that nothing in this act contained shall extend to make any forfeiture, disability, or incapacity in, by, or upon any non-commission officer or officers in his majesty’s navy, if such officer or officers shall only subscribe the declaration therein required, in manner as the same is directed.

“XVI. Provided also, that nothing in this act contained shall extend to prejudice George Earl of Bristol, or Anne Countess of Bristol, his wife, in the pension or pensions granted to them by patent under the great seal of England, bearing date the sixteenth day of July, in the year of our Lord one thousand six hundred sixty and nine, being in lieu of a just debt due to the said earl from his majesty, particularly expressed in the said patent.

“XVII. Provided also, that this act, or anything therein contained, shall not extend to the office of any high constable, petty constable, tithingman, headborough, overseer of the poor, churchwardens, surveyor of the highways, or any like inferior civil office, or to any office or forester, or keeper of any park, chace, warren, or game, or of bailiff of any manor or lands, or to any like private offices, or to any person or persons having only the before-mentioned, or any the like offices.”

Constables, &c. See farther, 10 Ann. c. 2; 12 Ann. St. II. c. 12; 5 Geo. 1, c. 4; and 16 Geo. 2, c. 30.

XLVII. STAT. 25 CAROLI 2, c. 5. A.D. 1672.

STAT. 25 CAR. 2, c. 5.

“An Act for the King’s Majesty’s most gracious General and Free Pardon.”

[Arrears of first-fruits; procurations, synodals, and other payments out of any ecclesiastical promotion; taking away temporalities in time of vacation: excepted from pardon.]

XLVIII. STAT. 29 CAROLI 2, c. 3(1). A.D. 1676.

STAT. 29 CAR. 2, c. 3.

“An Act for Prevention of Frauds and Perjuries.”

“For prevention of many fraudulent practices, which are commonly endeavoured to be upheld by perjury and subornation of perjury; be it enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, that from and after the four and twentieth day of June, which shall be in the year of our Lord one thousand six hundred seventy and seven, all leases, estates, interests of freehold, or terms of years, or any uncertain interest of, in, to, or out of any messuages, manors, lands, tenements, or hereditaments, made or created by livery and seisin only, or by parol, and not put in writing, and signed by the parties so making or creating the same, or their agents thereunto lawfully authorized by writing, shall have the force and effect of leases or estates at will only, and shall not either in law or equity be deemed or taken to have any other or greater force or effect; any consideration for making any such parol leases or estates, or any former law or usage, to the contrary notwithstanding.

1 Rol. Abr. 24.

2 Lev. 227. Parol leases and interest of freehold shall have the force of estates at will only.

“II. Except nevertheless all leases not exceeding the term of three years from the making thereof, whereupon the rent reserved to the landlord, during such term, shall amount unto two third parts at the least of the full improved value of the thing demised.

Except leases not exceeding three years, &c.

“III. And moreover, that no leases, estates, or interests, either of freehold, or terms of years, or any uncertain interest, not being copyhold or customary interest, of, in, to, or out of any messuages, manors, lands, tenements, or hereditaments,

No leases or estates of freehold shall be granted or

(1) Vide Stat. 4 Ann. c. 16. Stat. 14 Geo. 2, c. 20. Stat. 7 Gul. 4 & 1 Vict. c. 26. Stat. 29 Car. 2, c. 3, ss. 5, 6, 12, 19, 20, 21, & 22, has been repealed, by Stat. 7

Gul. 4 & 1 Vict. c. 26, but the repealed sections have been inserted, in order that practitioners may perceive the difference of language, which the legislature has adopted.

STAT. 29 CAR.
2. c. 3.

surrendered by
word.

Promises and
agreements by
parol.

2 Show. 16.
Skinn. 142,
143.

2 Mod. 310.
1 Vent. 361,
362.

3 Lev. 65, 66.
1 Salk. 290.
See 3 Bur.
1281, 1886,
1921.

Devises of
lands shall be
in writing, and
attested by
three or four
witnesses.

3 Lev. 86.
Carth. 35, 514.
3 Mod. 218,
262.

How the same
shall be revoc-
able.

3 Mod. 260.

All declara-
tions or crea-
tions of trusts
shall be in
writing.

Explained by
4 Ann. c. 16,
s. 15.

Trusts arising,
transferred or
extinguished
by implication
of law, are
excepted.

Assignments of
trusts shall be
in writing.

Lands, &c.
shall be liable
to the judg-
ments, &c. of
cest. que trust;

shall at any time after the said four and twentieth day of June be assigned, granted, or surrendered, unless it be by deed, or note in writing, signed by the party so assigning, granting, or surrendering the same, or their agents thereunto lawfully authorized by writing, or by act and operation of law.

“IV. And be it further enacted by the authority aforesaid, that from and after the said four and twentieth day of June, no action shall be brought whereby to charge any executor or administrator upon any special promise, to answer damages out of his own estate; or whereby to charge the defendant upon any special promise to answer for the debt, default, or miscarriages of another person; or to charge any person upon any agreement made upon consideration of marriage; or upon any contract or sale of lands, tenements, or hereditaments, or any interest in or concerning them; or upon any agreement that is not to be performed within the space of one year from the making thereof; unless the agreement upon which such action shall be brought, or some memorandum or note thereof shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized.

“V. And be it further enacted by the authority aforesaid, that from and after the said four-and-twentieth day of June, all devises and bequests of any lands or tenements, devisable either by force of the statute of wills, or by this statute, or by force of the custom of Kent, or the custom of any borough, or any other particular custom, shall be in writing, and signed by the party so devising the same, or by some other person in his presence, and by his express directions, and shall be attested and subscribed in the presence of the said devisor by three or four credible witnesses, or else they shall be utterly void and of none effect.

“VI. And moreover, no devise in writing of lands, tenements, or hereditaments, nor any clause thereof, shall at any time after the said four and twentieth day of June be revocable, otherwise than by some other will or codicil in writing, or other writing declaring the same, or by burning, cancelling, tearing, or obliterating the same by the testator himself, or in his presence, and by his directions and consent; but all devises and bequests of lands and tenements shall remain and continue in force, until the same be burnt, cancelled, torn, or obliterated by the testator, or his directions, in manner aforesaid, or unless the same be altered by some other will or codicil in writing, or other writing of the devisor, signed in the presence of three or four witnesses, declaring the same; any former law or usage to the contrary notwithstanding.

“VII. And be it further enacted by the authority aforesaid, that, from and after the said four and twentieth day of June, all declarations or creations of trusts or confidences of any lands, tenements, or hereditaments, shall be manifested and proved by some writing signed by the party who is by law enabled to declare such trust, or by his last will in writing, or else they shall be utterly void and of none effect.

“VIII. Provided always, that where any conveyance shall be made of any lands or tenements by which a trust or confidence shall or may arise or result by the implication or construction of law, or be transferred or extinguished by an act or operation of law, then and in every such case such trust or confidence shall be of the like force and effect as the same would have been if this statute had not been made; anything herein before contained to the contrary notwithstanding.

“IX. And be it further enacted, that all grants and assignments of any trust or confidence shall likewise be in writing, signed by the party granting or assigning the same, or by such last will or devise, or else shall likewise be utterly void and of none effect.

“X. And be it further enacted by the authority aforesaid, that, from and after the said four and twentieth day of June, it shall and may be lawful for every sheriff or other officer to whom any writ or precept is or shall be directed, at the suit of any person or persons, of, for, and upon any judgment, statute, or recognizance hereafter to be made or had, to do, make, and deliver execution unto the party in that behalf, suing, of all such lands, tenements, rectories, tithes, rents, and hereditaments, as any other person or persons be in any manner of wise seised

or possessed, or hereafter shall be seised or possessed, in trust for him against whom execution is so sued, like as the sheriff or other officer might or ought to have done, if the said party against whom execution hereafter shall be so sued, had been seised of such lands, tenements, rectories, tithes, rents, or other hereditaments of such estate as they be seised of in trust for him at the time of the said execution sued; which lands, tenements, rectories, tithes, rents, and other hereditaments, by force and virtue of such execution, shall accordingly be held and enjoyed freed and discharged from all incumbrances of such person or persons as shall be so seised or possessed in trust for the person against whom such execution shall be sued; and if any *cestuy que trust* hereafter shall die, leaving a trust in fee-simple to descend to his heir, there and in every such case such trust shall be deemed and taken, and is hereby declared to be, assets by descent, and the heir shall be liable to and chargeable with the obligation of his ancestors for and by reason of such assets, as fully and amply as he might or ought to have been, if the estate in law had descended to him in possession in like manner as the trust descended; any law, custom, or usage to the contrary in any wise notwithstanding.

“XI. Provided always, that no heir that shall become chargeable by reason of any estate or trust made assets in his hands by this law, shall by reason of any kind of plea or confession of the action, or suffering judgment by *nient dedire*, or any other matter, be chargeable to pay the condemnation out of his own estate; but execution shall be sued of the whole estate so made assets in his hands by descent, in whose hands soever it shall come after the writ purchased, in the same manner as it is to be at and by the common law, where the heir at law pleading a true plea, judgment is prayed against him thereupon; any thing in this present act contained to the contrary notwithstanding.

“XII. And for the amendment of the law in the particulars following; be it further enacted by the authority aforesaid, that from henceforth any estate *pur auter vie* shall be devisable by a will in writing, signed by the party so devising the same, or by some other person in his presence and by his express directions, attested and subscribed in the presence of the devisor by three or more witnesses; and if no such devise thereof be made, the same shall be chargeable in the hands of the heir, if it shall come to him by reason of a special occupancy, as assets by descent, as in case of lands in fee-simple; and in case there be no special occupant thereof, it shall go to the executors or administrators of the party that had the estate thereof by virtue of the grant, and shall be assets in their hands.”

“XIX. And, for prevention of fraudulent practices in setting up nuncupative wills, which have been the occasion of much perjury; be it enacted by the authority aforesaid, that, from and after the aforesaid four and twentieth day of June, no nuncupative will shall be good, where the estate thereby bequeathed shall exceed the value of thirty pounds, that is not proved by the oaths of three witnesses (at the least) that were present at the making thereof; nor unless it be proved that the testator, at the time of pronouncing the same, did bid the persons present, or some of them, bear witness that such was his will, or to that effect; nor unless such nuncupative will were made in the time of the last sickness of the deceased, and in the house of his or her habitation or dwelling, or where he or she hath been resident for the space of ten days or more next before the making of such will, except where such person was surprised or taken sick, being from his own home, and died before he returned to the place of his or her dwelling.

“XX. And be it further enacted, that, after six months passed after the speaking of the pretended testamentary words, no testimony shall be received to prove any will nuncupative, except the said testimony, or the substance thereof, were committed to writing within six days after the making of the said will.

“XXI. And be it further enacted, that no letters testamentary, or probate of any nuncupative will, shall pass the seal of any court till fourteen days at the least after the decease of the testator be fully expired; nor shall any nuncupative will be at any time received to be proved, unless process have first issued to call in the widow, or next of kindred to the deceased, to the end they may contest the same, if they please.

STAT. 29 CAR.
2, c. 3.

and held free from the incumbrances of the persons seised in trust. Trust shall be assets in the hands of heirs. 2 Vern. 248, c. 232.

No heir shall by reason thereof become chargeable of his own estate.

Estates *pur auter vie* shall be devisable. 14 Geo. 2, c. 20, s. 9. And shall be assets in the heir's hand. And where there is no special occupant, shall go to the executors. Nuncupative wills.

Explained by 4 Ann. c. 16, s. 14.

Probates of nuncupative wills.

STAT. 29 CAR.
2, c. 3.
Raym. 334.

“XXII. And be it further enacted, that no will in writing concerning any goods or chattels, or personal estate, shall be repealed, nor shall any clause, devise, or bequest therein be altered or changed by any words, or will by word of mouth only, except the same be in the life of the testator committed to writing, and after the writing thereof read unto the testator, and allowed by him, and proved to be so done by three witnesses at the least.

Soldiers’ and
mariners’ wills
excepted.

“XXIII. Provided always, that, notwithstanding this act, any soldier being in actual military service, or any mariner or seaman being at sea, may dispose of his moveables, wages, and personal estate, as he or they might have done before the making of this act.

The jurisdic-
tion of courts
saved.

“XXIV. And it is hereby declared, that nothing in this act shall extend to alter or change the jurisdiction or right of probate of wills concerning personal estates, but that the Prerogative court of the Archbishop of Canterbury, and other ecclesiastical courts, and other courts having right to the probate of such wills, shall retain the same right and power as they had before, in every respect, subject nevertheless to the rules and directions of this act.

22 & 23 Car.
2, c. 10.
Husbands not
compellable to
make distribu-
tion of the per-
sonal estates of
their wives.
3 Mod. 231.

“XXV. And, for the explaining one act of this present parliament, intituled, ‘An Act for the better settling of Intestates’ Estates,’ be it declared by the authority aforesaid, that neither the said act, nor anything therein contained, shall be construed to extend to the estates of feme coverts that shall die intestate, but that their husbands may demand and have administration of their rights, credits, and other personal estates, and recover and enjoy the same, as they might have done before the making of the said act.”

STAT. 29 CAR.
2, c. 7.

XLIX. STAT. 29 CAROLI 2, c. 7. A.D. 1676.

“An Act for the better Observation of the Lord’s Day, commonly called Sunday.”

1 Car. 1, c. 1.

“For the better observation and keeping holy the Lord’s day, commonly called Sunday; be it enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and of the commons in this present parliament assembled, and by the authority of the same, that all the laws

3 Car. 1, c. 1.

See 2 Bur. 787.

enacted and in force concerning the observation of the Lord’s day, and repairing to the church thereon, be carefully put in execution; and that all and every person and persons whatsoever, shall on every Lord’s day apply themselves to the observation of the same, by exercising themselves thereon in the duties of piety and true religion, publicly and privately; and that no tradesman, artificer, workman, labourer, or other person whatsoever, shall do or exercise any *worldly labour* (1), business, or work, of their *ordinary callings* (2), upon the Lord’s day,

Tradesmen,
artificers, and
labourers.

(1) *Worldly labour*:—This is analogous to the laws of Ina: (cap. 3:): “Servus, si quid operis patraret die Dominico ex præcepto Domini sui, liber esto; Dominus 30-solidos dependito. Verum si id operis, injussu Domini sui, aggressus fuerit, verberibus cædator, aut saltem virgarum metum pretio redimito. Liber, si die hoc operetur injussu Domini sui, aut servituti addicitor, aut 60 solidos dependito. Sacerdos si in hanc partem deliquerit, poena in duplum augetor.” So likewise it is stated in the laws of Ethelred: (c. 15:): “Dominicæ solennia diei cum summo honore magnoperè celebranda sunt, nec quicquam in eadem operis agatur servilis.” In which case there was one exception in the injunctions of Queen Elizabeth, *viz.* for labour in time of harvest, after divine service was over; but this (as well as other abuses of the Lord’s day) stands prohibited, and is made punishable by the present act.

The words *worldly labour*, are not con-

fined to a man’s ordinary calling, but apply to any business he may carry on. *Smith v. Sparrow*, 4 Bing. 84.

It may be here remarked, that, by Stat. 1 & 2 Gul. 4, c. 32, killing game on a Sunday subjects the offender to a penalty not exceeding 5*l.*; by Stat. 3 & 4 Gul. 4, c. 31, elections of officers thentofore required to be held on the Lord’s day are in future to be held on the Saturday next preceding, or on the Monday next ensuing; by Stat. 2 Geo. 3, c. 15, s. 7, fish may be sold; by Act. 7 & 8 Geo. 4, c. lxxv. and by Stat. 1 & 2 Gul. 4, c. 22, watermen and hackney coachmen, are allowed to ply for hire upon Sundays; and Stat. 6 & 7 Gul. 4, c. 37, extends the provisions of Act 3 Geo. 4, c. cvi. relative to baking on a Sunday, to all places out of London, or beyond ten miles of London.

(2) *Ordinary callings*:—In the Register of Archbishop Chicheley, (2 Chich. 295 (b),) there is a special declaration, forbidding the

or any part thereof, (works of necessity and charity only excepted,) and that every person being of the age of fourteen years or upwards, offending in the pre- STAT. 29 CAR. 2. c. 7.

barbers of London to exercise their callings on the Lord's day; and in a visitation of Archbishop Warham, (69 (a), 51 (a), 58 (a),) barbers and butchers were presented to the spiritual court for exercising their several trades on that day, and admonished to forbear to do it, upon pain of ecclesiastical censures.

Although the common law is founded on the religious tenets professed by the Anglican church, yet, at common law, the observance of the Sabbath was a duty of imperfect obligation. *Rex v. Brotherton*, Str. 702. To remedy which, Stat. 29 Car. 2, c. 7, was passed, and that statute being designed for the support of the religion of the country, it has received an extended construction.

The best illustration of the provisions of Stat. 29 Car. 2, c. 7, and of its principles, is the judgment of Mr. Justice Bayley in *Fennell v. Ridler*, (5 B. & C. 406,) and which was characterized by Chief Justice Best in *Smith v. Sparrow*, (4 Bing. 88,) as "one of the most able judgments ever delivered;" it is as follows:

Mr. Justice Bayley. "This case came before the court upon a motion for a new trial. It was an action upon the warranty of a horse. The plaintiffs were horse-dealers, and the horse was bought and the warranty given on a Sunday, and the only question was, whether, under Stat. 29 Car. 1, c. 7, the purchase was illegal, and the plaintiffs precluded from maintaining the action. That is an act for the better observation of Sunday, and after directing, that every person shall on every Lord's day apply himself to the observation of the same by exercising himself in the duties of piety and true religion, publicly and privately; one of its provisions is, that no tradesman, artificer, workman, labourer, or other person whatsoever, shall do or exercise any worldly labour, business, or work of their ordinary callings upon the Lord's day, or any part thereof, works of necessity and charity only excepted. That the purchase of a horse by a horse-dealer is an exercise of the business of his ordinary calling, no one can doubt. And is there anything in the spirit or frame of this act which will take such a purchase out of its operation? The spirit of the act is to advance the interests of religion, to turn a man's thoughts from his worldly concerns, and to direct them to the duties of piety and religion; and the act cannot be construed according to its spirit, unless it is so construed as to check the career of worldly traffic. And is there anything in the frame of it to prevent its applying to the case in question? It does not indeed apply to all persons, but to such only as have some ordinary calling; and the interposition of the word *business* between the words *labour* and *work* might justify a question, whether it included every description of the business of a man's ordinary calling, or whether it was not confined to such as was manual and cal-

culated to meet the public eye. There is nothing, however, in the act to show that it was passed exclusively for promoting public decency, and not for regulating private conduct; and though I expressed a doubt upon this point in *Bloxsome v. Williams*, (3 B. & C. 232,) I am satisfied, upon further consideration, that it would be a narrow construction of the act, and a construction contrary to its spirit, to give it such a restriction. Labour may be private, and not meet the public eye, and so not offend against public decency; but it is equally labour, and equally interferes with a man's religious duties. The same may be said of business or of work. Each may be public, and meet the public eye; each may be private, and concealed. There is nothing, therefore, in the position of the word *business* between those of *labour* and *work*, which in our judgment can justify us in giving to it anything but its ordinary meaning; and it seems to us, that every species of labour, business, or work, whether public or private, in the ordinary calling of a tradesman, artificer, workman, labourer, or other person, is within the prohibition of this statute.

"The statute, in direct terms, provides that every person shall apply himself to the observation of the Lord's day, publicly and *privately*; so that private as well as public conduct was expressly within its contemplation. In *Drury v. Defontaine*, (1 Taunt. 135,) Lord Chief Justice Mansfield, (after the court had taken time to consider,) lays it down, that if any man in the exercise of his ordinary calling make a contract on a Sunday, that contract would be void; (and the case before him was a private contract for the purchase of a horse;) but he showed, that that case was not within the statute, because no one of the parties was in the exercise of the business of his ordinary calling. His expression, that the contract would be *void*, probably meant only that it would be void so as to prevent a party, who was privy to what made it illegal, from suing upon it in a court of law, but not so as to defeat a claim upon it by an innocent party; and so it was considered by this court in *Bloxsome v. Williams*, 3 B. & C. 232. That was also the case of a *private* sale of a horse, and an action brought upon a warranty, and to recover back the price. The objection was made, the purchase was on a Sunday.

"Though I expressed the doubt I have mentioned, whether the statute applied to private sales, such as were not open breaches of the Sunday, that was not the ground of the decision; but very distinct grounds were stated, to show that the statute did not apply, for the sale was substantially not on the *Sunday*, but on a *Tuesday*. The defendant was the only person who was in the exercise of his ordinary calling, and the plaintiff did not know what his calling was; so that the defendant was the only person who had violated the statute, and it would have been

STAT. 29 CAR. 2, c. 7. mises, shall, for every such offence, forfeit the sum of five shillings; and that no person or persons whatsoever, shall publicly cry, show forth, or *expose to sale* (1),

against justice to have allowed him to take advantage of his own wrong to defeat the rights of the plaintiff, who was innocent. These cases, therefore, tend to support the present objection; and upon the principle, that this statute is entitled to such a construction as will promote the ends for which it was passed, that it applies to private as well as public conduct, and that the purchase by the plaintiff was within the mischief intended to be suppressed, and within the words made use of to suppress it, we are of opinion, that the plaintiff cannot maintain the present action, and that the rule for a new trial must be made absolute." *Vide etiam* Stephens on Nisi Prius, tit. ASSUMPSIT, 260.

In *Begbie v. Levi*, (1 C. & J. 180,) which was an action by an indorsee against the acceptor of a bill of exchange drawn on a Sunday: it was held, that the plaintiff might recover; but the court said, that if it had been *accepted on a Sunday*, and done in the ordinary calling of the defendant, and the plaintiff was acquainted with that circumstance when he took the bill, he would be precluded from recovering on it, but the defendant would not be permitted to set up his own illegal act as a defence at the suit of an innocent holder of the bill. *Vide* Stephens on Nisi Prius, tit. BILLS OF EXCHANGE AND PROMISSORY NOTES, 781.

Stat. 29 Car. 2, c. 7, s. 5, prohibits only the labour, business, or work done in the course of a man's ordinary calling, but it does not apply to a contract of hiring; and therefore such a contract for a year, made on a Sunday between a farmer and a labourer, has been held to be valid, and that a service under it conferred a settlement. *Rex v. Whitnash (Inhabitants of)*, 7 B. & C. 596.

An attorney is not within Stat. 29 Car. 2, c. 7, s. 1, which prohibits certain persons from doing any work of their ordinary calling on the Lord's day. *Peate v. Dickens*, 3 Dowl. P. C. 171.

And if an attorney, acting on behalf of his client, agree on a Sunday to become personally responsible for part of the debt owing by him, he does not thereby do any work of his ordinary calling, within the meaning of Stat. 29 Car. 2, c. 7. *Ibid*.

The owner of a stage-coach is not within Stat. 3 Car. 1, c. 1, or Stat. 29 Car. 2, c. 7, and therefore an action may be maintained against him for neglecting to take a passenger on a Sunday. *Sandiman v. Breach*, 7 B. & C. 96. Where a coach proprietor, having refused to carry the plaintiff, because there were no other passengers, and who, in consequence, hired a post-chaise to go to his destination: it was held, that the proprietor was liable for the chaise hire, notwithstanding the contract was made on a Sunday. *Ibid*.

An action will not lie on a contract entered into on a Sunday, although entered into by an agent, and although the objection be taken by the party at whose request the

contract was entered into. *Smith v. Sparrow*, 4 Bing. 84. 2 C. & P. 544. Where a contract for the sale of goods, which have been delivered to and returned by the purchaser, was void, by reason of its having been made on a Sunday: it was held, that a subsequent promise to pay did not entitle the vendor to recover the value upon *quantum meruit*. *Williams v. Paul*, 6 Bing. 633.

(1) *Expose to sale*:—"Negotiatio die Dominicâ" was strictly forbidden by the laws of Alfred, Athelstan, and Edgar; (Spel. 377, 404, 450;) which is agreeable to the rule of the canon law: "Omnes dies Dominicos à vesperâ, in vesperam cum omni veneratione decernimus observari, et ab omni illicito opere abstinere; ut in eis mercatum minime fiat, neque placitum, neque aliquis ad mortem vel ad poenam judicetur; nec sacramenta (nisi pro pace vel alia necessitate) prestantur." Extra. l. 2, t. 9, c. 1. In the Canons of 1571, (Coll. Can. 236,) where fairs and markets are forbidden, an allowance is implied, for the selling of some small matters, after divine service; but here nothing is to be exposed to sale upon the Lord's day, or any part thereof. *Vide antè* 614, n. (1).

In *Drury v. Defontaine*, (1 Taunt. 131,) it was decided, that a sale of goods made on a Sunday, which is not made in the exercise of the ordinary calling of the vendor, or his agent, is not void at common law, or by Stat. 29 Car. 2, c. 7; Chief Justice *Mansfield* observing, "The bargaining for and selling horses on a Sunday is certainly a very indecent thing, and what no religious person would do. But we cannot discover that the law has gone so far as to say that every contract made on a Sunday shall be void, although, under these penal statutes, if any man, in the exercise of his ordinary calling, should make a contract on the Sunday, that contract would be void. It appears that the horse was not sent to Hull for the purpose of private sale, but for the purpose of being sold by auction; for it may be gathered from the evidence, that Hull keeps a repository for sale by auction. Therefore Hull did not sell this horse, properly speaking, as a horse-dealer. It is said by Lord *Coke*, that the Christian religion is part of the common law, and such a sale certainly is directly contrary to the practice of those religious duties which it was the purpose of the legislature to enforce, as expressed in the preamble of Stat. 29 Car. 2, namely, 'That every person whatsoever shall on the Lord's day apply themselves to the observation of the same, by exercising themselves thereon in the duties of piety and true religion publicly and privately;' which certainly is not likely to be done by those whose minds are engaged in making bargains and selling horses. Lord *Coke*, (2 Inst. 220,) cites a Saxon law of King Athelstan, the latter part of which is, 'Die autem dominico nemo mercaturam facito; id quod si quis egerit, et ipsâ merce. et triginta præterea solidis mulcator; upon

any wares, merchandises, fruit, herbs, goods, or chattels whatsoever, upon the Lord's day, or any part thereof, upon pain that every person so offending, shall forfeit the same goods so cried or showed forth, or exposed to sale.

“II. And it is further enacted, that no drover, horse-courser, waggoner, butcher, higgler, their or any of their servants, shall travel or come into his or their inn or lodging, upon the Lord's day, or any part thereof, upon pain that each and every such offender shall forfeit twenty shillings for every such offence; and that no person or persons shall use, employ, or travel, upon the Lord's day, with any boat, wherry, lighter, or barge, except it be upon extraordinary occasion, to be allowed by some justice of the peace of the county, or head officer, or some justice of the peace of the city, borough, or town corporate, where the fact shall be committed; upon pain that every person so offending shall forfeit and lose the sum of five shillings for every such offence. And that if any person offending in any of the premises shall be thereof convicted before any justice of the peace of the county, or the chief officer or officers, or any justice of the peace of or within any city, borough, or town corporate, where the said offences shall be committed, upon his or their view, or confession of the party, or proof of any one or more witnesses by oath, (which the said justices, chief officer or officers, is by this act authorized to administer,) the said justice, or chief officer or officers shall give warrant under his or their hand and seal, to the constables or churchwardens of the parish or parishes where such offence shall be committed, to seize the said goods cried, shewed forth, or put to sale as aforesaid, and to sell the same, and to levy the said other forfeitures or penalties, by way of distress and sale of the goods of every such offender distrained, rendering to the said offenders the overplus of the monies raised thereby; and in default of such distress, or in case of insufficiency or inability of the said offender to pay the said forfeitures or penalties, that then the party offending be set publicly in the stocks by the space of two hours. And all and singular the forfeitures or penalties aforesaid shall be employed and converted to the use of the poor of the parish where the said offences shall be committed, saving only that it shall and may be lawful to and for any such justice, mayor, or head officer or officers, out of the said forfeitures or penalties to reward any person or persons that shall inform of any offence against this act, according to their discretions, so as such reward exceed not the third part of the forfeitures or penalties.

“III. Provided, that nothing in this act contained shall extend to the prohibiting of dressing of meat in families, or dressing or selling of meat *in inns* (1),

which Lord *Coke* observes, ‘Here note, by the way, that no merchandizing should be on the Lord's day.’ But it does not appear, that the common law ever considered those contracts as void which were made on a Sunday. In *Comyns v. Boyer*, the defendant pleaded a sale in open fair, but in stating a right to hold the fair, he did not except the case of the fair-day falling on a Sunday, and it was urged, that the plea was bad, because a fair held on that day would be illegal, as coming within the statute (27 Hen. 6, c. 5,) of fairs and markets. The court determined, that the holding a fair on that day would be illegal, but that the contract would not be void. The law is since changed, and if any act is forbidden under a penalty, a contract to do it, is now held void. But though that case is not now law, it shows that there was nothing in the common law which would avoid a sale made on the Sunday, otherwise this mention of the statute would not have been introduced. Stat. 29 Car. 2, is the only statute that can possibly apply here. It enacts that, ‘No person whatsoever shall do or exercise any worldly labour, business, or work of their ordinary callings, upon the Lord's day.’ To bring this case within the act, we

must pronounce, that either Drury or Hull worked within their ordinary callings on the Sunday. But the sale of horses by private contract was not Drury's ordinary calling, nor was it Hull's; his calling was that of a horse-auctioneer, and he was not within his ordinary calling in selling this horse by private contract: and, therefore, although it is to be lamented, the sale must be held good, and the rule discharged.”

(1) *In inns*:—In the injunctions of Queen Elizabeth, it was provided, that no innholders, or alehouse-keepers, shall use or sell meat or drink in the time of common prayer, preaching, or reading of the Homilies, or Scriptures: which is taken from the Articles of Visitation, 2 Edw. 6.

It has been adjudged, that baking provisions for customers was within this exception, (*Rex v. Cox*, 2 Burr. 787, recognised in *Rex v. Younger*, 5 T. R. 449;) but that baking rolls on a Sunday was not within the exception. *Crepps v. Durden*, Cowp. 641.

It may be here observed, that a person can commit but one offence, on the same day, by exercising his ordinary calling on a Sunday. *Ibid*.

STAT. 29 CAR. 2, c. 7.

None shall cry or expose to sale wares.

Drovers, horse coursers, waggoners, butchers, & higglers, boats and barges.

Provisions for coaches, by 5 & 6 G. & M. c. 22, s. 18, and 9 Ann. c. 23, s. 20.

In what manner the conviction shall be.

The penalty how to be levied.

In case of insufficiency, the offender shall be set in the stocks. The forfeitures, how to be disposed of.

A provision for private families, victualling-houses, &c.

STAT. 29 CAR.
2, c. 7.

The prosecution to be within ten days.

The hundred not responsible to persons travelling on the Lord's day; but shall make fresh suit after the offenders.

27 Eliz. c. 13.

Service of process on the Lord's day shall be void. Carthew, 504. See farther, 21 Geo. 3, c. 49.

cooks' shops, or victualling houses, for such as otherwise cannot be provided, nor to the crying or selling of milk before nine of the clock in the morning, or after four of the clock in the afternoon.

"IV. Provided also, that no person or persons shall be impeached, prosecuted, or molested, for any offence before-mentioned in this act, unless he or they be prosecuted for the same within ten days after the offence committed.

"V. Provided, and be it further enacted by the authority aforesaid, that if any person or persons whatsoever *which shall travel upon the Lord's day* (1), shall be then robbed, that no hundred or the inhabitants thereof *shall be charged* (2) with or answerable for any robbery so committed, but the person or persons so robbed shall be barred from bringing any action for the said robbery; any law to the contrary notwithstanding: nevertheless, the inhabitants of the counties and hundreds (after notice of any such robbery to them or some of them given, or after hue and cry for the same to be brought) shall make or cause to be made fresh suit and pursuit after the offenders, with horsemen and footmen, according to the statute made in the twenty-seventh year of the reign of Queen Elizabeth, upon pain of forfeiting to the king's majesty, his heirs and successors, as much money as might have been recovered against the hundred by the party robbed if this law had not been made.

"VI. Provided also, that no person or persons upon the Lord's day *shall serve or execute* (3), or cause to be served or executed, any writ, *process* (4), warrant, order, judgment, or decree, (except in cases of treason, felony, or breach of the *peace* (5),) but that the service of every such writ, process, warrant, order, judgment, or decree, shall be void to all intents and purposes whatsoever; and the person or persons so serving or executing the same, shall be as liable to the suit of the party grieved, and to answer damages to him for doing thereof, as if he or they had done the same without any writ, process, warrant, order, judgment, or decree at all."

(1) *Which shall travel upon the Lord's day*.—In *Tashmaker v. Edmonton* (*Hundred of*), (1 Com. 345; Str. 405,) it appeared, that the plaintiff lived a mile from the church, and going thither with his lady in his carriage upon a Sunday, was robbed; and for which he brought his action against the hundred: it was held, that he could recover, because the statute applied only to *travelling*; but Chief Justice *Pratt* said, if the plaintiff had been going to make visits, it might have been otherwise.

(2) *Shall be charged*.—This clause was probably inserted, in consequence of a judicial opinion given in *Waite v. Stoke* (*Hundred of*), (Cro. Jac. 496; 2 Roll. 59,) where the question was, whether one being robbed upon the Sunday morning, in time of divine service, and making hue and cry, and the hundred not producing any of the robbers, the said hundred should be chargeable by the statute? *Croke*, *Doderidge*, and *Houghton* held, that the hundred was chargeable; but *Montague* (Chief Justice) held the contrary.

(3) *Shall serve or execute*.—Before this statute, a person might have been attached for arresting another on Sunday. *Prinsor's case*, Cro. Car. 602. Thus, in *Knowles v. Richardson*, (1 Mod. 55,) *Kelynge* said, "I have known many attachments for arresting a man upon a Sunday, but still the affidavit contained, that he might have been taken on another day:" to which *Twisden* added,

"so for arresting a man as he was going to church, to disgrace him."

(4) *Process*.—"A libel was exhibited in the spiritual court of Durham against a woman for incontinence, and the citation was fixed upon the church door on a Sunday, according to custom; upon which it was urged, as the opinion of civilians, that such citation was sufficient without any personal serving, and that that had been the constant practice both before and since this statute; and *Holt* (Chief Justice) said, if the ecclesiastical law was, and had always been, to serve this process on a Sunday, (in which respect it was different from temporal process, which may be as well served on any other day,) that then it did not seem to be the intent of this statute to take away the serving it in that manner; which is only meant of processes, that may as well be executed at any other time." *Gibson's Codex*, 240. *Alanson v. Brookbank*, 5 Mod. 449. 2 Salk. 625.

(5) *Of the peace*.—Where a magistrate gave a warrant to a constable to take another person, in order, that he should find sureties for his good behaviour, and the constable executed the warrant on a Sunday, it was resolved, that such an arrest was legal, because a warrant for "good behaviour," was a warrant for the peace, and no more; and that this statute was to be favourably interpreted for the peace. *Johnson v. Coltson*, Raym. (Sir T.), 250.

L. STAT. 29 CAROLI 2, c. 8 (1). A.D. 1676.

STAT. 29 CAR.
2, c. 8.

"An Act for confirming and perpetuating Augmentations made by Ecclesiastical Persons to small Vicarages and Curacies."

"Whereas divers archbishops, bishops, deans and chapters, and other ecclesiastical persons, in obedience to *his majesty's letters* (2), bearing date the first day of

(1) *Vide* Stat. 1 Geo. 1, St. II. c. 10. Stat. 1 & 2 Gul. 4, c. 45. Stat. 1 & 2 Vict. c. 107, s. 14. Stat. 3 & 4 Vict. c. 113, s. 76. Stat. 4 & 5 Vict. c. 39, s. 26.

(2) *His majesty's letters*:—A bill was brought into the House of Commons, June 18, (12 Car. 2.) for the erecting and augmenting of vicarages, and had a first reading; but proceeded no further: having (as is supposed) been superseded and laid aside, (for the present at least,) in consideration, that the ends proposed in it would be in some degree answered by his majesty's letter to the bishop, which was as follows: (Kennett, *Improp.* 152:)

The King's Letters for Augmentations.

"As nothing is more in our desires, than to provide that the Church of England, under our reign, might be furnished with a religious, learned, sober, modest, and prudent clergy; so we are ready to give encouragement to their labours and study in their several degrees and stations, that they may give check to all profaneness and superstition, and as zealously affect to remove all scandals and reproach from them and their callings. Conceiving, therefore, a competent maintenance to be a necessary encouragement; and that all other persons who have power to dispose of tithes, may be invited to cherish a learned and godly ministry: we do resolve, that because where tithes have been appointed for the support of bishops, deans and chapters, collegiate churches and colleges, and other single persons that have not taken due care to provide and ordain sufficient maintenance for the vicars of their respective places, or for the curates where vicarages were not endowed; to settle for the future some good addition and increase on such vicarages and curates' places. Our will therefore is, that forthwith provision be made for the augmentation of all such vicarages and cures, where your tithes and profits are appropriated to you and your successors, in such manner, that they who immediately attend upon the performance of ministerial offices in every parish, may have a competent portion out of every rectory improprietate to your see. And to this end, our farther will is, that no lease be granted of any rectories or parsonages belonging to your see, belonging to you or your successors, until you shall provide, that the respective vicarages, or curates' places where are no vicarages endowed, have so much revenue in glebe, tithes, or other emoluments, as commonly will amount to 100*l.* or 80*l.* per annum, or more if it will bear it; and in good form of law settle it upon them and their successors. And where the rectories are of small value, and cannot admit of such proportions to the vicar and curate, our will is, that one half of the profit of such a rectory be reserved for the maintenance of the vicar or curate, as is

agreeable to the rates and proportions formerly mentioned.

"And our farther will is, that you do employ your authority and power, which by law belongeth to you as ordinary, for the augmentation of vicarages and stipends of curates, and that you do with diligence proceed in due form of law for the raising and establishing convenient maintenance of those who do attend holy duties in parish churches. And if any prebendary in any church (the corps of whose prebend consists in tithes) shall not observe these our commands, then we require you, or the dean of the church, to use all due means in law, where you or he hath power to compel them; or that otherwise you report to the bishop of the diocese, where the said corps doth lie, that he may interpose his authority for fulfilling this our order. And if any dean, or dean and chapter, or any that holdeth any dignity or prebend in the cathedral church, do not observe these our commands, that you call them before you, and see this our will obeyed. And if you or any bishop do not your duty, either in their own grants, or seeing others do it, then we will, that upon complaint, the archbishop of the province see all performed according to this our declaration, will, and pleasure. And whereas there are divers rural prebends, where the vicarages are not sufficiently endowed, we require you to see these our commands be fully observed by them. And we do declare our will and pleasure in all the particulars forecited to be, that if you, or any of your successors, or any dean, or dean and chapter, of that our cathedral church, or any other person holding any office, benefice, or prebend in the same, do or shall refuse or omit to observe these our commands: we shall judge them unworthy of our future favour, whensoever any preferment ecclesiastical shall be desired by them of us.

"And lastly, our will and command is, that you and your successors do, at or before the first day of October in every year, render an account to the Archbishop of — how these our orders and commands are observed, that the archbishop afterwards may represent the same unto us.

"By his majesty's command,

"EDWARD NICHOLAS."

It may not be improper on this occasion to take notice of another letter sent to the University of Oxford by King James the First, *primo regni*; in which he required the vice-chancellor and heads of houses to assemble themselves, &c. "to consider, and set down some speedy course, how, upon the expiration of the years in being of any lease of tithes or glebe impropriate, the same may afterwards be so devised, as ecclesiastical persons bred in the houses to whom the same do belong respectively, may be maintained,

STAT. 29 CAR. 2, c. 8. June, in the twelfth year of his said majesty's reign, and out of a pious care to improve poor vicarages and curacies, where the endowment thereof was found too small to afford a competent maintenance to those that serve the cure, have, since his majesty's happy return, upon their renewing of leases of rectories, or tithes improper or appropriate, made or may hereafter (1) make divers reservations

and enabled to execute their functions, and yet the colleges provided of such things as are necessary for maintaining the same." Kennett, Improv. App. 24.

(1) *Or may hereafter*:—"That the said royal letter was not intended barely for augmentations to be made immediately after the restoration, (when, it is true, the number and largeness of fines, rendered the design most practicable,) but also for making them by the said bodies in future times, appears, as well from the tenour of the letter, which is an injunction to them and their successors, as from the repeating and reinforcing of the same order by the king in the nineteenth year of his reign. Ibid. 271.

"It is supposed, in the forementioned letter, that the ordinary hath a right to oblige impropricators to augment vicarages, in that, his majesty requires the bishops to employ their authority and power, which by law belongeth to them, as ordinaries, for the augmentation of vicarages, and stipends of curates; and that they do with diligence proceed in due form of law, &c. And I think, it is agreed on all hands, that every ordinary hath such power over spiritual impropricators; which was so in the case of *Hitchcot v. Thornburrough*, (2 Rol. Abr. *Patron* (H), 337,) where the vicar sued the tenant of the master of the choristers of the church of Sarum, (the said master being parson,) for addition of maintenance in the spiritual court; and prohibition was denied, upon this reason, that the ordinary might compel the parson to an augmentation, there being such a power reserved to him in all appropriations, and that the lessee, who held for lives according to Stat. 32 Hen. 8, came in, subject to the same charge.

"It is true, this was an appropriation which had never come to the king by any Statute of Dissolution; but that circumstance of having been conveyed to the king, made no difference with regard to the jurisdiction of the bishop, so long as they were re-conveyed to a spiritual hand; as appears from the case of the *Dean and Chapter of St. Asaph*, cit. Cro. Jac. 518. And the books, when they pronounce impropriations, lay-fees, seem to ground it wholly upon their being in lay-hands; and to mean no more, when they say that they became lay-fees by the Statutes of Dissolution, than as by those statutes they came into lay-hands. The only question then is, concerning his power over lay-impropricators. And, before the dissolution of monasteries, the exercise of ordinary jurisdiction in this particular appears upon our books, in divers ways: as, i. In general commissions to inquire, throughout whole dioceses or archdeaconries, in what places augmentations were needful. Witles, 130 (b). Wainfl. 9 (b), 28 (a). Strat. (W.), 53 (a), 56 (a). ii. In special

commissions, to inquire into the state and condition of particular vicarages, in order to augmentation. Isl. 40 (a), 41 (b), 47 (a). Wainfl. 28. iii. In commissions to proceed to augmentation. Sudb. 9 (a). Arund. 100 (b), 105 (b), 111 (a), 118 (b). iv. In actual augmentations. Winch. 286 (a). Isl. 201 (b). Witles, 21 (b). Court. 124 (a), 143 (b). Arund. 483 (b), 484 (a). Chich. 298 (a). 1 Wainfl. 81 (b). 2 Ibid. 140 (a). Court. (W.), 22 (a), 46 (a). 1 Shirr. (C.), 81 (a). 2 Ibid. 86 (b), 93 (b). v. In injunctions to appropriators, to build houses for the vicars. 2 Arund. 123. Woodl. (W.), 78 (b). vi. In new endowments, mentioned in our books under the titles of *Nova Dotatio*; *Nova Ordinatio*. Strat. (W.), 8 (b), 69 (b). Shirr. (C.) 87 (b), 89 (b), 90 (b). 2 Shirr. 91 (b).

"Under this obligation of enlarging and augmenting vicarages, where needful, were all appropriations enjoyed before the dissolution; so that it is truly said in the case of *Hichcocke v. Hichcocke*, (March, 87,) 'The power of the bishop *augendi et minuendi* the portion of the vicar, is by the common law.'

"Then come the Acts of Dissolution, and say, that the king shall have and enjoy, to him and his heirs for ever, all and singular such monasteries and tithes, in as large and ample manner, as the abbots held them, and elsewhere, in the state and condition that now they be; and, that the takers from the king shall have and hold them, &c., and shall have all such suits, actions, entries, &c. in like manner, form, and condition, &c., which Acts of Dissolution were grounded upon surrenders, made by the religious into the hands of the king.

"From whence it hath been argued, with great appearance of reason, that nothing could come into the king's hands in virtue of the surrenders of the religious, but what was theirs; and the right of the bishop to augment, and of the vicar to claim augmentation, was not theirs. That the most natural construction of the king's enjoying the impropriations in the same manner, form, and state, as the religious did, is, that he shall enjoy them with the same limitations, privileges, and burdens, as the religious did: that, accordingly, it is granted, that exemptions from tithes can be enjoyed by the grantees only while the lands remain in their own hands, because that privilege which was granted to the several orders, was not absolute, but *sub modo*, scil. *quandiu propriis manibus excoluntur*: that, because reparations of chancels, payments of curates, proxies, synodals, &c. rested upon the religious appropriator, therefore they have always rested upon the lay impropricator: that (by like construction) as the religious held those appropriations with the charge of a competent maintenance for the vicar, at the

beyond the ancient rent, to the intent the same should or might become payable to the said vicars or curates, in augmentation of their endowments, which have been for the most part enjoyed accordingly: but in regard that such reservations were not made to the vicars or curates; or if they were, no convenient remedy could be had by such vicars or curates for the recovery thereof, and they were not at the time thereof capable of taking any interest to their own use, whereby the said provisions will depend upon the good pleasure of the successors, and may in time be disappointed:

STAT. 29 CAR.
2, c. 8.

“II. For the establishment thereof, be it enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, that all and every augmentation of what nature soever, granted, reserved, or agreed to be made payable, or intended to be granted, reserved, or made payable, since the said first day of June, in the twelfth year of his said majesty’s reign, or which shall at any time hereafter be granted, reserved, or made payable to any vicar or curate, or reserved by way of increase of rent to the lessors, but intended to be to or for the use or benefit of any vicar or curate, by any archbishop, bishop, dean, provost, dean and chapter, archdeacon, prebendary, or other ecclesiastical corporation, person or persons whatsoever, so making the said reservation out of any rectory impropriate, or portion of tithes, belonging to any archbishop, bishop, dean, provost, dean and chapter, or other ecclesiastical corporation, person or persons, shall be deemed and adjudged to continue and be, and shall for ever hereafter continue and remain, as well during the continuance of the estate or term upon which the said augmentations were granted, reserved, or agreed to be made payable, as afterwards, in whose hands soever the said rectories or portion of tithes shall be or come; which rectories or portion of tithes shall be chargeable therewith, whether the same be reserved again, or not; and the said vicars and curates respectively are hereby adjudged to be in the actual possession thereof, for the use of themselves and their successors, and the same shall for ever hereafter be

Augmentations shall continue during the estate upon which they are reserved, and afterwards.

discretion of the ordinary, so do the lay owners hold their impropriations with the same charge: that the meaning of the parliament was not to destroy the rights of other men, but only to suppress the monks: that, in the several Acts of Dissolution, there are general savings of rights, &c. to all bodies politic, &c., and particularly of portions, &c. ‘which any may, or might have had, in or to the premises, or to any part or parcel thereof, in such like manner, form, and condition, to all intents, respects, and purposes, as if this act had never been had, or made, &c.’ and therefore, that the vicar having then a right to a *congrua portio*, (*i. e.* part or parcel as the statute speaks,) out of the rectory, with a right to sue the abbot if he denied it, and the bishop having a right to assign such portion, and to enforce the allowance of it by sequestration, and other ecclesiastical censures; both the bishop and the vicar have those rights respectively reserved to them, in the said general savings: that if it be objected, that those clauses of reservation of right, do not expressly mention, either the jurisdiction of the bishop, or the portion of the vicar, the answer is, that neither do they mention the reparation of chanels, or payment of the stipends of curates; yet both these burdens, as having rested upon the religious, passed from them to the king, and from the king to the grantees. That though they are now applied to other ends and uses, than heretofore they were yet they retain the same nature; and if it had not

been understood, that after the conveyance into lay-hands they still remained ecclesiastical duties, they might have been recovered, as other chattels or lay fees are, by action of debt, or otherwise at common law, and there had needed no act of parliament to enable laymen to sue for them; nor would the remedy have been given in the spiritual, but most certainly in the temporal courts.

“Notwithstanding all this, it must be confessed, that nothing is more peremptorily delivered throughout the books of common law than the contrary doctrine, *viz.*, that since the dissolution, all impropriations (at least in the hands of laymen) are become mere lay-fees, or inheritances of a mere temporal nature; from whence they infer, that therefore all such possessions are entirely freed from the spiritual jurisdiction; and particularly that the ordinary hath no power to make augmentation of a vicarage, out of any rectory, which is in the hands of a lay impropriator.

“But the statutes of the land do no where call them lay fees, (on the contrary, they always speak of them by their old ecclesiastical names, benefices, rectories, parsonages, appropriations, tithes, church duties, and the like,) and it is humbly conceived, that in any point which depends upon a written law, there is no force in a bare name imposed at pleasure, further than as the name itself appears to be warranted by the plain language or tenour of the law.” Gibson’s Codex, 722, 723.

STAT. 29 CAR.
2, c. 8.

Remedy for
the same.

Magna Charta,
c. 36.

Augmentation
exceeding one
moiety of the
value of the
rectory, not
confirmed.

Augmentation
leases, where
to be entered.

Fee for enter-
ing.

Such entry
how to be at-
tested, to be a
record and evi-
dence at law.

Agreements
for augmenta-
tions, to be
entered like-
wise.

Augmentations
to be favoured
in construc-
tion, as chari-
table uses.

New leases,
without ex-

taken, received, and enjoyed by the said vicars and curates, and their successors, as well during the continuance of the term or estate upon which the said augmentations were granted, reserved, or agreed to be made payable, as afterwards; and the said vicars and curates shall have remedy for the same, either by distress upon the rectories impropriate, or portions of tithes charged therewith, or by action of debt against that person who ought to have paid the same, his executors or administrators; any disability in the person or persons, bodies politic or corporate so granting, or any disability or incapacity in the vicars or curates, to whom, or to or for whose use or benefit, the same are granted or intended to be granted; the statute of mortmain, or any other law, custom, or other matter or thing whatsoever, to the contrary notwithstanding.

“III. Provided always, that no future augmentation be confirmed by virtue of this act, which shall exceed one moiety of the clear yearly value, above all reprises, of the rectory impropriate, out of the which the same shall be granted or reserved.

“IV. And to the end the said vicars and curates may the better make appear the certainty of the said augmentations; be it enacted by the authority aforesaid, that every archbishop, bishop, dean and chapter respectively, on or before the nine and twentieth day of September next coming, shall cause every lease or grant whereon any such augmentation is made, to be fairly entered in a book of parchment, to be kept by their respective registers for that purpose. And every dean, archdeacon, prebendary, or other ecclesiastical person respectively, shall cause every lease or grant whereon any such augmentation hath been made by himself, his predecessor or predecessors, to be entered in the said book, to be kept by the register of the bishop of the diocese; for the entering whereof no fee shall be paid, nor any thing demanded, save only a reasonable reward to the clerk for entering the same, not exceeding five shillings; which said entry being examined by the respective archbishop, bishop, or dean, and by them respectively attested in the said book to be a true copy of the original lease or grant, and that the augmentation in the same was intended for such use, shall be as a record; a true copy whereof, proved by witnesses to be a true copy, shall be deemed, taken, adjudged, and expounded to be good and sufficient evidence in the law, whereupon the said vicars and curates respectively shall and may by virtue of this act from time to time recover the benefit of such augmentation.

“V. And be it further enacted by the authority aforesaid, that where any archbishop, bishop, dean and chapter, or any other ecclesiastical corporation or person whatsoever, upon the renewing or granting any lease or estate, have made any agreement for an augmentation for the vicar or curate, and such augmentation hath for any time been accordingly paid, although the said agreement is not expressed or mentioned in the said lease or grant, every such ecclesiastical person shall cause the substance of such agreement to be entered in the said book, to remain for a memorial of it to perpetuity.

“VI. And be it further enacted, that such augmentation so entered shall likewise continue, and be for ever hereafter good and available in the law, for the benefit of the vicar or curate for whom it was intended, and their successors, as well against the archbishop, bishop, or other ecclesiastical corporation or person, who agreed for the same, and his and their successors, as against every other person enjoying the said rectories or portions of tithes intended to be charged therewith, in the same manner, and for which they shall have the same remedy, as they should or ought to have by virtue of this act, if the same had been mentioned and reserved in and by the lease.

“VII. And if any question shall hereafter arise concerning the validity of such grants, or any other matter or thing in this act mentioned and contained, such favourable constructions, and such further remedy, if need be, shall be had and made for the benefit of the vicars and curates, as heretofore hath been had and made, or may be had for other charitable uses, upon the statutes for charitable uses.

“VIII. Provided always, and be it further enacted by the authority aforesaid, that if upon the surrender, expiration, or other determination of any lease wherein

any such augmentation as aforesaid hath been or shall be granted, any new lease of the premises, or any part thereof, shall hereafter be made, without express continuance of the said augmentation, every such new lease shall be utterly void to all intents and purposes.

“IX. Provided always, that this act, or any thing therein contained, shall not extend or be construed to invalidate, alter, or make void one lease, bearing date the nineteenth of October, one thousand six hundred seventy and six, made by the dean and chapter of York, of the parsonage and tithes of Stourton, in the county of Nottingham, wherein there is an augmentation of six and thirty pounds per annum reserved and made due and payable to the vicar of Stourton aforesaid, but that the said sum of six and thirty pounds be always paid to the vicar and his successors accordingly; anything in this act contained to the contrary in any wise notwithstanding.

“X. Provided, that this act, or any thing therein contained, shall not extend or be construed to invalidate, alter, or make void one lease lately made by the dean and chapter of Exon, unto Arthur Sprey, Esquire, of the tithe-sheaf of the parish of Saint Evall, in the county of Cornwall, whereon there is an augmentation of twenty pounds per annum already made due and payable to the vicar of the said parish during the said lease, but that the said sum of twenty pounds be always paid to the vicar and his successors accordingly; anything in this act contained to the contrary in any wise notwithstanding.”

STAT. 29 CAR. 2, c. 8.

press continuance of the augmentations, to be void.

A lease of the parsonage of Stourton saved.

A lease of St. Evall in Cornwall saved.

LI. STAT. 29 CAROLI 2, c. 9. A.D. 1676.

“*An Act for taking away the Writ de Hæretico Comburendo.*”

“Be it enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that the writ commonly called *breve de hæretico comburendo*, with all process and proceedings thereupon, in order to the executing such writ, or following or depending thereupon, and all punishment by death, in pursuance of any ecclesiastical censures, be from henceforth utterly taken away and abolished; any law, statute, canon, constitution, custom, or usage, to the contrary heretofore or now in force, in any wise notwithstanding.

“II. Provided always, that nothing in this act shall extend or be construed to take away or abridge the jurisdiction of protestant archbishops, or bishops, or any other judges of any ecclesiastical courts, in cases of atheism, blasphemy, heresy, or schism, and other damnable doctrines and opinions, but that they may proceed to punish the same according to his majesty’s ecclesiastical laws, by excommunication, deprivation, degradation, and other ecclesiastical censures, not extending to death, in such sort and no other, as they might have done *before the making* (1) of this act; anything in this law contained to the contrary in any wise notwithstanding.”

STAT. 29 CAR. 2, c. 9.

A saving of the ecclesiastical jurisdiction. 1 Salk. 135, 136.

LII. STAT. 29 & 30 CAROLI 2, c. 1 (2). A.D. 1676.

“*An Act for raising Money by a Poll and otherwise. . . .*”

[Archbishop, to pay 50*l.*; bishop, 20*l.*; dean, 10*l.*; archdeacon, 2*l.* 10*s.*; prebend, 2*l.* 10*s.*; doctor, 5*l.*; incumbent of 120*l.* per annum, 5*l.*; but doctors of divinity, not promoted, shall not be charged for their title; nor shall the widow of any ecclesiastical person deceased be charged for the third part, according to the dignity or title of her deceased husband.]

(1) *Before the making*:—Upon the abrogating of the ancient statutes made against heretics, the cognizance of heresy, and punishment of heretics, returned into its ancient channel and bounds, and now belongs to the archbishop as metropolitan of the province, and to every bishop within his own proper diocese, who are to punish only by ecclesiastical censures. *Legate’s case*, 3 Inst. 40.

But as no person can be indicted or impeached for heresy before any temporal judge, or other that hath temporal jurisdiction; so if a heretic be convicted of heresy and recant, he cannot be punished by the ecclesiastical law. *Nicholas Fuller’s case*, 12 Co. 44.

(2) Expired.

STAT. 29 & 30 CAR. 2, c. 1.

STAT. 30 CAR.
2, c. 3.

LIII. STAT. 30 CAROLI 2, c. 3(1). A.D. 1677.

"An Act for burying in Woollen."

STAT. 30 CAR.
2, c. 6.

LIV. STAT. 30 CAROLI 2, c. 6. A.D. 1677.

"An Act for reviving [for seven years] a former Act, intituled, 'An Act for avoiding unnecessary Suits and Delays,' and for Continuance [for seven years] of one other Act, intituled, 'An Act for the better settling of Intestates' Estates."

STAT. 30 CAR.
2, c. 7.

LV. STAT. 30 CAROLI 2, c. 7(2). A.D. 1677.

"An Act to enable Creditors to recover their Debts of the Executors and Administrators of Executors in their own wrong."

"Whereas the executors and administrators of such persons who have possessed themselves of considerable personal estates of other dead persons, and converted the same to their own use, have no remedy by the rules of the common law, as it now stands, to pay the debts of those persons whose estate hath been so converted by their testator or intestate, which hath been found very mischievous, and many creditors defeated of their just debts, although their debtors left behind them sufficient to satisfy the same, with a great overplus:

3 Mod. 113.

"II. For remedy whereof, be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority thereof, that all and every the executors and administrators of any person or persons, who as executor or executors in his or their own wrong, or administrators, shall, from and after the first day of August next ensuing, waste or convert any goods, chattels, estate, or assets of any person deceased, to their own use, shall be liable and chargeable in the same manner as their testator or intestate would have been if they had been living. This act to continue in force for three years, and from thence to the end of the next session of parliament, and no longer."

1 Jac. 2, c. 17.

STAT. 30 CAR.
2, St. II.

LVI. STAT. 30 CAROLI 2, St. II.(3). A.D. 1677.

"An Act for the more effectual preserving the King's Person and Government, by disabling Papists from sitting in either House of Parliament."

STAT. 32 CAR.
2, c. 1.

LVII. STAT. 32 CAROLI 2, c. 1(4). A.D. 1680.

"An additional Act for burying in Woollen."

(1) *Vide* Stat. 32 Car. 2, c. 1. Repealed by Stat. 54 Geo. 3, c. 108, s. 1. 1, St. II. c. 55. Stat. 2 Geo. 2, c. 31. Stat. 16 Geo. 2, c. 30. Stat. 31 Geo. 3, c. 32.

(2) Continued, made perpetual, and enlarged by Stat. 1 Jac. 2, c. 17, and Stat. 4 & 5 G. & M. c. 24, s. 12. Stat. 10 Geo. 4, c. 7. Stat. 1 Gul. 4, c. 26. Stat. 1 & 2 Gul. 4, c. 9.

(3) Repealed by Stat. 11 & 12 Gul. 3, c. 4. Stat. 12 & 13 Gul. 3, c. 2. Stat. 1 Geo. 4, c. 55. Stat. 2 Geo. 2, c. 31. Stat. 16 Geo. 2, c. 30. Stat. 31 Geo. 3, c. 32. Stat. 10 Geo. 4, c. 7. Stat. 1 Gul. 4, c. 26. Stat. 1 & 2 Gul. 4, c. 9. (4) Repealed by Stat. 54 Geo. 3, c. 108, s. 1.

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I. STAT. 1 JACOBI 2, c. 15. A.D. 1685.

STAT. 1 JAC.
2, c. 15.

"An Act for rebuilding, finishing, and adorning of the Cathedral Church of St. Paul's, London."

II. STAT. 1 JACOBI 2, c. 17. A.D. 1685.

STAT. 1 JAC.
2, c. 17.

"An Act for reviving and continuance of several Acts of Parliament therein mentioned."

"V. And be it enacted by the authority aforesaid, that one other act made in the seventeenth year of his said late majesty's reign, intituled, 'An Act for avoiding unnecessary Suits and Delays;' and also one other act made in the two and twentieth and three and twentieth years of his late majesty's reign, intituled, 'An Act for the better settling Intestate Estates,' (which said latter act is explained by a clause in one other act made in the nine and twentieth year of his said late majesty's reign, intituled, 'An Act for prevention of Frauds and Perjuries,') both which said acts, with the said clause, are continued by one other act made in the thirtieth year of his said late majesty's reign, intituled, 'An Act for reviving both the said former Acts.' All which said acts and clauses shall be in force, and is hereby made perpetual.

"VI. Provided always, and it is *hereby further enacted* (1), that no administrator shall, from the four and twentieth day of July next, be cited to any the courts in the said last act mentioned, to render an account of the personal estate of his intestate, (otherwise than by an inventory or inventories thereof,) unless it be at the instance or prosecution of some person or persons in behalf of a minor, or having a demand out of such personal estate as a creditor or next of kin, nor be compellable to account before any the ordinaries or judges by the said last act impowered and appointed to take the same, otherwise than as is aforesaid; anything in the said last acts contained to the contrary notwithstanding.

"VII. Provided also, and it is further enacted by the authority aforesaid, that if, after the death of a father, any of his children shall die intestate without wife or children, in the life-time of the mother, every brother and sister, *and the representatives* (2) of them, shall have an *equal share* (3) with her; anything in the last-mentioned acts to the contrary notwithstanding.

"VIII. Provided, and it is hereby, for the determining some doubts arising upon the acts aforementioned, for the better settling intestates' estates, enacted and declared, that the clause therein, by which it is provided, that that act, or any thing therein contained, should not any ways prejudice or hinder the customs observed within the city of London, and province of York, was never intended, nor shall be taken or construed to extend, to such part of any intestate's estate, as

17 Car. 2, c. 8,
and 22 & 23
Car. 2, c. 10,
made perpe-
tual.
Explanatory
clause in 29
Car. 2, c. 3,
Sect. 25 of
22 & 23 Car.
2, c. 10, made
perpetual.
30 Car. 2,
St. I. c. 6.
Administrator
compellable to
account only
to persons
interested.

Brother and
sister shall
share equally
with the
mother.

Customs of
London and
province of
York, &c.

(1) *Hereby further enacted*:—The two objects of this statute are, firstly, that the residue shall be forthcoming; secondly, that it shall be duly divided. *Canterbury (Archbishop of) v. Robertson*, 1 C. & M. 705.

(2) *And the representatives*:—The word

"and" immediately preceding the words "the representatives," is to be construed in the disjunctive. *Stanley v. Stanley*, 1 Atk. 458.

(3) *Equal share*:—*Vide ante* 599, Stat. 22 & 23 Car. 2, c. 10.

STAT. 1 JAC.
2, c. 17. any administrator, by virtue only of being administrator, by pretence or reason of any custom, may claim to have, to exempt the same from distribution, but that such part in the hands of such administrator shall be subject to distribution as in other cases within the said act."

STAT. 1 JAC.
2, c. 20. III. STAT. 1 JACOBI 2, c. 20. A.D. 1685.

"An Act to enable the Inhabitants of the Parish of St. Anne, within the Liberty of Westminster, to raise Money to build a Church to be the Parish Church there."

STAT. 1 JAC.
2, c. 22. IV. STAT. 1 JACOBI 2, c. 22. A.D. 1685.

"An Act for erecting a new Parish, to be called the Parish of St. James, within the Liberty of Westminster."

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I. STAT. 1 GULIELMI & MARIE, c. 6 (1). A.D. 1688 (2).

STAT. 1 G. &
M. c. 6.*"An Act for establishing the Coronation Oath."*

"Whereas, by the law and ancient usage of this realm, the kings and queens thereof have taken a solemn oath upon the Evangelists, at their respective coronations, to maintain the statutes, laws, and customs of the said realm, and all the people and inhabitants thereof, in their spiritual and civil rights and properties; but forasmuch as the oath itself on such occasion administered, hath heretofore been framed in doubtful words and expressions, with relation to ancient laws and constitutions at this time unknown: to the end therefore that one uniform oath may be in all times to come taken by the kings and queens of this realm, and to them respectively administered at the times of their and every of their coronation; may it please your majesties that it may be enacted;

"II. And be it enacted by the king's and queen's most excellent majesties, by and with the advice and consent of the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, that the oath herein mentioned, and hereafter expressed, shall and may be administered to their most excellent majesties King William and Queen Mary, (whom God long preserve,) at the time of their coronation, in the presence of all persons that shall be then and there present at the solemnizing thereof, by the Archbishop of Canterbury, or the Archbishop of York, or either of them, or any other bishop of this realm, whom the king's majesty shall thereunto appoint, and who shall be hereby thereunto respectively authorized; which oath followeth, and shall be administered in this manner, that is to say:

An oath to be
taken by the
king and queen.

(1) *Vide* Stat. 12 & 13 Gul. 3, c. 2 (*post.* 674).

(2) The date of this statute, and some of

the succeeding statutes should be A.D. 1689, according to the present method of computing the year from the 1st of January.

STAT. 1 G. &
M. c. 6.

Coronation
oath.

"The archbishop or bishop shall say,

"III. 'Will you solemnly promise and swear to govern the people of this kingdom of England, and the dominions thereto belonging, according to the statutes in parliament agreed on, and the laws and customs of the same?'

"The king and queen shall say, 'I solemnly promise so to do.'

"*Archbishop or Bishop.* 'Will you to your power cause law and justice, in mercy, to be executed in all your judgments?'

"*King and Queen.* 'I will.'

"*Archbishop or Bishop.* 'Will you to the utmost of your power maintain the laws of God, the true profession of the Gospel, and the Protestant Reformed Religion established by law? And will you preserve unto the bishops and clergy of this realm, and to the churches committed to their charge, all such rights and privileges as by law do or shall appertain unto them, or any of them?'

"*King and Queen.* 'All this I promise to do.'

"After this, the king and queen laying his and her hand upon the Holy Gospels, shall say,

"*King and Queen.* 'The things which I have here before promised, I will perform and keep. So help me God.'

"Then the king and queen shall kiss the book.

All kings, &c.
to take the
oath.

"IV. And be it further enacted, that the said oath shall be in like manner administered to every king or queen, who shall succeed to the imperial crown of this realm, at their respective coronations, by one of the archbishops or bishops of this realm of England, for the time being, to be thereunto appointed by such king or queen respectively, and in the presence of all persons that shall be attending, assisting, or otherwise present at such their respective coronations; any law, statute, or usage, to the contrary notwithstanding."

STAT. 1 G. &
M. c. 8.

II. STAT. 1 GULIELMI & MARIE, c. 8(1). A.D. 1688.

"*An Act for the abrogating of the Oaths of Supremacy and Allegiance, and appointing other Oaths.*"

1 Eliz. c. 1.

"Whereas, by a statute made in the first year of the reign of our late sovereign lady Queen Elizabeth, intituled, 'An Act to restore to the Crown the ancient Jurisdiction over the Estate Ecclesiastical and Spiritual, and abolishing all Foreign Powers repugnant to the same,' the persons therein mentioned were obliged to take an oath therein mentioned, commonly called 'The Oath of Supremacy:' and whereas, by another statute made in the third year of the reign of our late sovereign lord King James the First, intituled, 'An Act for the better discovering and repressing Popish Recusants,' another oath, commonly called 'The Oath of Allegiance,' or 'Obedience,' was required to be taken by the persons therein mentioned:

The old oaths
of allegiance
and supremacy
abrogated.

"II. Be it enacted by the king's and queen's most excellent majesties, by and with the advice and consent of the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, that from henceforth no person whatsoever shall be obliged to take the said oaths, or either of them, by force or virtue of the said statutes, or either of them, or any other statute whatsoever, but that the said statutes, and every other statute, for so much only as concerns the said oaths, and the said oaths themselves, shall be and are hereby repealed, utterly abrogated, and made void.

1 Hale's P. C.
62.

The new oaths
and declara-
tion, by whom
and how to be
taken.

"III. And be it further enacted by the authority aforesaid, that the oaths appointed by this present act to be taken, and the declaration likewise appointed by this present act to be made, repeated, and subscribed, shall, from and after the first day of May, in the year one thousand six hundred eighty-nine, be taken, made, repeated, and subscribed by every such person and persons as were appointed and required by any act or acts whatsoever, to take the said abrogated oaths of

supremacy and allegiance, or either of them, before such person or persons as hereafter in this act is expressed; that is to say, all and every archbishop and bishop that now is, and all and every person, of or above the degree of a baron of parliament, in their majesties' high court of Chancery, or in their majesties' court of King's Bench, in public and open court, between the hours of nine of the clock and twelve in the forenoon, before the end of Trinity term next, or at the general quarter sessions to be holden for that county or place where he or they shall be, inhabit, or reside, in open court, between the said hours of nine and twelve of the clock in the forenoon, before the first day of August next; all which shall be put on record in the respective courts.

"IV. And all and every other such person and persons shall take the said oaths, and make, repeat, and subscribe the said declaration by this present act required to be taken, made, and subscribed, before such person or persons respectively, as by any act or acts were authorized or empowered to tender the said oath of allegiance now abrogated and made void; which said person or persons so respectively authorized to minister or tender the said oaths and declaration, are hereby required to minister and tender the same accordingly.

"V. And be it further enacted by the authority aforesaid, that all persons, other than such concerning whom other provision shall be made in this act, or in any other act of this present session of parliament, that shall hereafter be admitted into any office or employment ecclesiastical or civil, or come into any capacity, in respect or by reason whereof they should have been obliged by any statute to take the said abrogated oaths, or either of them, shall take the oaths hereby appointed, in such manner, at such times, before such persons, and in such courts and places, as they should or ought to have taken the said former oaths, or either of them, in case the same had not been abrogated, as aforesaid. And that every such person, who shall neglect or refuse to take the same, shall incur and be liable to the same penalties, forfeitures, disabilities, and incapacities, as by any such statute was appointed, for or upon neglect, or refusal, to take the said former oaths hereby abrogated, or either of them.

"VI. And be it further enacted, that if any person now having any office or employment, civil or military, shall neglect or refuse to take the said oaths hereby appointed to be taken, in such manner as by this act is directed, before the first day of August, in the year one thousand six hundred eighty-nine, or sooner if required thereunto by any order from his majesty in council, before such persons as by the said order shall be appointed to take and receive the same, that in every such case the said office and employment of every person so neglecting or refusing, shall be void, and is hereby adjudged void.

"VII. And be it further enacted by the authority aforesaid, that if any archbishop or bishop, or any other person now having any ecclesiastical dignity, benefice, or promotion, shall neglect or refuse to take the oaths by this act appointed to be taken, in such manner as by this act is directed, before the first day of August in the year one thousand six hundred eighty-nine, every such person and persons so neglecting or refusing, shall be, and is and are hereby declared and adjudged to be, suspended from the execution of his or their office by the space of six months, to be accounted from the said first day of August; and if the said person or persons (so having neglected or refused) shall not within the said space of six months take the said oaths in such manner, court, or place, as they ought to have taken the same, before the said first day of August; then he or they shall be *ipso facto* deprived, and is and are hereby adjudged to be deprived of his and their offices, benefices, dignities, and promotions ecclesiastical.

"VIII. And be it further enacted, that if any person or persons now being master, governor, head, or fellow of any college or hall, in either of the two universities, or of any other college, or master of any hospital or school, or professor of divinity, law, physic, or other science in either of the said universities, or in the city of London, shall neglect or refuse to take the oaths by this act appointed to be taken, in such manner, and before such persons as by this act is directed, before the first day of August in the year one thousand six hundred eighty-nine; every

STAT. 1 G. & M. c. 8.

Before whom the new oaths are to be taken, and declaration to be made and subscribed.

All persons which shall be in office shall take the oaths, &c.

The penalty for neglect.

Persons now in office neglecting, the office to be void.

Ecclesiastical persons now in benefice, &c. neglecting, to be suspended, &c.

Persons who are now masters of colleges, &c. neglecting, how punished.

STAT. 1 G. &
M. c. 8.

such person and persons so neglecting or refusing, shall be, and is and are hereby declared and adjudged to be, suspended from the execution of his or their office and employment, and from his or their mastership, government, fellowship, and professorship respectively, for the space of six months, to be accounted from the said first day of August: and if the said person or persons (so having neglected or refused) shall not within the said space of six months take the said oaths in such court or place, and before such persons, and in such manner, as they ought to have taken the same before the said first day of August, that in every such case the said office and employment, mastership, government, fellowship, and professorship of every person so neglecting or refusing, shall be void, and is hereby adjudged void.

Persons re-
fusing to take
the oaths upon
tender, to be
committed.

“IX. And be it further enacted, that if any such other person or persons (other than the persons specially above mentioned) shall refuse to take the said oaths, or either of them, when tendered to him or them by any persons lawfully authorized, as is aforesaid, to administer or tender the same; the person or persons so tendering the said oaths, or either of them, shall commit the said person and persons so refusing, to the common gaol or house of correction, there to remain without bail or mainprize for the space of three months, unless such offender shall pay down to the said person or persons so tendering the said oaths, or either of them, such sum of money, not exceeding forty shillings, as the said person or persons so tendering the said oaths, or either of them, shall require such offender to pay for his or her said refusal; which money shall be paid to the churchwardens or overseers of the poor, for the relief of the poor of the parish or place where such offender did last inhabit: and if at the end of three months after such refusal, the person and persons so refusing shall again refuse to take the said oaths, or either of them, when lawfully tendered to him or them, as is aforesaid; the said person or persons so tendering the said oaths, or either of them, shall commit the said person and persons so refusing to the common gaol or house of correction, there to remain for the space of six months, unless every such offender shall pay down to the person or persons so tendering the said oaths, or either of them, such sum of money, not exceeding ten pounds, nor under five pounds, as the said person or persons so tendering the said oaths, or either of them, shall require such offender to pay for his or her said second refusal; the said money to be disposed in manner aforesaid; and unless every such offender shall become bound with two sufficient sureties, with condition to be of the good behaviour, and also to appear at the next assizes or general gaol delivery to be holden for the county, liberty, or place where such offender shall then inhabit or reside; at which assizes or gaol delivery the said oaths shall be again tendered to every such offender by the justices of assize or gaol delivery, in their open assizes or gaol delivery; and if the said offender shall refuse to take the said oaths, or either of them, when tendered to him or her by the said justices of assizes or gaol delivery, as is aforesaid, then every person and persons so refusing, shall be and is and are hereby adjudged incapable of any office, civil or military, within this kingdom, and shall likewise be and remain bound to the good behaviour, until he or they do take the said oaths: and in case such person or persons shall refuse also to make and subscribe the declaration mentioned in the statute made in the thirtieth year of the reign of King Charles the Second, intituled “An Act for the more effectual preserving the King’s Person and Government, by disabling Papists from sitting in either House of Parliament,” such person and persons shall suffer all pains, penalties, forfeitures, and disabilities, as a popish recusant convict, and be taken and deemed a popish recusant convict, to all intents and purposes whatsoever.

Second
refusal.

Third refusal.

Penalty for
refusing
declaration.
30 Car. 2,
St. II. c. 1.

Land and sea
officers to take
the oaths and
declaration.

“X. And be it further enacted by the authority aforesaid, that all and every commission officer and officers, and non-commission or warrant officer and officers, that are already employed in their majesties’ service by sea or land, shall take the said oaths, and also make, repeat, and subscribe the declaration mentioned in the said statute made in the thirtieth year of the reign of King Charles the Second, before the lord high admiral of England, or the commissioners for executing the office of lord high admiral, or their deputies, or such other persons as their majesties shall authorize or appoint to administer and accept the same respectively; and

that all and every such person and persons as shall hereafter be put into any such employment by sea or land, shall, before the delivery of such commission or warrant to such officer, take the said oaths, and make, repeat, and subscribe the said declaration before the lord high admiral, or commissioners of the Admiralty, or their deputies, as aforesaid, or such person as shall issue such commission or warrant, or such others as shall be authorized to administer the same as aforesaid respectively, who are hereby respectively authorized and required to tender, administer, and accept the same; and all and every such officer or officers, that shall refuse to take the said oaths, and make and subscribe the said declaration, shall be incapable of receiving, taking, holding, or executing such office or employment.

STAT. 1 G. & M. c. 8.

Penalty.

“XI. And be it further enacted, that the oath appointed by the statute made in the thirteenth and fourteenth years of King Charles the Second, intituled, ‘An Act for ordering the Forces in the several Counties of this Kingdom,’ the form and words of which oath are in the same statute expressed; and also so much of a declaration prescribed in another act made in the same year, intituled, ‘An Act for the Uniformity of Public Prayers, and Administration of the Sacraments, and other Rites and Ceremonies: and for establishing the Form of making, ordaining, and consecrating Bishops, Priests, and Deacons, in the Church of England,’ as is expressed in these words, (viz.) ‘I, A. B., declare, that it is not lawful upon any pretence whatsoever to take arms against the king; and that I do abhor that traitorous position of taking arms by his authority against his person, or against those that are commissioned by him;’ shall not from henceforth be required or enjoined, nor any person suffer any forfeiture, penalty, or loss, by the not taking, subscribing, or making the said oath, or the said recited part of the said declaration; the last fore-mentioned statutes, or any other law or statute to the contrary in any wise notwithstanding.

The oath and declaration appointed by two acts of 13 & 14 Car. 2, cc. 3 & 4, made void.

“XII. And be it enacted, that the oaths that are intended and required to be taken by this act, are the oaths in these express words hereafter following:

Oaths by this act.

“I, A. B., do sincerely promise and swear, that I will be faithful, and bear true allegiance, to their Majesties King William and Queen Mary:

“‘So help me God, &c.’

“I, A. B., do swear, that I do from my heart abhor, detest, and abjure, as impious and heretical, that damnable doctrine and position, that princes excommunicated or deprived by the pope, or any authority of the see of Rome, may be deposed or murdered by their subjects, or any other whatsoever. And I do declare, that no foreign prince, person, prelate, state, or potentate, hath or ought to have any jurisdiction, power, superiority, pre-eminence, or authority, ecclesiastical or spiritual, within this realm:

“So help me God, &c.’”

“XIII. And be it further enacted by the authority aforesaid, that the names of all and singular such persons and officers aforesaid that do or shall, in the court of Chancery, King’s Bench, or Quarter Sessions, take the oaths by this act required or appointed to be taken, shall be in the said respective courts of Chancery and King’s Bench, and the Quarter Sessions, inrolled with the day and time of their taking the same, in rolls made and kept only for that intent and purpose, and for no other. The which rolls, as for the court of Chancery, shall be publicly hung up in the office of the Petty Bag; and the rolls for the King’s Bench, in the crown office of the said court; and in some public place in every quarter sessions, and there remain during the whole term, every term, and during the whole time of the said sessions, in every quarter sessions, for every one to resort to and look upon without fee or reward. And none of the person or persons aforesaid shall give or pay, as any fee or reward to any officer or officers belonging to any of the courts, as aforesaid, above the sum of twelve pence for his or their entry of his or their taking of the said oaths by this act required or appointed to be taken.

Names of persons who take the oaths to be inrolled,

to be viewed without fee.

Twelve pence for the oath.

“XIV. And whereas, since the eleventh day of December in the year of our Lord one thousand six hundred eight-eight, the said abrogated oaths could not be taken by any person that was elected or placed in any office of magistracy, or place of trust relating to or concerning the government of any city, corporation, borough, cinque-port, or their members, or other port town, at the time of his being

Provision for members of corporations who could not take the abrogated oaths

STAT. 1 G. &
M. c. 8.

since Decem-
ber last.
13 Car. 2,
St. II. c. 1.

admitted and sworn into such office, place, or employment, by reason whereof his said election, placing, and choice into such office or employment, by one act, intituled, 'An Act for the well-governing of Corporations,' is enacted and declared to be void; be it therefore enacted by the authority aforesaid, that if any such officer shall, before the first day of August in the year of our Lord one thousand six hundred eighty-nine, take the oaths herein mentioned and required to be taken, before such person or persons, who by the said act should have administered the said abrogated oaths, at the time of his admission into such office or employment, the said election and placing into such office or employment shall be taken and adjudged to be as good and effectual, as if he had taken the said abrogated oaths; anything in the said act, or in any other statute, to the contrary in any wise notwithstanding.

Provision for
officers who
could not take
the abrogated
oaths since
Michaelmas
last.
25 Car. 2, c. 2.

"XV. And whereas, since the feast of Saint Michael last past, divers persons have been admitted into offices, employments, or places of trust, and could not take the said abrogated oaths, and subscribe the declaration at such time, and in such manner, as is directed and appointed by one act made the five and twentieth of the late King Charles the Second, intituled, 'An Act for preventing of Dangers that may happen from Popish Recusants;' be it therefore enacted by the authority aforesaid, that if any such person shall, before the end of Trinity term next, in the high courts of Chancery or King's Bench, or before the first of August in the year of our Lord one thousand six hundred eighty-nine, at the quarter sessions for that county or place where he or they shall inhabit or reside, or execute the said office or employment, take the oaths in this act mentioned and appointed to be taken, and repeat and subscribe the said declaration, and take the sacrament of the Lord's supper according to the usage of the Church of England, and procure certificate thereof, in such manner as in the said act is required, directed, and appointed, that then such person shall and is hereby indemnified and discharged from any penalty or disability that he might or should have incurred by the said act, and shall and is hereby adjudged to have been and be as good and sufficient an officer from the time of his admission, as if he had taken the said abrogated oaths, and performed all other things required by the said act; anything to the contrary in any wise notwithstanding.

King may
allow to twelve
of the non-
jurant clergy
subsistence.

"XVI. Provided always, and be it enacted by the authority aforesaid, that it be left to the king, to allow to such of the clergy as shall refuse the oaths prescribed by this act, as he shall think fit, not exceeding the number of twelve, an allowance out of their ecclesiastical benefices or promotions for their subsistence, not exceeding a third part, and to continue during his majesty's pleasure, and no longer."

STAT. 1 G. &
M. c. 9.

III. STAT. 1 GULIELMI & MARIE, c. 9 (1). A.D. 1688.

"An Act for the amoving Papists, and reputed Papists, from the Cities of London and Westminster, and ten Miles distance from the same."

STAT. 1 G. &
M. c. 13.

IV. STAT. 1 GULIELMI & MARIE, c. 13 (2). A.D. 1688.

"An Act for raising Money by a Poll, and otherwise, towards the reducing of Ireland."

[Archbishop, to pay 50*l*.; bishop, 20*l*.; dean, 10*l*.; archdeacon, 2*l*. 10*s*.; prebend, 2*l*. 10*s*.; doctor, 5*l*.; pluralist of 120*l*. per annum, 5*l*.; but doctors not promoted shall not be charged for their title; nor shall the widow of any ecclesiastical person deceased be charged for the third part, according to the dignity or title of her deceased husband.]

STAT. 1 G. &
M. c. 15.

V. STAT. 1 GULIELMI & MARIE, c. 15. A.D. 1688.

"An Act for the better securing the Government, by disarming Papists and reputed Papists."

(1) *Vide* Stat. 31 Geo. 3, c. 32. Stat. 43 Geo. 3, c. 30. (2) Expired.
Stat. 10 Geo. 4, c. 7.

VI. STAT. 1 GULIELMI & MARIE, c. 16. A.D. 1688.

STAT. 1 G. & M. c. 16.

"An Act that the simoniacal Promotion of one Person may not prejudice another."

"Whereas it hath often happened, that persons simoniac or simoniacally promoted to benefices or ecclesiastical livings, have enjoyed the benefit of such livings many years, and sometimes all their life-time, by reason of the secret carriage of such simoniacal dealing; and after the death of such simoniac person, another person innocent of such crime, and worthy of such preferment, being presented or promoted by another patron innocent also of that simoniacal contract, have been troubled and removed upon pretence of lapse (or otherwise) to the prejudice of the innocent patron in reversion, and of his clerk, whereby the guilty go away with profit of his crime, and the innocent succeeding patron and his clerk are punished, contrary to all reason and good conscience:

"II. For prevention whereof, be it enacted by the king's and queen's most excellent majesties, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that, after the death of the person so simoniacally promoted, the offence or contract of simony shall, neither by way of title in pleading, or in evidence to a jury, or otherwise, hereafter be alleged or pleaded, to the prejudice of any other patron innocent of simony, or of his clerk by him presented or promoted, upon pretence of lapse to the crown, metropolitan, or otherwise, unless the person simoniac or simoniacally presented, or his patron, was convicted of such offence at the common law, or some ecclesiastical court, in the life-time of the person simoniac or simoniacally promoted or presented; any law or statute to the contrary notwithstanding.

"III. And be it also provided, enacted, and declared by the authority aforesaid, that no lease or leases, really and *bonâ fide* made, or hereafter to be made, by any such person as aforesaid, simoniac or simoniacally promoted to any deanery, prebend, or parsonage, or other ecclesiastical benefice or dignity, for good and valuable consideration, to any tenant or person not being privy unto, or having notice of such simony, shall be impeached or avoided for or by reason of such simony, but shall be good and effectual in law, the said simony notwithstanding."

31 Eliz. c. 6.

Simoniacal contract, where it shall not prejudice.
19 Vin. 455, &c.
2 Haw. P. C. 389 & 396.

Lease made *bonâ fide* by simonist good.

See farther,
12 Ann. St. II. c. 12.

VII. STAT. 1 GULIELMI & MARIE, c. 17. A.D. 1688.

STAT. 1 G. & M. c. 17.

"An Act for rectifying a Mistake in a certain Act of this present Parliament, for the amoving Papists from the Cities of London and Westminster."

VIII. STAT. 1 GULIELMI & MARIE, c. 18(1). A.D. 1688.

STAT. 1 G. & M. c. 18.

"An Act for exempting their Majesties' Protestant Subjects, dissenting from the Church of England, from the Penalties of certain Laws."

"Forasmuch as some ease to scrupulous consciences in the exercise of religion (2) may be an effectual means to unite their majesties' protestant subjects in interest and affection:

(1) *Vide* Stat. 10 Ann. c. 2. Stat. 8 Geo. 1, c. 6. Stat. 19 Geo. 3, c. 44. Stat. 52 Geo. 3, c. 155. Stat. 53 Geo. 3, c. 160. Stat. 6 Geo. 4, c. 50. Stat. 2 & 3 Gul. 4, c. 115.

(2) *Exercise of religion*:—A general view of the tolerant principles of the Anglican church during this reign, may be collected from the judgment of Sir John Nicholl, in *Kemp v. Wickes*, (3 Phill. 297,) who in speaking of baptism by dissenters, says, "It seems by no means proper, however, wholly to pass over the view which may be taken of this subject as affected by the Toleration Act. By that act an important change was worked in the

situation of his majesty's protestant dissenting subjects; and the baptisms now administered by dissenting ministers, stand upon very different grounds from those by mere laymen. There were many laws, both of church and state, requiring conformity to the church, creating disabilities, imposing penalties, and denouncing excommunications upon all nonconformity. Now, supposing that during the existence of these disabilities, it could be maintained, that in point of law no act of nonconformists could be recognised in a court of justice, and, therefore, that a baptism administered by such persons could not be noticed at all, either by the

STAT. 1 G. &
M. c. 18.

The several
laws not to
extend to
dissenters.
23 Eliz. c. 1.
29 Eliz. c. 6.

"II. Be it enacted by the king's and queen's most excellent majesties, by and with the advice and consent of the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, that neither the statute made in the three and twentieth year of the reign of the late Queen Elizabeth, intituled, 'An Act to retain the Queen's Majesty's Subjects in their due Obedience;' nor the statute made in the twenty-ninth year of the said queen, intituled, 'An Act for the more speedy and due Execution of certain Branches of the Statute made in the three and twentieth year of the Queen's Majesty's Reign,'

church or by the courts administering the law of the church, yet could it be maintained now, that such a baptism was a mere nullity? If such could have been considered as the view of the law before the Toleration Act, yet that act would change the whole shape of the thing: that act removed the disabilities; it allowed protestant dissenters publicly to exercise their worship in their own way, under certain regulations; it legalized their ministers, it protected them against prosecutions for nonconformity.

"Now, their ministers and preachers being allowed by law, (and, so far as that goes, they are lawful ministers for the purposes of their own worship,) their worship being permitted by law, their nonconformity being tolerated, could it any longer be said, that rites and ceremonies performed by them, are not such as the law can recognise in any of his majesty's courts of justice, provided they are not contrary to, nor defective in, that which the Christian church universally holds to be essential; that is, provided they are Christians? This appears to be a necessary consequence of the Toleration Act. The manner in which that act has been considered by other courts, is not altogether foreign to the consideration. Its general principle was much canvassed in the famous case of *Evans v. London (The Chamberlain of)*. The particular circumstances of that case are foreign to the consideration of this. The case began in a jurisdiction in the city. It was afterwards appealed to a commission of the judges, and then to the House of Lords; and, in the first of the stages of the appeal, a very eminent judge, Mr. Justice *Foster*, thus expressed himself in his judgment: 'The defendant does not plead the Toleration Act to excuse one offence by another; but to show that, although the Rubric did require conformity in all things, yet, by the Toleration Act, the Rubric is taken out of the way, and does not extend to his case. The Act of Toleration is not to be considered merely as an act of connivance; it was made, that the public worship of protestant dissenters might be legal, and they might be entitled to the public protection.' So again, Lord *Mansfield*, in the House of Lords, said, 'Conscience is not controllable by human laws, nor amenable to human tribunals; and attempts to force conscience, will never produce conviction. Nonconformity is no offence by the common law, and the pains and penalties for nonconformity to the established rites of the church, are repealed by the Act of Toleration.' This shows something of the general view taken of that statute by the judges

of the common law. Acts of nonconformists are now legalized; and they are to be recognised, and were upon that occasion recognised, in courts of law. Indeed, the legislature itself, (as has been pointed out,) has recognised the baptism of dissenters; for Stat. 23 Geo. 3, c. 67, which laid a duty upon registers of baptisms by the church, was extended by Stat. 25 Geo. 3, c. 75, to the registers of baptism of protestant dissenters. Both are now repealed; but the passing of that second statute is a recognition of baptism by protestant dissenters.

"Protestant dissenters then, being allowed the exercise of their religion, being no longer liable to pains and penalties—their ministers lawfully exercising their functions—the rites of that body being allowed by the law—it can no longer be considered, that any acts and rites performed by them, are such as the law cannot, in the due administration of it, take any notice whatever of, or that a baptism performed by them, when attended with what our own church admits to be the essentials of baptism, is still to be looked upon as a mere nullity, or that infants so baptized, are to be rejected from burial as persons unbaptized at all, or in other words, (though that has been disavowed by the counsel in the argument,) as not being Christians."

Respecting the general rights and disqualifications of dissenters; vide *Lewis v. Hammond*, 2 B. & A. 206. *Rex v. Waddington*, 1 B. & C. 26. *Rex v. Suffolk (Justices)*, 15 East, 590. *Porter v. Clarke*, 2 Sim. 520. *Leslie v. Birnie*, 2 Russ. 114. *Regina v. Peach*, 2 Salk. 572. *Kenward v. Knowles*, Willes, 463.

It may be here observed, that Stat. 9 Geo. 4, c. 17, repeals in part the Test and Corporation Acts, and substitutes a declaration in lieu of the sacramental test. Stat. 3 & 4 Vict. c. 92, enables courts of justice to admit non-parochial registers, as evidence of births or baptisms, deaths or burials, and marriages. Stat. 6 & 7 Gul. 4, c. 85; Stat. 7 Gul. 4 & 1 Vict. c. 22, and Stat. 3 & 4 Vict. c. 72, enable dissenters to be married without any religious ceremony. In fact, adopting the language of Sir *William Scott*, in *H. M. Procurator-General v. Stone*, (1 Consist. 428,) "As the law now is, every one goes to his parochial church, with a certainty of not feeling any of his solemn opinions offended. If any person dissents, a remedy is provided by the mild and wise spirit of toleration which has prevailed in modern times, and which allows that he should join himself to persons of persuasions similar to his own."

viz., the aforesaid act; nor that branch or clause of a statute made in the first year of the reign of the said queen, intituled, 'An Act for the Uniformity of Common Prayer and Service in the Church, and Administration of the Sacraments;' whereby all persons, having no lawful or reasonable excuse to be absent, are required to resort to their parish church or chapel, or some usual place where the common prayer shall be used, upon pain of punishment by the censures of the church, and also upon pain that every person so offending shall forfeit for every such offence twelve pence; nor the statute made in the third year of the reign of the late King James the First, intituled, 'An Act for the better discovering and repressing Popish Recusants;' nor that other statute made in the same year, intituled, 'An Act to prevent and avoid Dangers which may grow by Popish Recusants;' nor any other law or statute of this realm made against papists or popish recusants, except the statute made in the five and twentieth year of King Charles the Second, intituled, 'An Act for preventing Dangers which may happen from Popish Recusants;' and except also the statute made in the thirtieth year of the said King Charles the Second, intituled, 'An Act for the more effectual preserving the King's Person and Government, by disabling Papists from sitting in either House of Parliament;' shall be construed to extend to any person or persons dissenting from the church of England, *that shall take*(1) the oaths mentioned in a statute made this present parliament, intituled, 'An Act for removing and preventing all Questions and Disputes concerning the assembling and sitting of this present Parliament;' and shall make and subscribe the declaration mentioned in a statute made in the thirtieth year of the reign of King Charles the Second, intituled, 'An Act to prevent Papists from sitting in either House of Parliament;' which oaths and declaration the justices of peace at the general sessions of the peace, to be held for the county or place where such person shall live, are hereby required to tender and administer to such persons as shall offer themselves to take, make, and subscribe the same, and thereof to keep a register; and likewise none of the persons aforesaid shall give or pay, as any fee or reward, to any officer or officers belonging to the court aforesaid, above the sum of sixpence, nor that more than once, for his or their entry of his taking the said oaths, and making and subscribing the said declaration; nor above the further sum of sixpence for any certificate of the same, to be made out and signed by the officer or officers of the said court.

"III. And be it further enacted by the authority aforesaid, that all and every person and persons already convicted or prosecuted in order to conviction of recusancy, by indictment, information, action of debt, or otherwise, grounded upon the aforesaid statutes, or any of them, that shall take the said oaths mentioned in the said statute made this present parliament, and make and subscribe the declaration aforesaid, in the court of Exchequer, or assizes, or general or quarter sessions to be held for the county where such person lives, and to be thence respectively certified into the Exchequer, shall be thenceforth exempted and discharged from all the penalties, seizures, forfeitures, judgments, and executions, incurred by force of any of the aforesaid statutes, without any composition, fee, or further charge whatsoever.

"IV. And be it further enacted by the authority aforesaid, that all and every person and persons that shall, as aforesaid, take the said oaths, and make and subscribe the declaration aforesaid, shall not be liable to any pains, penalties, or forfeitures, mentioned in an act made in the five and thirtieth year of the reign of the late Queen Elizabeth, intituled, 'An Act to retain the Queen's Majesty's Sub-

STAT. 1 G. & M. c. 18.

1 Eliz. c. 2, s. 14.

3 Jac. 1, c. 4.

3 Jac. 1, c. 5.

Exception.

25 Car. 2, c. 2.

30 Car. 2, St. II. c. 1.

Supra, c. 1.

30 Car. 2, St. II. c. 1.

Taking declaration to be registered.

Fee for register and certificate.

Persons convicted, &c. taking the oaths, &c. shall be discharged.

35 Eliz. c. 1.

(1) *That shall take*:—In *Rex v. Larwood*, (4 Mod. 274; 1 Salk. 168,) the court stated, "The defendant, therefore, should at first have pleaded in bar, that he was a dissenter from the church, &c., and then brought himself within the compass of the Act of Indulgence, of which the court cannot take any notice, because it is a private

act; for before it was made, the law did not take any notice of protestant dissenters, but only of dissenters from the church in general; besides, it is an act which doth not extend to all sorts of protestant dissenters, but only to such who shall qualify themselves as therein is prescribed."

STAT. 1 G. & M. c. 18.
22 Car. 2, c. 1.
Ecclesiastical court.

Private meet-
ings excluded.

Tithes saved.

Officers
scrupling
oaths, &c.
allowed to act
by deputy.

jects in their due Obedience;' nor in an act made in the two and twentieth year of the reign of the late King Charles the Second, intituled, 'An Act to prevent and suppress Seditious Conventicles;' nor shall any of the said persons be *prosecuted*(1) in any ecclesiastical court, for or by reason of their non-conforming to the church of England.

"V. Provided always, and be it enacted by the authority aforesaid, that if any assembly of persons dissenting from the church of England shall be had in any place for religious worship with the doors locked, barred, or bolted, during any time of such meeting together, all and every person or persons, that shall come to and be at such meeting, shall not receive any benefit from this law, but be liable to all the pains and penalties of all the aforesaid laws recited in this act, for such their meeting, notwithstanding his taking the oaths, and his making and subscribing the declaration aforesaid.

"VI. Provided always, that nothing herein contained shall be construed to exempt any of the persons aforesaid from paying of tithes or other parochial duties, or any other duties to the church or minister, nor from any prosecution in any ecclesiastical court, or elsewhere, for the same.

"VII. And be it further enacted by the authority aforesaid, that if any person dissenting from the church of England, as aforesaid, shall hereafter be chosen or otherwise appointed to bear the office of high constable or petit constable, churchwarden, overseer of the poor, or any other *parochial or ward office*(2), and such

(1) *Prosecuted*.—Two persons who were improperly "published" and "married" in a *conventicle*, were afterwards libelled against in the spiritual court for incontinence and fornication; and, upon moving for a prohibition, time was assigned to show cause why it should not go, and the proceedings in the ecclesiastical court were stayed in the meantime. Afterwards it was agreed, that a prohibition should be granted, and that the plaintiff should declare, in order that the point might be tried upon demurrer. But what the judgment was, or whether the cause proceeded to trial, does not appear from the report. *Hutchinson & Uxor v. Brookebanke*, 3 Lev. 376.

(2) *Parochial or ward office*.—In *Kenward v. Knowles*, (Willes, 463,) it was held, that a Baptist preacher, qualified according to Stat. 1 G. & M. c. 18, was exempted from serving all parish offices, whether they existed before or were created since that act, even though he be also engaged in trade.

The following account of this case is taken from Mr. Justice Abney's MS.: (Willes, 464, *in not.*)

"*Per Curiam*. This is an extremely clear case. The case was not reserved from any doubt in the judge who tried the cause, but from the importunity of counsel. The Toleration Act is grounded on natural rights, and the highest natural right is that of the conscience. The statute ought to receive a large and beneficial exposition, if the case wanted it; but the present is not only within the intent, but also within the very letter of it. Every person who is in holy orders and is a teacher qualified according to Stat. 1 G. & M. c. 18, is exempted from serving any parochial office or other office in any parish, &c.; the plaintiff is so qualified, and therefore is exempted. This is a parochial office in the nature of it; Stat. 10 Geo. 2, calls it an office. It is appointed to by the parishioners, and exercised in a parish. The addition of the plaintiff's being a merchant or

a dealer in hops varies not the case; it does not destroy the privilege any more than a clergyman's holding a farm or exercising any temporal office. The Toleration Act exempts teachers from all future offices. Judgment for the plaintiff."

Every Roman catholic minister was exempted from the office of churchwarden on complying with the regulations prescribed by Stat. 31 Geo. 3, c. 32. By Stat. 42 Geo. 3, c. 90, s. 174, no serjeant, drummer, or corporal of the militia, nor any private man, from the time of his enrolment until his discharge, is liable to serve as a peace or parish officer. And by Stat. 7 & 8 Geo. 4, c. 53, s. 11, and 3 & 4 Gul. 4, c. 51, s. 12, the same exemptions apply to excise officers and custom-house officers. In *Anthony v. Segar*, (1 Consist. 10,) Sir William Scott observed, "If a parish had returned a papist, or a Jew, or a child of ten years of age, or a person convicted of felony, I conceive the ordinary would be bound to reject." In *Adey v. Theobald*, (1 Curt. 447,) the court refused to compel a quaker to undertake the office of churchwarden. Where a person first elected churchwarden had, on the payment of a fine, been excused, it was decided, that a person elected in his place, at the same vestry meeting, was bound to serve, unless some exemption be shown. *Birnie v. Weller*, 3 Hagg. 474. And in *Cooper v. Allnutt*, (3 Phill. 165,) it was held, that deafness was no ground for exemption from the office of churchwarden.

"No out-lier, though he occupy lands in the parish, may be chosen churchwarden; because he cannot take notice of absences from church, nor disorders in it, for the due presenting of them." Gibson's Codex, 215.

But a person may be parishioner without inhabiting a house, for he may occupy a farm. *Brook v. Owen*, 3 Phill. 517, *in not.*

A partner in trade, lodging in another parish, is bound to serve in the parish wherein

person shall scruple to take upon him any of the said offices in regard of the oaths, or any other matter or thing required by the law to be taken or done in respect of such office, every such person shall and may execute such office or employment by a sufficient deputy, by him to be provided, that shall comply with the laws on this behalf. Provided always the said deputy be allowed and approved by such person or persons, in such manner as such officer or officers respectively should by law have been allowed and approved.

“VIII. And be it further enacted by the authority aforesaid, that no person dissenting from the church of England in *holy orders*, or *pretended holy orders* (1), or pretending to holy orders, nor any preacher or teacher of any congregation of dissenting protestants, that shall make and subscribe the declaration aforesaid, and take the said oaths at the general or quarter sessions of the peace to be held for the county, town, parts, or division where such person lives, which court is hereby empowered to administer the same, and shall also declare his approbation of and subscribe the articles of religion mentioned in the statute made in the thirteenth year of the reign of the late Queen Elizabeth, except the thirty-fourth, thirty-fifth, and thirty-sixth, and these words of the twentieth article, *viz.* ‘The church hath power to decree rites or ceremonies, and authority in controversies of faith, and yet,’ shall be liable to any of the pains or penalties mentioned in an act made in the seventeenth year of the reign of King Charles the Second, intituled, ‘An Act for restraining Nonconformists from inhabiting in Corporations;’ nor the penalties mentioned in the aforesaid act made in the two and twentieth year of his said late majesty’s reign, for or by reason of such persons preaching at any meeting for the exercise of religion; nor to the penalty of one hundred pounds mentioned in an act made in the thirteenth and fourteenth of King Charles the Second, intituled, ‘An Act for the Uniformity of Public Prayers, and Administration of Sacraments, and other Rites and Ceremonies: and for establishing the Form of making, ordaining, and consecrating of Bishops, Priests, and Deacons, in the Church of England,’ for officiating in any congregation for the exercise of religion permitted and allowed by this act.

“IX. Provided always, that the making and subscribing the said declaration, and the taking the said oaths, and making the declaration of approbation and subscription to the said articles, in manner as aforesaid, by every respective person or persons hereinbefore mentioned, at such general or quarter sessions of the peace as aforesaid, shall be then and there entered of record in the said court, for which

is his house of trade; and even a non-resident partner in a house of trade has been held liable to serve the office of churchwarden. *Stephenson v. Langston*, 1 Consist. 379. *Vide etiam Rex v. Poynder*, 1 B. & C. 178. *Attorney-General v. Forster*, 10 Ves. 335. 1 Burn’s E. L. by Phillimore, 400. *Vide* Stephens on Clerical Law, tit. CHURCHWARDENS.

(1) In *holy orders*, or *pretended holy orders*:—Whether a person not having “holy orders,” (*i. e.* by episcopal ordination,) or “pretended holy orders,” (*i. e.* conferred by some form other than episcopal ordination, acknowledged by protestant dissenters,) but being a candidate only for holy orders of one or other description, be entitled to require of the sessions to have the oaths administered to him, and to be allowed to make and subscribe the declarations required by the eighth section of the Toleration Act, 1 G. & M. c. 18, within the further description in that section of a person “pretending to holy orders,” to enable him to preach, &c. without incurring penalties; or whether these words are to be understood only of a person pretending actually to have some description of holy orders, has been

questioned; but it is clear, under this statute, it is not necessary, that a person bringing himself within the true meaning of “pretending to holy orders,” should also be the teacher or preacher of a separate congregation of protestant dissenters; and where the sessions had refused to admit a person to take the oaths, and to make and subscribe the declarations, &c. because he had not the conjoint qualification, a *mandamus* was granted to them to administer to him the oaths, &c., or to enable them to make a special return of the grounds of their refusal. *Rex v. Gloucestershire (Justices of)*, 15 East, 577.

Where a protestant dissenter merely stated himself as one who “preaches to several congregations of protestant dissenters,” without showing that he had any *separate congregation* attached to him as *such teacher or preacher*, he was held in *Rex v. Denbighshire (Justices of)*, (14 East, 385,) not entitled to be admitted by the justices in sessions to take the oaths, and to make and subscribe the declaration as required by the Toleration Act, 1 G. & M. c. 18, in order to qualify himself, under the eighth clause of that statute, to officiate as such teacher or preacher.

STAT. 1 G. & M. c. 18.

Persons in orders, how exempted from, 17 Car. 2, c. 2. 13 & 14 Car. 2, c. 4.

13 Eliz. c. 12.

17 Car. 2, c. 2.

13 & 14 Car. 2, c. 4.

Taking the oaths, &c. to be registered.

STAT. 1 G. &
M. c. 18.

Meeting door
to be unlocked.

Baptists.

Teachers
exempt from
offices.

Justice of peace
may tender the
oaths, &c.

Penalty for
refusing.

Quakers, how
exempted.
Altered as to
quakers by
8 Geo. 1, c. 6.
Declaration of
fidelity.
See 2 Bur.
1002.

Profession.

sixpence shall be paid to the clerk of the peace, and no more: provided that such person shall not at any time preach in any place, but with the doors not locked, barred, or bolted, as aforesaid.

“X. And whereas some dissenting protestants scruple the baptizing of infants; be it enacted by the authority aforesaid, that every person in pretended holy orders, or pretending to holy orders, or preacher, or teacher, that shall subscribe the aforesaid articles of religion, except before excepted, and also except part of the seven and twentieth article touching infant baptism, and shall take the said oaths, and make and subscribe the declaration aforesaid, in manner aforesaid, every such person shall enjoy all the privileges, benefits, and advantages, which any other dissenting minister, as aforesaid, might have or enjoy by virtue of this act.

“XI. And be it further enacted by the authority aforesaid, that every teacher or preacher in holy orders, or pretended holy orders, that is, a minister, preacher, or teacher of a congregation, that shall take the oaths herein required, and make and subscribe the declaration aforesaid, and also subscribe such of the aforesaid articles of the church of England, as are required by this act in manner aforesaid, shall be thenceforth exempted from serving upon any jury, or from being chosen or appointed to bear the office of churchwarden, overseer of the poor, or any other parochial or ward office, or other office in any hundred of any shire, city, town, parish, division, or wapentake.

“XII. And be it further enacted by the authority aforesaid, that every justice of the peace may at any time hereafter require any person that goes to any meeting for exercise of religion, to make and subscribe the declaration aforesaid, and also to take the said *oaths* (1) or declaration of fidelity hereinafter mentioned, in case such person scruples the taking of an oath, and upon refusal thereof, such justice of the peace is hereby required to commit such person to prison without bail or main-prize, and to certify the name of such person to the next general or quarter sessions of the peace to be held for that county, city, town, part, or division, where such person then resides; and if such person so committed shall upon a second tender at the general or quarter sessions refuse to make and subscribe the declaration aforesaid, such person refusing shall be then and there recorded, and he shall be taken thenceforth to all intents and purposes for a popish recusant convict, and suffer accordingly, and incur all the penalties and forfeitures of all the aforesaid laws.

“XIII. And whereas there are certain other persons, dissenters from the church of England, who scruple the taking of any oath; be it enacted by the authority aforesaid, that every such person shall make and subscribe the aforesaid declaration, and also this declaration of fidelity following, *viz.*

“‘I, *A. B.*, do sincerely promise and solemnly declare before God and the world, that I will be true and faithful to King William and Queen Mary; and I do solemnly profess and declare, that I do from my heart abhor, detest, and renounce, as impious and heretical, that damnable doctrine and position, that princes excommunicated or deprived by the pope, or any authority of the see of Rome, may be deposed or murdered by their subjects, or any other whatsoever. And I do declare, that no foreign prince, person, prelate, state, or potentate, hath, or ought to have, any power, jurisdiction, superiority, pre-eminence, or authority, ecclesiastical or spiritual, within this realm.’

“And shall subscribe a profession of their Christian belief in these words:

“‘I, *A. B.*, profess faith in God the Father, and in Jesus Christ his eternal son, the true God, and in the Holy Spirit, One God blessed for evermore; and do acknowledge the Holy Scriptures of the Old and New Testament to be given by Divine inspiration.’

“Which declarations and subscription shall be made and entered of record at the general quarter sessions of the peace for the county, city, or place where every such

(1) *Oaths*.—Parol evidence of the oaths required by the Toleration Act having been taken, was in *Rex v. Hube*, (1 Peake's N. P. C. 180,) held not to be admissible; but that

it was not necessary to prove the taking of those oaths in an indictment for disturbing the congregation.

person shall then reside. And every such person that shall make and subscribe the two declarations and profession aforesaid, being thereunto required, shall be exempted from all the pains and penalties of all and every the aforementioned statutes made against popish recusants, or protestant nonconformists, and also from the penalties of an act made in the fifth year of the reign of the late Queen Elizabeth, intituled, 'An Act for the Assurance of the Queen's Royal Power over all Estates and Subjects within her Dominions,' for or by reason of such persons not taking or refusing to take the oath mentioned in the said act; and also from the penalties of an act made in the thirteenth and fourteenth years of the reign of King Charles the Second, intituled, 'An Act for preventing Mischiefs that may arise by certain Persons called Quakers, refusing to take lawful Oaths;' and enjoy all other the benefits, privileges, and advantages, under the like limitations, provisoes, and conditions, which any other dissenters shall or ought to enjoy by virtue of this act.

1 Geo. 1, St. I. c. 6; 8 Geo. 1, c. 6; 12 Geo. 2, c. 13, s. 8; and 22 Geo. 2, c. 46.

"XIV. Provided always, and be it enacted by the authority aforesaid, that in case any person shall refuse to take the said oaths, when tendered to them, which every justice of the peace is hereby empowered to do, such person shall not be admitted to make and subscribe the two declarations aforesaid, though required thereunto either before any justice of the peace, or at the general or quarter sessions, before or after any conviction of popish recusancy, as aforesaid, unless such person can, within thirty-one days after such tender of the declarations to him, produce two sufficient protestant witnesses, to testify upon oath, that they believe him to be a protestant dissenter, or a certificate under the hands of four protestants, who are conformable to the church of England, or have taken the oaths and subscribed the declaration above-mentioned, and shall also produce a certificate under the hands and seals of six or more sufficient men of the congregation to which he belongs, owning him for one of them.

"XV. Provided also, and be it enacted by the authority aforesaid, that until such certificate, under the hands of six of his congregation, as aforesaid, be produced, and two protestant witnesses come to attest his being a protestant dissenter, or a certificate under the hands of four protestants as aforesaid, be produced, the justice of the peace shall and hereby is required to take a recognizance with two sureties in the penal sum of fifty pounds, to be levied of his goods and chattels, lands, and tenements, to the use of the king's and queen's majesties, their heirs and successors, for his producing the same; and if he cannot give such security, to commit him to prison, there to remain until he has produced such certificates, or two witnesses, as aforesaid.

"XVI. Provided always, and it is the true intent and meaning of this act, that all the laws made and provided for the frequenting of divine service on the Lord's day, commonly called Sunday, shall be still in force, and executed against all persons that offend against the said laws, except such persons *come to some* (1) congregation or assembly of religious worship, allowed or permitted by this act.

"XVII. Provided always, and be it further enacted by the authority aforesaid, that neither this act, nor any clause, article, or thing herein contained, shall extend or be construed to extend to give any ease, benefit, or advantage to any papist or popish recusant whatsoever, or any person that shall deny in his preaching or writing the doctrine of the blessed Trinity, as it is declared in the aforesaid articles of religion.

"XVIII. Provided always, and be it enacted by the authority aforesaid, that if any person or persons, at any time or times after the tenth day of June, do and shall willingly and of purpose, maliciously or contemptuously come into any cathedral or parish church, chapel, or other congregation permitted by this act, and disquiet or disturb the same, or misuse any preacher or teacher, such person or

STAT. 1 G. & M. c. 18.

5 Eliz. c. 1.

13 & 14 Car. 2, c. 1.

Farther provisions concerning quakers, 7 & 8 Gul. 3, c. 34; Geo. 2, c. 46.

How purged after refusal of the oaths.

Laws for divine service in force.

Papists, &c. excepted.

Disturbers of religious worship, how punished. See 1 Geo. 1, St. II. c. 5, s. 4.

(1) *Come to some*.—It was said by Holt (Chief Justice), "If a man be a professed churchman, and his conscience will permit him sometimes to go to meetings instead of

coming to church, the Act of Toleration shall not excuse him; for it was not made for such sort of people." Gibson's Codex, 521.

STAT. 1 G. &
M. c. 18.

persons, upon proof thereof before any justice of peace, by two or more sufficient witnesses, shall find two sureties to be bound by recognizance in the penal sum of fifty pounds, and in default of such sureties shall be committed to prison, there to remain till the next general or *quarter sessions* (1); and upon conviction of the said offence at the said general or quarter sessions, shall suffer the pain and penalty of twenty pounds, to the use of the king's and queen's majesties, their heirs and successors.

Place for wor-
ship to be
certified.
See 4 Bur.
1991.

"XIX. Provided always, that no congregation or assembly for religious worship shall be permitted or allowed by this act, until the place of such meeting shall be certified to the bishop of the diocese, or to the archdeacon of that archdeaconry, or to the justices of the peace at the general or quarter sessions of the peace for the county, city, or place in which such meeting shall be held and *registered* (2) in the said bishop's or archdeacon's court respectively, or recorded at the said general or quarter sessions; the register or clerk of the peace whereof respectively is hereby required to register the same, and to give certificate thereof to such person as shall demand the same, for which there shall be no greater fee nor reward taken than the sum of sixpence."

STAT. 1 G. &
M. c. 26.

IX. STAT. 1 GULIELMI & MARIE, c. 26 (3). A.D. 1688.

"*An Act to vest in the two Universities the Presentations of Benefices belonging to Papists.*"

3 Jac. 1, c. 5.

"Whereas in and by a certain clause mentioned in one act of parliament made in the third year of the reign of King James the First, intituled, 'An Act to prevent and avoid Dangers which may grow by Popish Recusants,' it is enacted, that every person or persons that is or shall be a popish recusant convict, during the time that he shall be or remain a recusant, shall, from and after the end of that present session of parliament, be utterly disabled to present to any benefice with cure, or without cure, prebend, or any other ecclesiastical living, or to collate or nominate to any free school, hospital, or donative whatsoever, and from the beginning of the said parliament shall likewise be disabled to grant any avoidance to any benefice, prebend, or other ecclesiastical living:

Persons re-
fusing declara-
tion, disabled
to present, &c.
Antè c. 15.

"II. Be it enacted by the king's and queen's most excellent majesties, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by authority of the same, that every person who shall refuse or neglect to make, repeat, and subscribe the declaration mentioned in one act of this present parliament, intituled, 'An Act for the better securing the Government by disarming Papists, and reputed Papists,' when the same shall be tendered to such person by any two or more justices of the peace, as in the said act is enacted, or who shall upon notice given, as in the said act is directed, *refuse or forbear* (4) to appear before them for the making, repeating, and subscribing

(1) *Quarter sessions*:—In *Rex v. Hube*, (5 T. R. 542,) it was held, that an indictment found at the quarter sessions upon the Toleration Act, 1 G. & M. c. 18, for disturbing a dissenting congregation, might be removed into the court of King's Bench by *certiorari* before verdict; and that upon conviction of several defendants upon such indictment, each was liable to the penalty of 20*l.* imposed by Stat. 1 G. & M. c. 18.

(2) *Registered*:—In *Rex v. Derbyshire (Justices of)*, (Black. (Sir W.), 606,) it was considered, that the court of quarter sessions was merely ministerial as to registering meeting-houses under Stat. 1 G. & M. c. 18, s. 19.

An action was brought by divers inhabitants of Finly Chapel in Lancashire, against the registrar of the Bishop of Chester, (Gibson's Codex, 521,) for refusing to make an entry in the Registry for such chapel to be a conventicle, and for making a false return to

a *mandamus* issued for that end; but how the cause ended, does not appear from the report, where it is only referred to, in the way of pleading, as an instance of four or five persons joining in an action upon the case, for a false return to the *mandamus*, and as adjudged, that the action was well laid *per omnes conjunctim*.

(3) *Vide* Stat. 12 Ann. St. II. c. 14. Stat. 11 Geo. 2, c. 17. Stat. 10 Geo. 4, c. 7. 3 Burn's E. L. by Phillimore, 489.

(4) *Refuse or forbear*:—In *Fitzherbert v. Oxford (University of)*, (Com. 183,) the party was summoned to take the oaths, but refused to attend. Upon which occasion it was declared by the court, "that the justices ought to be present at the time appointed; and if they are not there, it would be a good excuse for the party, if he attended," but that there "is no necessity that the justices should be present, if the party does not come; but it

thereof, and shall thereupon have his name, surname, and usual place of abode certified and recorded at the general quarter sessions to be holden for the shire, riding, division, or liberty, for which such two justices shall be justices of the peace, by the clerk of the peace, or town clerk, as in the said act is appointed; every such person so recorded shall be, from and after the time of such record made, adjudged, taken, and esteemed disabled to make such presentation, collation, nomination, donation, or grant of any avoidance of any benefice, prebend, or ecclesiastical living, as fully and amply as if such person were a popish recusant convict by the laws or statutes of this realm; any law, statute, or usage to the contrary notwithstanding: and that the chancellor and scholars of the university of Oxford, and the chancellor and scholars of the university of Cambridge, by what name or names soever they, or either of them, are incorporated, shall respectively have the presentation, nomination, collation, and donation of and to every such benefice, prebend, or ecclesiastical living, school, hospital, and donative, set, lying, and being in the respective counties, cities, and other the places and limits in the said act of the third of King James mentioned, as in and by the said act is directed and appointed, so often as any of them shall become void, according to the limitations, directions, and provisions in that behalf limited, enacted, and provided.

STAT. 1 G. & M. c. 26.

Universities shall present, &c.

“III. And be it further enacted by the authority aforesaid, that where any person or persons are or shall be seised or possessed of any advowson, right of presentation, collation, or nomination to any such ecclesiastical living, free school, or hospital as aforesaid, in trust for any papist or popish recusant, who shall be convicted or disabled, according to the true intent and meaning of the said statute, made in the third year of the reign of the said King James the First, or by this present act, every such person and persons so seised and possessed in trust for any papist or popish recusant convict or disabled, shall be and are hereby adjudged to be disabled to present, nominate, or collate to any such ecclesiastical living, free school, or hospital, or to grant any avoidance thereof; and their and every of their presentations, nominations, collations, and grants, shall be null and void to all intents and purposes whatsoever; and the chancellors and scholars of the said respective universities as aforesaid, upon every avoidance, shall have the presentations, nominations, and collations, to such ecclesiastical livings, free schools, and hospitals, in such manner as they should have the same, in case such recusant convict or disabled were seised or possessed thereof.

Trustees disabled.

3 Jac. 1, c. 5. Enlarged as to papists not convict, by 12 Ann. St. II. c. 14, s. 1.

“IV. And in case any trustee or trustees, or mortgagee, or grantee of any avoidance, hereafter present, nominate, or collate, or cause to be presented, nominated, or collated, any person to any such ecclesiastical living, free school, or hospital, whereof the trust shall be for any recusant convict or disabled, without giving notice of the avoidance in writing to the vice-chancellor for the time being of the university, to whom the presentation, nomination, or collation shall belong, according to the true intent of this act, within three months after the avoidance shall happen, such trustee or trustees, mortgagees or grantees, shall forfeit and pay the sum of five hundred pounds, to the said respective chancellors and scholars of either of the said universities to whom such presentation, nomination, or collation shall belong, according to the true intent of this present act, to be recovered in any of their majesties' courts of record, by action of debt, bill, plaint, or information, wherein no essoin, protection, or wager of law shall be allowed.

Penalty upon trustees presenting without notice.

“V. Provided always, that the said chancellors and scholars of either of the said universities, shall not present or nominate to any benefice with cure, prebend, or other ecclesiastical living, any person as shall then have any other benefice with cure of souls; and if any such presentation shall be had or made of any such person so beneficed, the said presentation shall be utterly void; anything in this act to the contrary notwithstanding.

Presentation of person beneficed, void.

“VI. Provided, that if any person so presented or nominated to any benefice

What absence makes living void.

is sufficient, if they leave one at the place, act, namely, to attend at the time and place to give them notice if the party comes; and appointed.”

the party himself is obliged to do the first

STAT. 1 G. &
M. c. 26.

Taking the
oaths purges
the disability.

Cap. 8.

with cure, shall be absent from the same above the space of sixty days in any one year, that in such case the said benefice shall become void.

"VII. Provided nevertheless, that if any such person shall present himself before the justices of the peace at the general quarter sessions to be holden for the county, riding, division, or liberty where his name was recorded, and shall there in open court make, repeat, and subscribe the said declaration, and take the several oaths contained in one act of this present parliament, intituled, 'An Act for the abrogating of the Oaths of Supremacy and Allegiance, and appointing other Oaths,' he shall from thenceforth be discharged of and from the said disability, and be enabled to make such presentation, collation, nomination, and donation, and grant of any avoidance to any benefice, prebend, or ecclesiastical living, school, or hospital, as if this act had not been made."

STAT. 1 G. &
M. c. 29.

X. STAT. 1 GULIELMI & MARIE, c. 29(1). A.D. 1688.

"An Act for Relief of the Protestant Irish Clergy."

STAT. 1 G. &
M. SESS. 2, c. 2.

XI. STAT. 1 GULIELMI & MARIE, SESS. 2, c. 2[36](2). A.D. 1689.

"An Act declaring the Rights and Liberties of the Subject, and settling the Succession of the Crown."

"Whereas the lords spiritual and temporal, and commons, assembled at Westminster, lawfully, fully, and freely representing all the estates of the people of this realm, did upon the thirteenth day of February, in the year of our Lord one thousand six hundred eighty-eight, present unto their majesties, then called and known by the names and style of William and Mary, prince and princess of Orange, being present in their proper persons, a certain declaration in writing, made by the said lords and commons, in the words following; viz.

The heads of
abdication.

"Whereas the late King James the Second, by the assistance of divers evil counsellors, judges, and ministers employed by him, did endeavour to subvert and extirpate the protestant religion, and the laws and liberties of this kingdom:

Dispensing
power.

"1. By assuming and exercising a power of dispensing with and suspending of laws, and the execution of laws, without consent of parliament.

Committing
prelates.

"2. By committing and prosecuting divers worthy prelates, for humbly petitioning to be excused from concurring to the said assumed power.

Ecclesiastical
commission.

"3. By issuing and causing to be executed a commission under the great seal for erecting a court called 'The Court of Commissioners for Ecclesiastical Causes.'

Levying
money.

"4. By levying money for and to the use of the crown, by pretence of prerogative, for other time, and in other manner, than the same was granted to parliament.

Standing
army.

"5. By raising and keeping a standing army within this kingdom in time of peace, without consent of parliament, and quartering soldiers contrary to law.

Disarming
protestants.

"6. By causing several good subjects, being protestants, to be disarmed, at the same time when papists were both armed and employed, contrary to law.

Violating
elections.

"7. By violating the freedom of election of members to serve in parliament.

Wrong
prosecutions.
Juries.

"8. By prosecutions in the court of King's Bench, for matters and causes cognizable only in parliament; and by divers other arbitrary and illegal courses.

"9. And whereas of late years, partial, corrupt, and unqualified persons, have been returned and served on juries in trials, and particularly divers jurors in trials for high treason, which were not freeholders.

Excessive bail.

"10. And excessive bail hath been required of persons committed in criminal cases, to elude the benefit of the laws made for the liberty of the subjects.

Fines and
punishments.

"11. And excessive fines have been imposed; and illegal and cruel punishments inflicted.

Grants of
fines, &c.

"12. And several grants and promises made of fines and forfeitures, before any

(1) Expired.

Geo. 3, c. 53. Stat. 1 Gul. 4, c. 26. Stat.

(2) *Vide* Stat. 13 Gul. 3, c. 6. Stat. 5 3 & 4 Gul. 4, c. 49. Stat. 5 & 6 Gul. 4, c.

Ann. c. 8. Stat. 8 Geo. 1, c. 6. Stat. 6 62. Stat. 3 & 4 Vict. c. 52, s. 3.

conviction or judgment against the persons upon whom the same were to be levied.

“All which are utterly and directly contrary to the known laws and statutes, and freedom of this realm.

“And whereas the said late King James the Second having abdicated the government, and the throne being thereby vacant, his highness the Prince of Orange (whom it hath pleased Almighty God to make the glorious instrument of delivering this kingdom from popery and arbitrary power) did (by the advice of the lords spiritual and temporal, and divers principal persons of the commons) cause letters to be written to the lords spiritual and temporal, being protestants; and other letters to the several counties, cities, universities, boroughs, and cinque ports, for the choosing of such persons to represent them, as were of right to be sent to parliament, to meet and sit at Westminster upon the two and twentieth day of January in this year one thousand six hundred eighty and eight, in order to such an establishment, as that their religion, laws, and liberties might not again be in danger of being subverted: upon which letters, elections having been accordingly made,

“And thereupon the said lords spiritual and temporal, and commons, pursuant to their respective letters and elections, being now assembled in a full and free representative of this nation, taking into their most serious consideration the best means for attaining the ends aforesaid; do in the first place (as their ancestors in like case have usually done) for the vindicating and asserting their ancient rights and liberties, declare:

“1. That the pretended power of suspending of laws, or the execution of laws, by regal authority, without consent of parliament, is illegal.

“2. That the pretended power of dispensing with laws, or the execution of laws, by regal authority, as it hath been assumed and exercised of late, is illegal.

“3. That the commission for erecting the late court of commissioners for ecclesiastical causes, and all other commissions and courts of like nature, are illegal and pernicious.

“4. That levying money for or to the use of the crown, by pretence of prerogative, without grant of parliament, for longer time, or in other manner than the same is or shall be granted, is illegal.

“5. That it is the right of the subjects to petition the king, and all commitments and prosecutions for such petitioning are illegal.

“6. That the raising or keeping a standing army within the kingdom in time of peace, unless it be with consent of parliament, is against law.

“7. That the subjects which are protestants, may have arms for their defence, suitable to their conditions, and as allowed by law.

“8. That election of members of parliament ought to be free.

“9. That the freedom of speech, and debates or proceedings in parliament, ought not to be impeached or questioned in any court or place out of parliament.

“10. That excessive bail ought not to be required, nor excessive fines imposed; nor cruel and unusual punishments inflicted.

“11. That jurors ought to be duly impanelled and returned, and jurors which pass upon men in trials for high treason ought to be freeholders.

“12. That all grants and promises of fines and forfeitures of particular persons before conviction, are illegal and void.

“13. And that for redress of all grievances, and for the amending, strengthening, and preserving of the laws, parliaments ought to be held frequently.

“And they do claim, demand, and insist upon all and singular the premises, as their undoubted rights and liberties; and that no declarations, judgments, doings, or proceedings, to the prejudice of the people in any of the said premises, ought in any wise to be drawn hereafter into consequence or example.

“To which demand of their rights they are particularly encouraged by the declaration of his highness the Prince of Orange, as being the only means for obtaining a full redress and remedy therein.

“Having therefore an entire confidence, that his said highness the Prince of

STAT. 1 G. & M. SESS. 2, c. 2.

9 Hen. 3, St. 1.

c. 14.

3 Edw. 1, c. 6.

34 Edw. 3, c. 1.

The subjects' rights.

No dispensing power.

Late dispensing illegal.

Ecclesiastical courts illegal.

Levying money.

Right to petition.

Standing army

Subjects' arms

Freedom of election.

Freedom of speech.

Excessive bail.

Juries.

Grants of forfeitures.

Frequent parliaments.

STAT. 1 G. &
M. SESS. 2, c. 2.

Orange will perfect the deliverance so far advanced by him, and will still preserve them from the violation of their rights, which they have here asserted, and from all other attempts upon their religion, rights, and liberties :

Tender of the
crown.

“II. The said lords spiritual and temporal, and commons, assembled at Westminster, do resolve, that William and Mary, prince and princess of Orange, be, and be declared, king and queen of England, France, and Ireland, and the dominions thereunto belonging, to hold the crown and royal dignity of the said kingdoms and dominions to them the said prince and princess during their lives, and the life of the survivor of them ; and that the sole and full exercise of the regal power be only in, and executed by the said Prince of Orange, in the names of the said prince and princess, during their joint lives ; and after their deceases, the said crown and royal dignity of the said kingdoms and dominions to be to the heirs of the body of the said princess, and for default of such issue to the Princess Anne of Denmark, and the heirs of her body ; and for default of such issue, to the heirs of the body of the said Prince of Orange. And the lords spiritual and temporal, and commons, do pray the said prince and princess to accept the same accordingly.

New oaths of
allegiance, &c.

“III. And that the oaths hereafter mentioned be taken by all persons of whom the oaths of allegiance and supremacy might be required by law, instead of them ; and that the said oaths of allegiance and supremacy be abrogated.

Allegiance.

“I, *A. B.*, do sincerely promise and swear, that I will be faithful, and bear true allegiance, to their majesties King William and Queen Mary. So help me God.”

Supremacy.

“I, *A. B.*, do swear, that I do from my heart abhor, detest, and abjure, as impious and heretical, that damnable doctrine and position, that princes excommunicated, or deprived by the Pope, or any authority of the see of Rome, may be deposed or murdered by their subjects, or any other whatsoever. And I do declare, that no foreign prince, person, prelate, state or potentate hath, or ought to have, any jurisdiction, power, superiority, pre-eminence, or authority, ecclesiastical or spiritual, within this realm. So help me God.”

Acceptance of
the crown.

“IV. Upon which their said majesties did accept the crown and royal dignity of the kingdoms of England, France, and Ireland, and the dominions thereunto belonging, according to the resolution and desire of the said lords and commons contained in the said declaration.

The two houses
to sit.

“V. And thereupon their majesties were pleased, that the said lords spiritual and temporal, and commons, being the two houses of parliament, should continue to sit, and with their majesties’ royal concurrence make effectual provision for the settlement of the religion, laws, and liberties of this kingdom, so that the same for the future might not be in danger again of being subverted ; to which the said lords spiritual and temporal, and commons, did agree and proceed to act accordingly.

Subjects’
liberties to be
allowed.

“VI. Now, in pursuance of the premises, the said lords spiritual and temporal, and commons, in parliament assembled, for the ratifying, confirming, and establishing the said declaration, and the articles, clauses, matters, and things therein contained, by the force of a law made in due form by authority of parliament, do pray that it may be declared and enacted, that all and singular the rights and liberties asserted and claimed in the said declaration, are the true, ancient, and indubitable rights and liberties of the people of this kingdom, and so shall be esteemed, allowed, adjudged, deemed, and taken to be, and that all and every the particulars aforesaid shall be firmly and strictly holden and observed, as they are expressed in the said declaration ; and all officers and ministers whatsoever shall serve their majesties and their successors according to the same in all times to come.

William and
Mary declared
king and queen.

“VII. And the said lords spiritual and temporal, and commons, seriously considering how it hath pleased Almighty God, in his marvellous Providence, and merciful goodness to this nation, to provide and preserve their said majesties’ royal persons most happily to reign over us upon the throne of their ancestors, for which they render unto Him from the bottom of their hearts their humblest thanks and praises, do truly, firmly, assuredly, and in the sincerity of their hearts think, and do hereby recognise, acknowledge, and declare, that King James the Second having

abdicated the government, and their majesties having accepted the crown and royal dignity as aforesaid, their said majesties did become, were, are, and of right ought to be, by the laws of this realm, our sovereign liege lord and lady, king and queen of England, France, and Ireland, and the dominions thereunto belonging, in and to whose princely persons the royal state, crown, and dignity of the said realms, with all honours, styles, titles, regalities, prerogatives, powers, jurisdictions, and authorities to the same belonging and appertaining, are most fully, rightfully, and entirely invested and incorporated, united, and annexed.

STAT. 1 G. & M. SESS. 2, c. 2.

“VIII. And for preventing all questions and divisions in this realm, by reason of any pretended titles to the crown, and for preserving a certainty in the succession thereof, in and upon which the unity, peace, tranquillity, and safety of this nation doth, under God, wholly consist and depend, the said lords spiritual and temporal, and commons, do beseech their majesties that it may be enacted, established, and declared, that the crown and regal government of the said kingdoms and dominions, with all and singular the premises thereunto belonging and appertaining, shall be and continue to their said majesties, and the survivor of them, during their lives, and the life of the survivor of them: and that the entire, perfect, and full exercise of the regal power and government be only in, and executed by his majesty, in the names of both their majesties during their joint lives; and after their deceases the said crown and premises shall be and remain to the heirs of the body of her majesty; and for default of such issue, to her royal highness the Princess Anne of Denmark, and the heirs of her body; and for default of such issue, to the heirs of the body of his said majesty: and thereunto the said lords spiritual and temporal, and commons, do, in the name of all the people aforesaid, most humbly and faithfully submit themselves, their heirs and posterities for ever; and do faithfully promise, that they will stand to, maintain, and defend their said majesties, and also the limitation and succession of the crown herein specified and contained, to the utmost of their powers, with their lives and estates, against all persons whatsoever that shall attempt anything to the contrary.

Limitation of the crown.

“IX. And whereas it hath been found by experience, that it is inconsistent with the safety and welfare of this protestant kingdom, to be governed by a popish prince, or by any king or queen marrying a papist; the said lords spiritual and temporal, and commons, do further pray that it may be enacted, that all and every person and persons that is, are, or shall be reconciled to, or shall hold communion with, the see or church of Rome, or shall profess the popish religion, or shall marry a papist, shall be excluded, and be for ever incapable to inherit, possess, or enjoy the crown and government of this realm, and Ireland, and the dominions thereunto belonging, or any part of the same, or to have, use, or exercise any regal power, authority, or jurisdiction within the same; and in all and every such case or cases the people of these realms shall be, and are hereby absolved of their allegiance; and the said crown and government shall from time to time descend to, and be enjoyed by such person or persons, being protestants, as should have inherited and enjoyed the same, in case the said person or persons so reconciled, holding communion, or professing, or marrying as aforesaid, were naturally dead.

Papists debarred the crown.

“X. And that every king and queen of this realm, who at any time hereafter shall come to and succeed in the imperial crown of this kingdom, shall on the first day of the meeting of the first parliament, next after his or her coming to the crown, sitting in his or her throne in the house of peers, in the presence of the lords and commons therein assembled, or at his or her coronation, before such person or persons who shall administer the coronation oath to him or her, at the time of his or her taking the said oath, (which shall first happen,) make, subscribe, and audibly repeat the declaration mentioned in the statute made in the thirtieth year of the reign of King Charles the Second, intituled, ‘An Act for the more effectual preserving the King’s Person and Government, by disabling Papists from sitting in either House of Parliament.’ But if it shall happen, that such king or queen, upon his or her succession to the crown of this realm, shall be under the age of twelve years, then every such king or queen shall make, subscribe, and audibly repeat the said declaration at his or her coronation, or the first day of the

All kings, &c. to take the declaration of 30 Car. 2, St. II. c. 1.

If under twelve years old, to be done after attainment thereof.

STAT. 1 G. &
M. SESS. 2, c. 2.
King's assent.

meeting of the first parliament as aforesaid, which shall first happen after such king or queen shall have attained the said age of twelve years.

“XI. All which their majesties are contented and pleased shall be declared, enacted, and established by authority of this present parliament, and shall stand, remain, and be the law of this realm for ever; and the same are by their said majesties, by and with the advice and consent of the lords spiritual and temporal, and commons, in parliament assembled, and by the authority of the same, declared, enacted, and established accordingly.

Non obstante's
made void.

“XII. And be it further declared and enacted by the authority aforesaid, that from and after this present session of parliament, no dispensation by *non obstante* of or to any statute, or any part thereof, shall be allowed, but that the same shall be held void and of no effect, except a dispensation be allowed of in such statute, and except in such cases as shall be specially provided for by one or more bill or bills to be passed during this present session of parliament.

Pardons ex-
cepted before
October.

Farther pro-
vision con-
cerning suc-
cession of the crown, 12 Gul. 3, c. 2; 13 Gul. 3, c. 6.

“XIII. Provided that no charter, or grant, or pardon, granted before the three and twentieth day of October in the year of our lord one thousand six hundred eighty-nine, shall be any ways impeached or invalidated by this act, but that the same shall be and remain of the same force and effect in law, and no other, than as if this act had never been made.”

STAT. 2 G. &
M. SESS. 1, c.
10.

XII. STAT. 2 GULIELMI & MARIE, SESS. 1, c. 10. A.D. 1690.

“An Act for the King's and Queen's most gracious General and Free Pardon.”

[Robberies of churches; offences committed by Jesuits and seminary priests; convicted recusants; taking away of temporalities in time of vacation; arrears of first-fruits and tenths; adultery and other enormous crimes in clergymen: excepted from pardon (1).]

STAT. 3 G. &
M. c. 2.

XIII. STAT. 3 GULIELMI & MARIE, c. 2. A.D. 1691.

“An Act for the abrogating the Oath of Supremacy in Ireland, and appointing other Oaths.”

“Whereas by a statute made in Ireland in the second year of the reign of our late sovereign lady Queen Elizabeth, intituled, ‘An Act restoring to the Crown the ancient Jurisdiction over the Estate Ecclesiastical and Spiritual, and abolishing all foreign Power repugnant to the same,’ the persons therein mentioned are thereby obliged to take the oath in the said act expressed:

The oath made
in Ireland,
2 Eliz. c. 1,
abrogated.

What persons
are bound to
take the new
oaths.

“II. Be it enacted, that from henceforth no person whatsoever residing in Ireland shall be obliged to take the said oath by force or virtue of the said recited statute, or any other statute whatsoever;

Penalty upon
clergymen not
taking the
oaths, &c.

Penalty upon
other persons
offending.

“III. And be it further enacted, that the oaths appointed, intended, or required by this act to be taken, be taken by the persons herein and hereafter mentioned, and by every such other person and persons, as were appointed and required by the said recited act, or any other statute whatsoever made in Ireland, to take the said abrogated oath, before such person or persons, and in such court as hereafter in this act is expressed; And if any archbishop or bishop, or any other person having any ecclesiastical dignity or promotion, or being a lecturer or curate, shall neglect or refuse to take the said oaths, and make and subscribe the said declaration, as aforesaid, then he or they shall be *ipso facto* deprived, and is and are hereby adjudged to be deprived of his and their offices, dignities, and promotions ecclesiastical, and incapable to be lecturer or curate in any place or cure whatsoever: and all and every other person having any office, or receiving any pay, salary, fee, or wages, by reason as aforesaid, or being master, governor, head, or fellow of the said university or college, or master of any hospital or school, as aforesaid, that shall neglect or refuse to take the said oaths, and make and subscribe the said declaration, within the time, and in the manner aforesaid respectively, shall be *ipso facto* thenceforth adjudged

incapable and disabled in law, to all intents and purposes whatsoever, to have, occupy, or enjoy such office, pay, salary, fee, wages, mastership, governor's place, headship, fellowship, employment or employments, or any part of them, or any matter or thing aforesaid, or any profit or advantage appertaining to them, or any of them; and every such office and place shall be void.

"V. . . . shall make, subscribe, and audibly repeat this declaration following:

"I, *A. B.*, do solemnly and sincerely in the presence of God profess, testify, and declare, that I do believe, that in the sacrament of the Lord's supper there is not any transubstantiation of the elements of bread and wine into the body and blood of Christ, at or after the consecration thereof by any person whatsoever: and that the invocation or adoration of the Virgin Mary, or any other saint, and the sacrifice of the mass, as they are now used in the church of Rome, are superstitious and idolatrous. And I do solemnly in the presence of God profess, testify, and declare, that I do make this declaration, and every part thereof, in the plain and ordinary sense of the words read unto me, as they are commonly understood by protestants, without any evasion, equivocation, or mental reservation whatsoever, and without any dispensation already granted me for this purpose by the Pope, or any other authority or person whatsoever, or without any hope of any such dispensation from any person or authority whatsoever, or without believing that I am or can be acquitted, before God or man, or absolved of this declaration, or any part thereof, although the Pope, or any other person or persons, or power whatsoever, should dispense with, or annul the same, or declare that it was null and void from the beginning."

"VIII. And be it enacted, that the oaths that are intended and required to be taken by this act, are the oaths in these express words hereafter following:

"I, *A. B.*, do sincerely promise and swear, that I will be faithful and bear true allegiance to their majesties King William and Queen Mary:

"So help me God, &c."

"I, *A. B.*, do swear, that I do from my heart abhor, detest, and abjure, as impious and heretical, that damnable doctrine and position, that princes excommunicated or deprived by the Pope, or any authority of the see of Rome, may be deposed or murdered by their subjects, or any other whatsoever. And I do declare, that no foreign prince, person, prelate, state, or potentate, hath, or ought to have, any jurisdiction, power, superiority, pre-eminence, or authority, ecclesiastical or spiritual, within this realm:

So help me God, &c."

XIV. STAT. 3 GULIELMI & MARIE, c. 3(1). A.D. 1691.

STAT. 3 G. & M. c. 3.

"An Act for the better ascertaining the Tithes of Hemp and Flax. . . ."

XV. STAT. 3 GULIELMI & MARIE, c. 14(2). A.D. 1691.

STAT. 3 G. & M. c. 14.

"An Act for the Relief of Creditors against Fraudulent Devises."

XVI. STAT. 4 GULIELMI & MARIE, c. 2(3). A.D. 1692.

STAT. 4 G. & M. c. 2.

"An Act that the Inhabitants of the Province of York may dispose of their Personal Estates by their Wills, notwithstanding the Custom of that Province."

"Whereas by custom within the province of York, or other usage, the widows and younger children of persons dying inhabitants of that province, are entitled to a part of the goods and chattels of their late husbands and fathers, (called her and their reasonable part,) notwithstanding any disposition of the same by their husbands' and fathers' last wills and testaments, and notwithstanding any jointures made for the livelihood of the said widows by their husbands in their life-time, which are competent, according to agreement, whereby many persons are disabled from making sufficient provision for their younger children: for remedy whereof,

(1) Expired. *Vide* Stat. 6 Ann. c. 28. Gul. 4, c. 47.

(2) Repealed by Stat. 11 Geo. 4 & 1 (3) *Vide* Stat. 2 & 3 Ann. c. 5.

STAT. 4 G. &
M. c. 2.

Persons within
the province of
York may dis-
pose by will of
all their per-
sonal estate.

"II. Be it enacted by the king's and queen's most excellent majesties, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that, from and after the six and twentieth day of March, one thousand six hundred ninety and three, it shall and may be lawful for any person or persons, inhabiting or residing, or who shall have any goods or chattels within the province of York, by their last wills and testaments, to give, bequeath, and dispose of all and singular their goods, chattels, debts, and other personal estate, to their executor or executors, or to such other person or persons as the said testator or testators shall think fit, in as large and ample manner, as by the laws and statutes of this realm any person or persons may give and dispose of the same within the province of Canterbury, or elsewhere: and that from and after the said six and twentieth day of March, one thousand six hundred ninety and three, the widows, children, and other the kindred of such testator or testators, shall be barred to claim or demand any part of the goods, chattels, or other personal estate of such testator or testators, in any other manner than as by the said last wills and testaments is limited and appointed; any law, statute, or usage to the contrary in anywise notwithstanding.

Freemen of
York and
Chester
excepted.
In part repealed
by 2 & 3 Ann.
c. 5.

"III. Provided always, that nothing in this act contained shall extend, or be construed to extend, to the citizens of the cities of York and Chester, who are or shall be freemen of the said respective cities, inhabiting therein, or within the suburbs thereof, at the time of their death, but that every such citizen's widow and children shall and may have and enjoy such reasonable part and proportion of the testator's personal estate, as she or they might or ought to have had by the custom of the province of York, before the making of this act."

STAT. 4 G. &
M. c. 12.

XVII. STAT. 4 GULIELMI & MARIE, c. 12. A.D. 1692.

"An Act to make Parishioners of the Church united Contributors to the Repairs and Ornaments of the Church to whom the Union is made."

17 Car. 2, c. 3.

"Whereas by an act of parliament made in the seventeenth year of the reign of King Charles the Second, of blessed memory, provision was made for the uniting churches in cities and towns corporate: and forasmuch as it is highly reasonable that parishioners of parishes whose churches are *demolished* (1), and either before or afterwards united to other churches, should be contributors towards the repairs and other parochial charges of such other church, to which by virtue of the said act they are united:

37 Hen. 8,
c. 21.

If two churches
be united, and
one of them
down, the
parishioners of
that church
shall pay to-
wards the re-
pairs, &c. of
the other.
21 Vin. 594.

"II. Therefore be it enacted by the king's and queen's most excellent majesties, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that where any churches heretofore have been, or hereafter shall be, united by virtue of the said act, and one of the said churches so united was, at the time of such union, or shall afterwards be demolished, that in all such cases, as often as the church which was or shall be made the church presentative, and to which the union was or shall be made, shall be out of repair, or there shall be need of decent ornaments for the performance of divine service therein, that the parishioners of the parish, whose church shall then be down or demolished, shall bear and pay, towards the charges of such repairs and decent ornaments, such share and proportion as the archbishop or bishop that shall make such union shall by the same union direct and appoint; and for want of such direction and appointment, then one-third part of such charges of the repairs and decent ornaments, which shall be made or provided; and the same shall be rated, taxed, and levied, and in default thereof such process and proceedings shall be had and made against him or them, as if it were for the reparation and finding decent ornaments for their own parish church, if no such union had been made; any law, custom, usage, or opinion, to the contrary heretofore notwithstanding."

(1) *Demolished*.—"But if both churches are standing, then the repairs and ornaments shall be provided for, as they were at com-
mon law; that is, by the parishioners of each parish respectively." Gibson's Codex. 919.

XVIII. STAT. 5 GULIELMI & MARIE, c. 1(1). A.D. 1693.

STAT. 5 G. & M. c. 1.

"An Act for granting to their Majesties an Aid of Four Shillings in the Pound for One Year, for carrying on a vigorous War against France."

[Rectories and vicarages not exceeding 30*l.* or 40*l.* per annum, not to be taxed; and a similar exemption occurs in Stat. 6 & 7 Gul. 3, c. 3; Stat. 7 Gul. 3, c. 5; and Stat. 8 Gul. 3, c. 6.]

XIX. STAT. 6 & 7 GULIELMI 3, c. 6(2). A.D. 1695.

STAT. 6 & 7 GUL. 3, c. 6.

"An Act for granting to His Majesty certain Rates and Duties upon Marriages, Births, and Burials, and upon Bachelors and Widowers, for the term of Five Years, for carrying on the War against France with vigour."

"III. And be it further enacted by the authority aforesaid, that no person shall be married at any place pretending to be exempt from the visitation of the bishop of the diocese, without a licence first had and obtained, except the banns shall be published and certified according to law; and that every parson, vicar, and curate, who shall marry any persons contrary to the true intent and meaning hereof, shall forfeit the sum of one hundred pounds, to be recovered by action of debt, bill, plaint, or information, in any of his majesty's courts of record; one moiety whereof to the king, his heirs and successors, and the other moiety to the informer who shall sue for the same; and shall, for the second offence, be suspended *ab officio et beneficio*, for the space of three years."

Penalty upon vicar, &c. marrying in privileged place without licence.

Extended by 7 & 8 Gul. 3, c. 35, s. 2, to places not exempt, &c. See 26 Geo. 2, c. 33, for making clandestine marriages void.

[Taxes upon burials:—archbishop, 50*l.*; archbishop's wife, 10*l.*; bishop, 20*l.*; bishop's wife, 5*l.*; dean, 10*l.*; dean's wife, 2*l.* 10*s.*; archdeacon, 2*l.* 10*s.*; archdeacon's wife, 1*l.*; prebendary, 2*l.* 10*s.*; prebendary's wife, 1*l.* Upon birth of dignitaries' children, 20*s.* Upon marriage of archbishop, 20*l.*; bishop, 20*l.*; dean, 10*l.*; archdeacon, 2*l.* 10*s.*; prebendary, 2*l.* 10*s.* Annual payments: archbishop, 12*l.* 10*s.*; bishop, 5*l.*; dean, 2*l.* 10*s.*; archdeacon, 12*s.* 6*d.*; prebendary, 12*s.* 6*d.*]

XX. STAT. 6 & 7 GULIELMI 3, c. 20(3). A.D. 1695.

STAT. 6 & 7 GUL. 3, c. 20.

"An Act for the King's most Gracious, General, and Free Pardon."

XXI. STAT. 7 GULIELMI 3, c. 2. [IRELAND.] A.D. 1695.

STAT. 7 GUL. 3, c. 2. [Ir.]

"An Act for taking away the Writ De Heretico Comburendo."

"Be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this parliament assembled, and by authority of the same, that the writ commonly called *breve de heretico comburendo*, with all process and proceedings thereupon, in order to the executing such writ, or following or depending thereupon, and all punishment by death, in pursuance of ecclesiastical censures, be from henceforth utterly taken away and abolished; any law, statute, canon, constitution, custom, or usage to the contrary heretofore or now in force in any wise notwithstanding.

Eng. 29 Car. 2, c. 9.

Writ *de heretico comburendo*, and all proceeding thereon, taken away.

"II. Provided always, that nothing in this act shall extend or be construed to take away or abridge the jurisdiction of protestant archbishops or bishops, or any other judges of any ecclesiastical courts, in cases of atheism, blasphemy, heresy, or schism, or other damnable doctrines and opinions; but that they may proceed to punish the same according to his majesty's ecclesiastical laws, by excommunication, deprivation, degradation, and other ecclesiastical censures, not extending to death, in such sort, and no other, as they might have done before the making of this act; anything in this law contained to the contrary in any wise notwithstanding."

Saving of ecclesiastical jurisdiction in atheism, &c.

but not to extend to death.

1) Expired.

(2) *Vide* Stat. 52 Geo. 3, c. 146. Stat. 4 Geo. 4, c. 76. Stat. 11 Geo. 4 & 1 Gul. 4, c. 66, ss. 20, 21, 22, 23. Stat. 6 & 7 Gul.

4, c. 86.

(3) Expired. *Vide ante* 646, Stat. 2 G. & M. Sess. 1, c. 10.

STAT. 7 GUL.
3, c. 4. [IR.]

XXII. STAT. 7 GULIELMI 3, c. 4 (1). [IRELAND.] A.D. 1695.

"An Act to restrain Foreign Education."

STAT. 7 GUL.
3, c. 6. [IR.]

XXIII. STAT. 7 GULIELMI 3, c. 6. [IRELAND.] A.D. 1695.

"An Act for the better settling of Intestates' Estates."

Eng. 22 & 23
Car. 2, c. 10.

Ordinaries
upon granting
administration
shall take
bonds with
sureties, having
respect to the
value of the
estate.

"Be it enacted by the king's most excellent majesty, with the advice and consent of the lords spiritual and temporal, and the commons in this present parliament assembled, and by the authority of the same, that all ordinaries, as well the judge or judges of the prerogative court of the Archbishop of Armagh, for the time being, as all other ordinaries and ecclesiastical judges, and every of them, having power to commit administration of the goods, chattels, and credits of persons dying intestate, shall and may upon their respective granting and committing of administrations of the goods, chattels, and credits of persons dying intestate, after the feast of the purification of the Blessed Virgin Mary, in this present year of our Lord one thousand six hundred ninety five, take and require of the respective person or persons, to whom any administration is to be committed, sufficient bonds, with two or more able sureties, respect being had to the value of the estate, in the name of the ordinary, with the condition in manner and form following, *mutatis mutandis*, viz.:

Condition of
the bonds.

To make perfect inventory.

Exhibit it at a
certain day,
truly administer,
make just
account of administration,
pay and deliver
residue.

"The condition of this obligation is such, that if the within bounden *A. B.*, administrator of all and singular the goods, chattels, and credits of *E. D.* deceased, do make, or cause to be made, a true and perfect inventory of all and singular the goods and chattels, and credit of the said *E. D.* deceased, which have, or shall come to the hands, possession, or knowledge, of him the said *A. B.*, or into the hands or possession of any other person or persons for him, and the same so made do exhibit, or cause to be exhibited, in the registry of _____, at, or before the _____ day of _____ next ensuing, and the same goods, chattels, and credits, and all other the goods, chattels, and credits of the said deceased at the time of his death, which at any time hereafter shall come to the hands or possession of the said *A. B.*, or into the hands or possession of any other person or persons for him, do well and truly administer according to law; and further do make, or cause to be made, a true and just account of his said administration, at or before the _____ day of _____, and all the rest and residue of the said goods, chattels, and credits, which shall be found remaining upon the said administrator's account, the same being first examined and allowed of by the judge or judges for the time being of the said court, shall deliver and pay unto such person or persons respectively, as the said judge and judges, by his or their decree or sentence, pursuant to the true intent and meaning of this act, shall limit and appoint; and if it shall hereafter appear, that any last will or testament was made by the said deceased, and the executor or executors therein named do exhibit the same into the said court, making request to have it allowed and approved accordingly, if the said *A. B.* within bounden, being thereunto required, do render and deliver the said letters of administration, approbation of such testament being first had and made in the said court, then this obligation to be void and of none effect, or else to remain in full force and virtue."

If any will
appears and
approved, to
deliver the
letters of administration
upon request.

Such bonds
good and
pleadable.
Ordinaries
may call
administrators
to account;
and after debts
and funeral
charges, distribute amongst
wife and chil-

"Which bonds are hereby declared and enacted to be good in law, to all intents and purposes, and pleadable in any courts of justice; and also, that the said ordinaries and judges respectively shall, and may, and are enabled to proceed against and call such administrators to account, for and touching the goods of any person dying intestate, and upon hearing and due consideration thereof, to order and make just and equal distribution of what remaineth clear after all debts, funeral charges, and just expenses of every sort first allowed and deducted, amongst the wife and children, or children's children, if any such be, otherwise to the next of kindred to the dead person in equal degree, or legally representing their stocks, *pro suo cuiq. jure*, according to the law in such cases, and the rules and limitations

hereafter set down, and the same distribution to decree and settle, and to compel such administrators to observe and pay the same by due course of his majesty's ecclesiastical laws: saving to every one, supposing him or themselves aggrieved, their right of appeal, as was always in such cases used.

accordingly by due course of ecclesiastical laws. Saving right of appeal.

"II. Provided always, and be it enacted by the authority aforesaid, that all ordinaries, and every other person, who by this act is enabled to make distribution of the surplusage of the estate of any person dying intestate, shall distribute the whole surplusage of such estate or estates in manner and form following; that is to say, one third part of the said surplusage to the wife of the intestate, and all the residue by equal portions to and amongst the children of such persons dying intestate, and such persons as legally represent such children, in case any of the said children be then dead, other than such child or children (not being heir at law) who shall have any estate by the settlement of the intestate, or shall be advanced by the intestate in his life-time by portion or portions, equal to the share which shall by such distribution be allotted to the other children to whom such distribution is to be made; and in case any child (other than the heir at law) who shall have any estate by settlement from the said intestate, or shall be advanced by the said intestate in his life-time by portion, not equal to the share which shall be due to the other children by such distribution as aforesaid, then so much of the surplusage of the estate of such intestate to be distributed to such child or children, as shall have any land by settlement from the intestate, or were advanced in the life-time of the intestate, as shall make the estate of all the said children to be equal, as near as can be estimated; but the heir at law, notwithstanding any land which he shall have by descent or otherwise from the intestate, is to have an equal part in the distribution with the rest of the children, without any consideration of the value of lands which he hath by descent, or otherwise from the intestate. And in case there be no children, nor any legal representatives of them, then one moiety of the said estate to be allotted to the wife of the said intestate; the residue of the said estate to be distributed equally to every of the next of kindred of the intestate, who were in equal degree, and those who legally represent them.

If no children or their representatives, half to wife; residue to next of kin

"III. Provided that there be no representations admitted amongst collaterals after brothers' and sisters' children: and in case there be no wife, then all the estate to be distributed equally to, and amongst the children: and in case there be no child, then to the next of kindred in equal degree of or unto the intestate, and their legal representatives as aforesaid, and in no other manner whatsoever.

the children; if no child, the next of kin in

"IV. Provided also, and be it likewise enacted by the authority aforesaid, to the end that a due regard be had to creditors, that no such distribution of the goods of any person dying intestate be made till after one year be fully expired after the intestate's death; and that such and every person, to whom any distribution or share shall be allotted, shall give bonds with sufficient sureties in the said courts, (which said bonds shall be likewise good in law, and pleadable in any courts of justice,) that if any debt or debts truly owing by the intestate shall be afterwards sued for and recovered, or otherwise duly made to appear, that then and in every such case he or she shall respectively refund and pay back to the administrator his or her rateable part of such debt or debts, and of the costs of suit and charges of the administrator by reason of such debt, out of the part and share so as aforesaid allotted to him or her, thereby to enable the said administrator to pay and satisfy the said debt or debts so discovered after the distribution made as aforesaid.

"V. Provided always, and be it further enacted by the authority aforesaid, that in all cases where the ordinary hath used heretofore to grant administration *cum testamento annexo*, he shall continue so to do, and the will of the deceased in such testament expressed shall be performed and observed in such manner as it should have been if this act had never been made.

"VI. Provided always, that neither this act, nor anything therein contained,

STAT. 7 GUL. 3, c. 6. [Ir.] dren, &c., and compel administrator to pay

How and to whom the surplus distributed.

One-third to wife of intestate, residue equally among the children and their representatives, except a child (not being heir at law) advanced by intestate by a portion equal to the distributive share.

If such advancement not equal, to be made so out of the surplus.

Heir at law, notwithstanding lands by descent or otherwise, to have distributive share.

in equal degree.

No representation after brothers' and sisters' children.

If no wife, the whole among equal degree.

No distribution till after one year.

Bonds to be given to refund proportionably if debts afterwards appear.

Not to extend to administration *cum testamento annexo*;

Nor to estates

STAT. 7 GUL.
3, c. 6. [Ir.]
of *femes covert*,
which shall go
to the husband
as before.

Eng. 29 Car.
2, c. 3, s. 25.
Administrators
not to be cited
to account
otherwise than
by inventory,
unless at in-
stance of a
minor, credi-
tor, or next of
kin.

Eng. 1 Jac. 2,
c. 17, s. 6.

Brothers and

sisters of a child dying intestate after death of the father without wife or children, share equally with the mother. Eng. 1 Jac. 2, c. 17, s. 7.

Administrator
de bonis non,
&c. may sue
sci. fa. upon
judgment by
executor or
administrator.
Eng. 17 Car.
2, c. 8.

Custom of Ire-
land, by which
only one-third,
or a moiety of
personal estate
subject to the
party's dispo-
sition by will,
or to go in
course of ad-
ministration if
no will, made
void.

Executors and
administrators
of executor in
his own wrong,

shall be construed to extend to the estates of *femes covert* that shall die intestate but that their husbands may demand and have administration of their rights, credits, and other personal estates, and recover and enjoy the same, as they might have done before the making of this act.

“VII. Provided also, and it is hereby further enacted, that no administrator shall from henceforth be cited into any of the courts in this act mentioned, to render an account of the personal estates of his intestate, otherwise than by an inventory or inventories thereof, unless it be at the instance or prosecution of some person or persons in behalf of a minor, or having a demand out of such estate as a creditor, or next of kin, and shall not be compellable to account before any the ordinaries or judges by this act empowered and appointed to take the same, otherwise than as is aforesaid.

“VIII. And be it further enacted by the authority aforesaid, that if after the death of a father, any of his children shall die intestate without wife or children, in the life-time of the mother, every brother and sister, and the representatives of them, shall have an equal share with her; any law, usage, or custom to the contrary notwithstanding.

“IX. And whereas it hath been heretofore used, that in case any executor or administrator to any person deceased, did obtain any judgment or judgments in law in any of his majesty's courts of record within this kingdom of Ireland, in his or their own name or names, for any debt due unto his or their testator or intestate, and did happen to die before any execution sued forth by him or them upon such judgment or judgments, the effect or benefit of such judgment or judgments was wholly lost; and such person or persons to whom letters of administration of the goods unadministered to such first testator or intestate were committed, could not by the rules of law have any benefit or advantage of such judgment or judgments by *scire facias*, or otherwise, but were forced, for the recovering of such debt or duty, to sue forth a new original, to their great expense and delay: for remedy whereof, be it enacted by the authority aforesaid, that from henceforth in all such cases it shall and may be lawful for any administrator or administrators of the goods unadministered of such first testator or intestate to sue forth any writ or writs of *scir. fac.* upon any such judgment or judgments so had and obtained in the name or names of such executor or administrator, and have the benefit and advantage of such judgment or judgments as fully to all intents and purposes as such executor or administrator himself might have had, if he or they had been living and sued forth such writ or writs upon any such judgment; any law, custom, or usage to the contrary hereof in any wise notwithstanding.

“X. And whereas it has been held, that there is a certain custom within this kingdom of Ireland to the effect following, that is to say, that if any person die possessed of or entitled to any goods, things in action, or personal estate whatsoever; and having at the time of his death, a wife, or child, or children, that in such case all the said estate is to be divided into three equal parts, whereof one third part belongs to the wife, another to the child or children, and the other third part only to be subject to the disposition of the party deceased by his last will or testament, in case he make any, or to go in a course of administration in case he die intestate; and if he leave a wife only, and no child or children, then the said estate to be divided into two parts, whereof the one moiety to go to the wife, and the other moiety only to be subject to his disposition by will as aforesaid, otherwise to go in a course of administration in case he die intestate; and so in like manner if he shall leave a child or children, and no wife: now it is hereby declared, that the said custom shall from henceforth be absolutely null and void to all intents and purposes whatsoever, and shall not be taken to be in force, or to be binding to any person or persons whatsoever.

“XI. And whereas the executors and administrators of such persons who have possessed themselves of considerable personal estates of other dead persons, and converted the same to their own use, have no remedy by the rules of the common

law, as it now stands, to pay the debts of those persons whose estate hath been so converted by their testator or intestate, which hath been found very mischievous, and many creditors defeated of their just debts, although their debtors left behind them sufficient to satisfy the same with a great overplus: for remedy whereof, be it further enacted by the authority aforesaid, that all and every the executors and administrators of any person or persons, who as executor or executors in his or their own wrong, or as administrator, shall, from and after the fifth day of November, in this present year of our Lord one thousand six hundred ninety and five, waste or convert any goods, chattels, estate, or assets of any person deceased, to their own use, shall be liable and chargeable to make good the same out of the assets of such testator or intestate."

XXIV. STAT. 7 GULIELMI 3, c. 9. [IRELAND.] A.D. 1695.

"An Act for the more effectual suppressing of Profane Cursing and Swearing."

"Whereas it is found by experience, that an act of parliament made in the tenth and eleventh years of the reign of King Charles the First, intituled, 'An Act to prevent and reform Profane Swearing and Cursing,' hath proved ineffectual to the suppressing of those detestable sins, by reason of some deficiency in the said act: be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by authority of the same, that if any person or persons shall, after the fifth day of November, in this present year of our Lord one thousand six hundred ninety and five, profanely swear and curse in the presence or hearing of any justice of peace of the county, division, or of the mayor, or other head officer or justice of peace, for any city or town corporate, where such offence is or shall be committed, or that shall be thereof convicted by the oath of one witness, or by the confession of the party offending, before any justice of the peace of the county, or mayor or bailiff, or other chief officer, or justice of the peace of such city or town corporate, where the said offence shall be committed; that then for every such offence, the party so offending shall forfeit and pay to the use of the poor of the parish, where such offence or offences shall be committed, the respective sums hereinafter mentioned: that is to say, every servant, day-labourer, common soldier, and common seaman, one shilling, and every other person two shillings: and in case any of the persons aforesaid shall after conviction offend a second time, such persons shall forfeit and pay double; and if a third time, treble the sum respectively by him or her to be paid for the first offence.

"II. And it is hereby further enacted, that upon neglect or refusal of payment of the said forfeiture, any justice of peace of the county, or mayor, or other head officer, or justice of peace of any city or town corporate where the said offence shall be committed, shall and are hereby authorized and required to direct and send his warrant to the constable, tything-man, churchwarden, or overseer of the poor of the parish where the offence shall be committed, or where the offender shall inhabit, thereby commanding them, or some one or more of them, to levy by distress and sale of the goods of the offender, the sum so forfeited for the use of the poor of the parish as aforesaid; and in case no such distress can be had, then every such offender, being above the age of sixteen years, shall by warrant under the hand and seal of the said justice of peace, or other officer as aforesaid, be publicly set in the stocks for the space of one hour for every single offence, and for any number of offences whereof he shall be convicted at one and the same time, then two hours; and if the party offending be under the age of sixteen years, and shall not forthwith pay the said forfeitures, then he or she shall, by warrant as aforesaid, be whipped by the constable, or by the parent, guardian, or master of such offender, in the presence of the constable.

"III. And be it further enacted, that if any justice of the peace or chief magistrate shall wilfully and willingly omit the performance of his duty in the execution of this act, he shall forfeit the sum of five pounds; the one moiety to the use of the informer, to be recovered by action, suit, bill, or plaint, in any of

STAT. 7 GUL. 3, c. 6. [IR.] or administrator wasting or converting, &c. chargeable out of the assets. Eng. 30 Car. 2, c. 7.

STAT. 7 GUL. 3, c. 9. [IR.]

Eng. 6 & 7 Gul. 3. 10 & 11 Car. 1, c. 1, defective.

Forfeitures of several degrees of persons for swearing.

In presence or hearing of a justice, &c.

Conviction by oath of one witness or confession. Forfeitures to poor of the parish. Servants, day labourers, soldiers, and seamen, 1s. other persons, 2s.

Second offence, double; third, treble.

Levied by distress and sale, upon warrant to constable, &c.

In default of distress, to be set in stocks, if above sixteen;

if under, whipped.

Five pounds penalty upon magistrates neglecting.

STAT. 7 GUL.
3, c. 9. [IR.]

In suits for executing this act, defendants may plead general issue, and may have treble costs.

Offenders to be prosecuted in ten days.

The act to be read in churches four Sundays, on pain of 20s.

Convictions to be registered, and certified to the sessions.

his majesty's courts, wherein no essoin, protection, or wager of law shall be allowed, nor any more than one imparlance granted.

"IV. And it is hereby further enacted, that if any action or suit shall be commenced or brought against any justice of peace, constable, or other officer or person whatsoever, for doing or causing to be done anything in pursuance of this act concerning the said offences, the defendant in such action may plead the general issue, and give the special matter in evidence; and if upon such action verdict be given for the defendant, or the plaintiff become nonsuit, or discontinue his action, then the defendant shall have treble costs.

"V. Provided always, and it is hereby enacted, that no person shall be prosecuted or troubled for any offence against this statute, unless the same be proved or prosecuted within ten days next after the offence committed.

"VI. And it is further enacted by the authority aforesaid, that this act shall be publicly read four times in the year in all parish churches and all public chapels, by the parson, vicar, or curate of the respective parishes or chapels, immediately after morning prayers on four several Sundays; that is to say, the Sunday next after the fifth day of November in this present year of our Lord one thousand six hundred ninety-five; the fifth day of February following; the fifth day of May which will be in the year of our Lord one thousand six hundred ninety-six; and the fifth day of August following, under the pain of twenty shillings for every such omission or neglect.

"VII. And be it further enacted by authority aforesaid, that the justices of peace, mayor, or other head officer, shall register in a book, to be kept for that purpose, all the convictions made before him upon this act, and the time of making thereof, and for what offence; and shall certify the same to the next general quarter sessions of the peace for the said county or place where the offences are committed, to be there kept upon record by the respective clerks of the peace, to be seen without fee or rewards."

STAT. 7 GUL.
3, c. 14. [IR.]

XXV. STAT. 7 GULIELMI 3, c. 14(1). [IRELAND.] A.D. 1695.

"An Act declaring which Days in the Year shall be observed as Holy Days."

STAT. 7 GUL.
3, c. 17. [IR.]

XXVI. STAT. 7 GULIELMI 3, c. 17(2). [IRELAND.] A.D. 1695.

"An Act for the better Observation of the Lord's Day, commonly called Sunday."

Eng. 29 Car.
2, c. 7.

All persons to observe the Lord's day, and exercise duties of religion, publicly and privately. No worldly labour or calling exercised, works of necessity or charity excepted.

Penalty 5s. on offenders of age of fourteen. Goods cried or exposed to sale, forfeited. No drover, carrier, &c. to travel or come to his inn on Sunday, on pain of 20s. Eng. 3 Car. 1, c. 1.

"For the better observation and keeping holy the Lord's day, commonly called Sunday, be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that all and every person and persons whatsoever shall on every Lord's day apply themselves to the observation of the same, by exercising themselves thereon in the duties of piety and true religion publicly and privately; and that no tradesman, artificer, workman, labourer, or other person whatsoever, shall do or exercise any worldly labour, business, or work of their ordinary callings upon the Lord's day, or any part thereof (works of necessity and charity only excepted): and that every person, being of the age of fourteen years, or upwards, offending in the premises, shall for every such offence forfeit the sum of five shillings; and that no person or persons whatsoever shall publicly cry, shew forth, or expose to sale any wares, merchandises, fruit, herbs, goods or chattels whatsoever upon the Lord's day, or any part thereof, upon pain that every person so offending shall forfeit the same goods so cried, or shewed forth, or exposed to sale.

"II. And it is further enacted, that no drover, horse-courser, waggoner, carrier, butcher, higgler, their or any of their servants, shall travel, or come into his or their inn, or lodging, upon the Lord's day, or any part thereof, upon pain that each and every such offender shall forfeit twenty shillings for such offence.

(1) Obsolete.

(2) *Vide* Stat. 6 Geo. 1, c. 5. (1.) Stat. 27 Geo. 3, c. 35, s. 4. (1.)

"III. And for prevention of disorders and breaches of the peace, which commonly happen in divers parts of the kingdom, by reason of tumultuous and disorderly meetings, which have been, and frequently are, used on the Lord's day, commonly called Sunday, under pretence of hurling, commoning, foot-ball playing, cudgels, wrestling, or other sports; be it further enacted by the authority aforesaid, that no person or persons whatsoever shall play, use, or exercise any hurling, commoning, foot-ball playing, cudgels, wrestling, or any other games, pastimes, or sports, on the Lord's day, or any part thereof: and if any person or persons shall offend therein, and be thereof convicted in such manner as herein-after directed, every such person and persons shall forfeit the sum of twelve pence sterling for every such offence, to be immediately paid to such justice of the peace, officer or officers, before whom such conviction shall be: and that if any person offending against this act, or anything therein contained, shall be thereof convicted before any justice of the peace of the county, or of the chief officer or officers, or any justice of the peace, of or within any city, borough, or town corporate, where the said offence shall be committed, upon his or their view, or confession of the party, or proof of any one or more witnesses by oath, which the said justices, chief officer or officers, is by this act authorized to administer; the said justice, or chief officer or officers shall give warrant under his or their hands and seals to the constables or churchwardens of the parish or parishes, where such offence shall be committed, to seize the said goods cried, shewed forth, or put to sale as aforesaid, and to sell the same; and to levy the said other forfeitures or penalties by way of distress and sale of the goods of every such offender distrained, rendering to the said offender the overplus of the monies raised thereby: and in default of such distress, or in case of insufficiency or inability of the said offender to pay the said forfeitures and penalties, that then the party offending be set publicly in the stocks by the space of two hours; and all and singular the forfeitures or penalties aforesaid shall be employed and converted to the use of the poor of the parish where the said offences shall be committed; saving only that it shall and may be lawful to and for any justice, mayor, or head officer or officers, out of the said forfeitures or penalties to reward any person or persons that shall inform of any offence against this act, according to their discretions; so as such reward exceed not the third part of the forfeitures or penalties: provided that nothing in this act contained shall extend to the prohibiting of dressing meat in families, or dressing or selling of meat in inns, cooks' shops, or victualling houses, for such as otherwise cannot be provided; nor the crying or selling of milk or fish before ten of the clock in the morning, or after four of the clock in the afternoon; nor to the using of hackney-coaches in or about the city of Dublin.

milk or fish sold before ten or after four; and hackney coaches used in or

"IV. Provided also, that no person or persons shall be impeached, prosecuted, or molested, for any offence before mentioned in this act, unless he or they be prosecuted for the same within ten days after the offence committed.

"V. Provided, and be it further enacted by the authority aforesaid, that if any person or persons whatsoever, which shall travel on the Lord's day, shall be then robbed, that no hundred, or the inhabitants thereof, shall be charged with or answerable for any robbery so committed; but the person or persons so robbed shall be barred from bringing any action for the said robbery; any law to the contrary notwithstanding.

"VI. Nevertheless the inhabitants of the counties, hundreds, or baronies, after notice of any such robbery to them or some of them given, or after hue and cry for the same to be brought, shall make, or cause to be made, fresh suit and pursuit after the offenders, with horsemen and footmen, according to the statute made in the tenth year of the reign of King Charles the First, upon pain of forfeiting to the king's majesty, his heirs and successors, as much money as might have been recovered against the said hundred or barony by the party robbed, as if this law had not been made.

"VII. Provided also, and be it enacted, that no person or persons upon the Lord's day, commonly called Sunday, shall serve, or execute, or cause to be served

STAT. 7 GUL.
3, c. 17. [1r.]

To prevent breach of the peace by disorderly meetings, hurling, foot-ball, cudgels, and other pastimes on Sunday, prohibited. Eng. 1 Car. 1. Penalty 12d. every offence. Justice of peace upon conviction to issue warrants to the constable, to levy by distress and sale, to use of the poor.

In default of distress, offender set in stocks two hours.

Reward to informers not above one-third out of the forfeiture.

Meat may be dressed in families, inns, &c. for such as otherwise cannot be provided; and about Dublin.

Prosecution to be in ten days.

The hundred not answerable for robberies upon travellers on Sundays;

but after notice of hue and cry shall make fresh suit according to 10 & 11 Car. 1, c. 13, on pain of forfeiture of so much as might have been recovered. Service of process on Sunday void, except in

STAT. 7 GUL.
3, c. 17. [IR.]
treason, felony,
or breach of
peace.

Damages for
the same as if
done without
any writ, &c.
Tavern keep-
ers, &c. not to
entertain or
furnish liquors
during divine
service, on
pain of 10s.
except their
own family;
they who enter
or remain there
forfeit 5s.

Constables and
churchwar-
dens are fre-
quently to
enter taverns,
and apprehend
offenders, and
carry before a
justice, before
whom convic-
tion or acquittal
final.

And the justice
to receive the
penalty for use
of the poor,
and in default
of payment
commit off-
fender to gaol.

Not to extend
to persons in
inns before,
and intending
to abide there
on Sunday.
Commence-
ment of the
act, 1 Novem-
ber, 1695.

or executed, any writ, process, warrant, order, judgment, or decree, (except in cases of treason, felony, or breach of the peace;) but that the service of every such writ, process, warrant, order, judgment, or decree, shall be void to all intents and purposes whatsoever; and the person and persons so serving or executing the same shall be as liable to the suit of the party grieved, and to answer damage to him for doing thereof, as if he or they had done the same without any writ, process, war- rant, order, judgment, or decree at all.

“VIII. And for the better preventing drinking and intemperance on the Lord’s day, commonly called Sunday, be it also enacted by the authority aforesaid, that no keeper of any tavern, ale-house, or public victualling-house, shall receive, entertain, or permit to remain in his house, any person or persons during the time of divine service, except those who are of their own family, or lodgers in the said house; or furnish them with wine, ale, beer, or other liquor of any sort, upon the penalty of forfeiting of ten shillings for every such offence, to be paid by every such keeper of taverns, ale-houses, or public victualling-houses; and also of the sum of five shillings, to be forfeited by every such person or persons, who shall enter or remain in such taverns, ale-houses, or victualling-houses, contrary to this act.

“IX. And for the better execution thereof, all constables and churchwardens of parishes, within the several cities and towns corporate within this realm, are commanded and required frequently, and as often as they have reasonable cause so to do, to enter into all taverns, ale-houses, and victualling-houses, within their parishes or districts, where they shall reasonably suspect any person to be and remain, contrary to the intent of this present act; and to apprehend such persons as they shall find, or reasonably suspect to be offenders against the same; and also the master or keeper of such house, where such offenders shall be apprehended, and them in custody to carry before the next, or some other justice of peace near the place where such person shall be apprehended; which justice or justices of the peace are hereby empowered to examine witnesses upon oath, touching the breach of this law; and after examination to proceed to a conviction or acquittal of the persons accused, which shall be final to all parties; and if such justice or justices of the peace shall, upon proof, convict the persons accused to have offended against this law, the said justice of peace shall forthwith demand from such offenders the penalties on them intended to be imposed by this act, and to receive the same; and in default of payment to commit the offender to the gaol of the said county, till he shall have made payment of the same; which sum so paid and received shall be applied to the use of the poor of the respective parishes, where such offences have been or shall be committed.

“X. Provided nothing herein contained shall extend to persons who have been in any inns before the Lord’s day, commonly called Sunday, and design to abide there on Sunday; but it shall and may be lawful for such persons to continue and remain in such inns and public houses, as if this act had never been made.

“XI. Provided always, that this act shall commence and take effect on the first day of November, in the year of our Lord one thousand six hundred ninety-five, and not before.”

STAT. 7 & 8
GUL. 3, c. 6.

XXVII. STAT. 7 & 8 GULIELMI 3, c. 6(1). A.D. 1696.

“An Act for the more easy Recovery of Small Tithes.”

Continued
further for
seven years by
10 & 11 Gul.
3, c. 15, and
perpetuated by
3 & 4 Ann.
c. 18, s. 1.

“For the more easy and effectual recovery of small tithes, and the value of them, where the same shall be unduly subtracted and detained, where the same do not amount to above the yearly value of forty shillings from any one person: be it enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that all and every person and persons shall henceforth well and truly set out and pay all and singular the tithes, commonly called small tithes, and compositions and agreements for the same, with

(1) *Vide* Stat. 10 & 11 Gul. 3, c. 15. 15. Stat. 5 & 6 Gul. 4, c. 74. Stat. 6 & Stat. 53 Geo. 3, c. 127. Stat. 7 Geo. 4, c. 7 Gul. 4, c. 71.

all offerings, oblations, and obventions, to the several rectors, vicars, and other persons, to whom they are or shall be due, in their several parishes within this kingdom of England, dominion of Wales, and town of Berwick-upon-Tweed, according to the rights, customs, and prescriptions commonly used within the said parishes respectively; and if any person or persons shall hereafter subtract or withdraw, or any ways fail in the true payment of such small tithes, offerings, oblations, obventions, or compositions as aforesaid, by the space of twenty days at most after demand thereof, then it shall and may be lawful for the person or persons, to whom the same shall be due, to make his or their complaint in writing unto two or more of his majesty's justices of the peace within that county, riding, city, town corporate, place, or division where the same shall grow due; neither of which justices of peace is to be patron of the church or chapel whence the said tithes do or shall arise, nor any ways interested in such tithes, offerings, oblations, obventions, or compositions aforesaid.

"II. And be it further enacted by the authority aforesaid, that if hereafter any suit or complaint shall be brought to two or more justices of the peace as aforesaid, concerning small tithes, offerings, oblations, obventions, or compositions as aforesaid, the said justices are hereby authorized and required to summon, in writing under their hands and seals, by reasonable warning, every such person or persons against whom any complaint shall be made as aforesaid; and after his or their appearance, or upon default of their appearance, the said warning or summons being proved before them upon oath, the said justices of peace, or any two or more of them, shall proceed to hear and determine the said complaint, and upon the proofs, evidences, and testimonies, produced before them, shall, in writing under their hands and seals, adjudge the case, and give such reasonable allowance and compensation for such tithes, oblations, and compositions so subtracted or withheld, as they shall judge to be just and reasonable, and also such costs and charges, not exceeding ten shillings, as upon the merits of the cause shall appear just.

"III. And be it further enacted, that if any person or persons shall refuse or neglect, by the space of ten days after notice given, to pay or satisfy any such sum of money, as upon such complaint and proceeding shall by two or more justices of the peace be adjudged as aforesaid, in every such case the constables and churchwardens of the said parish, or one of them, shall, by warrant under the hands and seals of the said justices to them directed, distrain the goods and chattels of the party so refusing or neglecting as aforesaid, and after detaining them by the space of three days, in case the said sum so adjudged to be paid, together with reasonable charges for making and detaining the said distress, be not tendered or paid by the said party in the mean time, shall and may make public sale of the same, and pay to the party complaining so much of the money arising by such sale as may satisfy the said sum so adjudged, retaining to themselves such reasonable charges for making and keeping the said distress, as the said justice shall think fit, and shall render the overplus (if any be) to the owner.

"IV. Provided always, and be it enacted, that it shall and may be lawful for all justices of peace, in the examination of all matters offered to them by this act, to administer an oath or oaths to any witness or witnesses, where the same shall be necessary for their information, and for the better discovery of the truth.

"V. Provided also, and be it enacted, that this act or anything herein contained, shall not extend to any tithes, oblations, payments, or obventions, within the city of London, or liberties thereof, nor to any other city or town corporate where the same are settled by any act of parliament in that case particularly made and provided.

"VI. Provided also, and be it enacted, that no complaint for or concerning any small tithes, offerings, oblations, obventions, or compositions, hereafter due, shall be heard and determined by any justices of the peace, by virtue of this act, unless the complaint shall be made within the space of two years next after the times that the same tithes, oblations, obventions, and compositions, did become due or payable; anything in this act contained to the contrary notwithstanding.

STAT. 7 & 8
GUL. 3, c. 6.
8 Vin. 564.
2 Burn. 498.

If small tithes not paid in twenty days after demand, lawful to complain to two justices not interested,

18 Edw. 3,
St. III. c. 7.
45 Edw. 3,
c. 3.
5 Hen. 4, c. 11.

who may summon the persons complained of, and on default of appearance determine the complaint, &c.

On refusal to pay in ten days after notice, the constables, &c. may distrain.

Justices to administer an oath.

Not to extend to London, &c.

No complaint to be heard, unless made within two years.

STAT. 7 & 8
GUL. 3, c. 6.

Persons ag-
grieved may
appeal to the
sessions.
If judgment
be confirmed,
justices to give
costs, &c.

Persons com-
plained of, in-
sisting on any
composition,
&c., and
giving security
to pay costs,
justices not to
give judgment.

Judgment to
be inrolled at
the next ses-
sions by the
clerk of the
peace, &c.

Persons re-
moving, jus-
tices may
certify the
judgment, &c.

“VII. Provided also, and be it enacted, that any person finding him, her, or themselves aggrieved, by any judgment to be given by any two justices of the peace, shall and may appeal to the next general quarter sessions to be held for that county, riding, city, town corporate, or division, and the justices of the peace there present, or the major part of them, shall proceed finally to hear and determine the matter, and to reverse the said judgment, if they shall see cause; and if the justices then present, or the major part of them, shall find cause to confirm the judgment given by the first two justices of the peace, they shall then decree the same by order of sessions, and shall also proceed to give such costs against the appellant, to be levied by distress and sale of the goods and chattels of the said appellant, as to them shall seem just and reasonable; and no proceedings, or judgment had, or to be had by virtue of this act, shall be removed or superseded by virtue of any writ of *certiorari*, or other writ out of his majesty's courts at Westminster, or any other court whatsoever, unless the title of such tithes, oblations, or obventions, shall be in question; any law, statute, custom or usage, to the contrary notwithstanding.

“VIII. Provided always, and be it enacted, that where any person or persons complained of for substracting or withholding any small tithes, or other duties aforesaid, shall, before the justices of the peace to whom such complaint is made, insist upon any prescription, composition, or *modus decimandi*, agreement, or title, whereby he or she is or ought to be freed from payment of the said tithes, or other dues in question, and deliver the same in writing to the said justices of the peace, subscribed by him or her, and shall then give to the party complaining, reasonable and sufficient security, to the satisfaction of the said justices, to pay all such costs and damages, as upon a trial at law to be had for that purpose, in any of his majesty's courts having cognizance of that matter, shall be given against him, her, or them, in case the said prescription, composition, or *modus decimandi*, shall not upon the said trial be allowed; that in that case the said justices of the peace shall forbear to give any judgment in the matter; and that then and in such case the person or persons so complaining shall and may be at liberty to prosecute such person or persons for their said substruction in any other court or courts whatsoever, where he, she, or they might have sued before the making of this act; anything in this act to the contrary notwithstanding.

“IX. And be it further enacted by the authority aforesaid, that every person and persons, who shall by virtue of this act obtain any judgment, or against whom any judgment shall be obtained, before any justices of the peace out of sessions, for small tithes, oblations, obventions, or compositions, shall cause or procure the said judgment to be inrolled at the next general quarter sessions to be holden for the said county, city, riding, or division; and the clerk of the peace for the said county, city, riding, or division, is hereby required, upon tender thereof, to inrol the same; and that he shall not ask or receive for the inrolment of any one judgment any fee or reward exceeding one shilling; and that the judgment so inrolled, and satisfaction made by paying the same sum so adjudged, shall be a good bar to conclude the said rectors, vicars, and other persons, from any other remedy for the said small tithes, oblations, obventions, or compositions, for which the said judgment was obtained.

“X. And be it further enacted by the authority aforesaid, that if any person or persons, against whom any such judgment or judgments shall be had as aforesaid, shall remove out of the county, riding, city, or corporation, after judgment had as aforesaid, and before the levying the sum or sums thereby adjudged to be levied, the justices of the peace who made the said judgment, or one of them, shall certify the same, under his or their hands and seals, to any justice of peace of such other county, city, or place, wherein the said person or persons shall be inhabitants; which said justice is hereby authorized and required, by warrant under his hand and seal, to be directed to the constables or churchwardens of the place, or one of them, to levy the sum or sums so adjudged to be levied, as aforesaid, upon the goods and chattels of such person or persons, as fully as the said other justices might have done, if he, she, or they, had not removed as aforesaid; which shall be paid according to the said judgment.

- “XI. Provided always, and be it enacted, that no vicar or other person shall have remedy to recover small tithes, or other dues aforesaid, which became or were due before the making of this act, unless complaint be made to the justices of the peace in form aforesaid, before the first day of October, which shall be in the year of our Lord one thousand six hundred ninety-six. STAT. 7 & 8
GUL. 3, c. 6.
- “XII. And it is hereby declared and enacted, that the said justices of the peace, who shall hear and determine any of the matters aforesaid, shall have power to give costs, not exceeding ten shillings, to the party prosecuted, if they shall find the complaint to be false and vexatious; which costs shall be levied in manner and form aforesaid. Justices may
give costs not
exceeding 10s.
- “XIII. Provided also, and be it further enacted, that if any person or persons shall be sued for anything done in execution of this act, and the plaintiff in such suit shall discontinue his action, or be nonsuit, or a verdict pass against him, that then, in any of the said cases, such person or persons shall recover double costs. Double costs.
- “XIV. Provided always, that any clerk, or other person or persons, who shall begin any suit for recovery of small tithes, oblations, or obventions, not exceeding the value of forty shillings, in his majesty's court of exchequer, or in any of the ecclesiastical courts, shall have no benefit by this act, or any clause in it, for the same matter for which he or they have so sued. Suits for tithes
not exceeding
40s. to have no
benefit by this
act.
- “XV. Provided always, and be it further enacted, that this act shall continue for the space of three years, and from thence to the end of the next session of parliament, and no longer.” Act to continue
three years.
Farther
provisions
Geo. 1, c. 26.
- respecting tithes, 11 & 12 Gul. 3, c. 16, which is made perpetual by 1
- XXVIII. STAT. 7 & 8 GULIELMI 3, c. 24(1). A.D. 1696. STAT. 7 & 8
GUL. 3, c. 24.
- “An Act requiring the Practisers of Law to take the Oaths, and subscribe the Declaration therein mentioned.”*
- XXIX. STAT. 7 & 8 GULIELMI 3, c. 27(2). A.D. 1696. STAT. 7 & 8
GUL. 3, c. 27.
- “An Act for the better Security of His Majesty's Royal Person and Government.”*
- XXX. STAT. 7 & 8 GULIELMI 3, c. 34(3). A.D. 1696. STAT. 7 & 8
GUL. 3, c. 34.
- “An Act that the solemn Affirmation and Declaration of the People called Quakers, shall be accepted instead of an Oath in the usual form.”*
- XXXI. STAT. 7 & 8 GULIELMI 3, c. 35(4). A.D. 1696. STAT. 7 & 8
GUL. 3, c. 35.
- “An Act for the enforcing the Laws which restrain Marriages without Licence or Banns, and for the better registering Marriages, Births, and Burials.”*
- “Whereas by an act of parliament made in the fifth and sixth years of the reign of his majesty King William, and the late Queen Mary of blessed memory, intituled, ‘An Act for granting to their Majesties several Duties upon Vellum, Parchment, and Paper, for four Years, towards carrying on the War against France,’ it is amongst other things enacted, that a duty or imposition of five shillings shall be rated, levied, collected, and paid, for every piece of paper or parchment, upon which any licence or certificate of marriage should be written or ingrossed: and whereas by a clause in another act of parliament made in the sixth and seventh years of his majesty's reign, intituled, ‘An Act for granting to His Majesty certain Rates and Duties upon Marriages, Births, and Burials, and upon Bachelors and Widowers, for the term of five Years, for carrying on the War against France with vigour,’ it is amongst other things enacted and provided, that

(1) Vide Stat. 1 Geo. 1, St. II. c. 6. Stat. 8 Geo. 1, c. 6. Stat. 9 Geo. 4, c. 32. Stat. 3 & 4 Gul. 4, c. 49. Stat. 1 & 2 Vict. c. 77.

(2) Vide Stat. 13 Gul. 3, c. 6. (4) Vide Stat. 4 Geo. 4, c. 76. Stat. 6 & 7 Gul. 4, c. 85. Stat. 6 & 7 Gul. 4, c. 86.

(3) Vide Stat. 13 & 14 Gul. 3, c. 4. Stat. 1 Geo. 1, St. II. c. 6. Stat. 8 Geo. 1, c. 6. Stat. 22 Geo. 2, c. 46, ss. 36, 37. Stat. 7 Gul. 4 & 1 Vict. c. 1. Stat. 7 Gul. 4 & 1 Vict. c. 22. Stat. 3 & 4 Vict. c. 72.

STAT. 7 & 8
GUL. 3, c. 35.

no person shall be married at any place pretended to be exempted from the visitation of the bishop of the diocese, without a licence first had and obtained, except the banns shall be published and certified according to law; and that every parson, vicar, and curate, who shall marry any persons contrary to the true intent and meaning thereof, shall forfeit the sum of one hundred pounds: which clause was so enacted and provided for the better ascertaining, levying, and collecting the aforesaid duty of five shillings upon every licence or certificate of marriage, but by experience is found ineffectual for the same, in regard the said penalty of one hundred pounds is not extended to every offence of the same parson, vicar, or curate, so offending as aforesaid: and whereas the force and intent of the said clause is otherwise eluded and made of none effect, by several parsons, vicars, and curates, who, to avoid the said penalty of one hundred pounds, do substitute and employ, and knowingly and wittingly suffer and permit, divers other ministers to marry great numbers of persons in their respective churches and chapels, without publication of banns, or licences of marriage first had and obtained; many of which ministers so substituted, employed, permitted, and suffered to marry as aforesaid, have no benefices or settled habitations, and are poor and indigent, and cannot easily be discovered and convicted of the offences aforesaid: and whereas divers ministers, being in prison for debt and otherwise, do marry in the said prisons, many persons resorting thither for the purposes aforesaid, and in other places for lucre and gain to themselves; by all which means the duties and impositions upon licences of marriage, as aforesaid, are greatly diminished and subtracted, and many other great inconveniences do arise: for the remedying and preventing whereof,

Penalty on parsons marrying without banns or licence;

“II. Be it enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in parliament assembled, and by the authority of the same, that from and after the four and twentieth day of June, in the year of our lord one thousand six hundred ninety and six, every parson, vicar, or curate, who shall marry any persons in any church or chapel, exempt or not exempt, or in any other place whatever, without publication of the banns of matrimony between the respective persons according to law, or without licences for the said marriages first had and obtained, shall, for every such offence, forfeit the sum of one hundred pounds.

and for permitting so to do.

“III. And for the more effectual preventing the abuses aforesaid, be it further enacted by the authority aforesaid, that every parson, vicar, or curate, who shall substitute or employ, or knowingly and wittingly shall suffer and permit, any other minister to marry any persons in any church or chapel to such parson, vicar, or curate belonging or appertaining, without publication of banns or licences of marriage first had and obtained, shall, for every such offence, forfeit the sum of one hundred pounds; the aforesaid respective forfeitures to be recovered by action of debt, bill, plaint, or information, in any of his majesty’s courts of record, wherein no essoin, wager, or protection of law, or any more than one imparlance, shall be allowed; one moiety thereof to his majesty, his heirs and successors, and the other moiety to him or them who shall inform or sue for the same.

Penalty on those married without licence or banns.
See 26 Geo. 2, c. 33, for

“IV. And, for the better ascertaining, levying, and collecting, the said duties on marriages and licences, as aforesaid; be it further enacted by the authority aforesaid, that from and after the four and twentieth day of June, in the year of our Lord one thousand six hundred ninety and six, every man so married without licence or publication of banns (1), as aforesaid, shall forfeit the sum of ten pounds,

(1) *Licence or publication of banns*:—In *Middleton v. Croft*, (Str. 1056,) the plaintiff declared, in prohibition, that by Stat. 7 & 8 Gul. 3, c. 35, a penalty of 10*l.* was inflicted on every man who married without licence or banns: notwithstanding which, he and his wife had been cited into the spiritual court, for being married before eight in the morning, without licence or banns, contrary to the canon, which fixes the time to be between eight and twelve, and requires a licence

or banns; that they were lay persons, not bound by the canon; and therefore prayed a prohibition. The defendant, as to the contempt, pleaded not guilty; and for a consultation, demurred. Upon such facts, Lord *Hardwicke* delivered the resolution of the court in the following language: “In this case three questions have been made. i. Whether by the Canons of 1603, lay persons are punishable for a clandestine marriage, ii. If not; whether by the canon law an-

to be recovered, together with costs of suit, in manner as aforesaid, by any person who shall inform or sue for the same; and likewise that every sexton, or parish

STAT. 7 & 8
GUL. 3, c. 35.
making clan-

ciently received, the spiritual court has a jurisdiction to proceed for a clandestine marriage. And, iii. Supposing they have a jurisdiction either way; whether that jurisdiction is taken away by the act of parliament, which has inflicted the penalty of 10*l*.

"As to the first of these, two things are considerable: 1. Whether the laity are within the words of those canons. 2. Whether there was a proper authority to bind the laity, if the words do extend to them.

"And as to the question, 'whether the words take them in;' those which any way relate to this matter are the 62nd, 101st, 102nd, 103rd, and 104th canons: in the four first of which there are no words that affect the parties contracting. Indeed in the 104th there are words relating to the married persons; but they relate only to marriages under void or irregular licences, which is not this case. And therefore upon this point we are all of opinion, that lay persons are not within the words of the Canons of 1603.

"The next point is, whether the makers of those canons had a power to bind the laity. They were made by the bishops and clergy in convocation assembled, by virtue of the king's writ, and confirmed by his charter under the great seal.

"The general opinion has been, that these having never been received or confirmed in parliament, cannot bind the laity. And my brother *Wright*, in his argument, seemed to admit it, by putting the case upon the foot of the old canon law; but as the other counsel who argued on that side did not give it up, it may be proper to settle it. And we are all of opinion, that, *proprio vigore*, the Canons of 1603 do not bind the laity: I say *proprio vigore*, because some of them are only declaratory of the ancient canon law.

"They who look into *Spelman's* collection, will find much matter in the ancient councils, that may serve for illustration and ornament; but as those were often mixed assemblies, composed of the nobility, legantine authority, and papal usurpation, little is to be found as to the merits of the question, 'whether the laity are bound or not.'

"The only proper way, therefore, is, to consider this question upon the foot of the ancient constitution. No new law can be introduced here, but is the work, and has the consent, of the three estates of the realm: and so it is declared in the Parliament Roll, 4 Hen. 5, p. 2, No. 19. 12 Co. 74. 4 Inst. 1. For they representing the whole realm, every man is by representation a party. In the making of canons, the royal assent is all the share that the legislature has in them: for the lords and commons are excluded, and not represented. It was said indeed by Dr. *Andrews*, that even in parliament there was not an actual representation of all orders and degrees of men; there being more subjects who do not vote in elections, than who do. But that does not make it cease to be a representation. It was impossible that all could join in the election; and therefore our

constitution has fixed it in the more worthy, who have a right to bind the rest. The learned doctor indeed advanced a notion, 'that the parson represents the parish;' but how can that be, when we all know the parson is not elected by them? The writ is *convocari facias totum clerum*; and the premonition is, that archdeacons and deans shall come in person, and the rest by their representatives. 4 Inst. 382. These show plainly, that the clergy only are called, and that the proctors are chosen to represent the clergy only. Hence arises the distinction between canons made in ancient councils confirmed by the empire after it became Christian, and those made here. The Emperor, according to Justinian and the Digest, had a legislative power; and when they received his confirmation, they had their full authority. But that is not the case here: the crown has not the full legislative power; and it is therefore rightly said in Salk. (673.) 'The king's consent to a canon in *re ecclesiastica* makes it a law to bind the clergy, but not the laity,' and no one can say, that the consent of the people is included in the royal confirmation.

"Another argument is, 'that by our constitution taxes and new laws are co-extensive.' The parliament lay taxes on all the people; but the clergy never pretended to tax any but themselves. And it seems very absurd, that when they cannot raise money upon the laity, they should still have it in their power to enact new laws, whereby their liberty and property may be affected.

"In all the acts since the Reformation, for confirming forms of prayer, and other ecclesiastical constitutions, the preambles show, that the clergy in convocation were only considered as the propounders of them. It was said, that this did not give being to them as laws, to bind the laity; but was only to enforce them by the addition of civil penalties. But that is not the only reason, though it is one. The true use of these confirmations in parliament was the extension of them over the laity, who would otherwise not be bound. It has been said, 'that at least they should bind in *re ecclesiastica*,' but this proves a great deal too much. There are many things of an ecclesiastical nature, which no canon can touch; as the case of tithes, the degrees of consanguinity, and the operation of administrations: and if this argument would hold, they might overturn the common law as to the heirship of lands, and the division of personal estates, which would never be endured. These are matters that have always been regulated by the legislature: witness the statutes of 32 Hen. 8, c. 28 [*antè* 262]; 21 Hen. 8, c. 5 [*antè* 119]; and 22 & 23 Car. 2, c. 10 [*antè* 599]. If they were thought to have power in these matters, how came the bishops, at the time of making the Statute of Merton, c. 9 [*antè* 3], to apply for a declaration touching the legitimacy of children born before lawful marriage?

STAT. 7 & 8
GUL. 3, c. 35.
destine marriages void.

clerk, or other person acting as sexton or parish clerk, who shall knowingly and wittingly aid, promote, and assist at such marriages so celebrated without banns or

"As to the case cited from 1 Rol. Abr. 909, I. 5, that *bona notabilia* were by a canon settled at 5l. in King James the First's time. In the first place it is a mistake: for there were canons set it at that, long before even *Perkins*, who, (s. 489,) notwithstanding, estimates them at 40s. *Rolle* himself adds a *dubitatur*. And, after all, what is this more than a regulation of fees amongst themselves? 8 Co. 135 (a), is a report of the same case: and he says nothing of this. So that, at most, it is but a loose saying in an abridgment.

"In the statute law there is nothing express upon this point; but there are strong implications. The 25 Hen. 8, c. 19 [*antè* 150], empowers commissioners to inspect the canons; and in *Rastal's* statutes there are several acts subsequent for that purpose. And it is observable, that the statute of 25 Hen. 8 [*antè* 160], begins with the submission of the clergy *in verbo sacerdotii*; and though nothing is said as to the persons to be bound, yet it appears the clergy thought it proper to take along with them the consent of the laity, to abrogate and alter canons; and everybody must see, that if this authority had been executed, the system would have derived its binding force from the grantors.

"I come next to consider the judicial authorities. The first is the *Prior of Leed's case*, (20 Hen. 6, 12 (b); *Brooke*, Ordinary, 1,) where it is expressly laid down, that the ordinary has power to make holy-days, fasting-days, and constitutions provincial, *de tyer le clergy, mes nemy de tyer le temporally*.

"The next case, (Mich. 24 Edw. 4, 44 (b).) where though there is some difference in opinion upon the power of the convocation, yet as to the point now in question, it is agreed on both sides. In 5 Co. 32 (b), *Cawdrie's case*, my Lord *Coke* lays it down, that by general consent of the whole realm, canons may be made or altered.

"In Mo. 755; Plowd. 43; 2 Co. 37; the question proposed is, whether the deprivation of the puritan ministers was lawful: and the judges said it was, because the king had delegated them full power, as he might.

"That a parliamentary confirmation is necessary, see Carth. 485; Salk. 134. And I have seen two manuscript reports of that case in Carthew, by my Lord *Raymond*, (1 Raym. 447,) and Chief Justice *Eyre*, both of which agree with the report.

"In Mod. Cas. 188, in a suit for not coming to church, *Holt* says, if you have a canon before 1603, it may bind: and in *Davis's case*, (Mich. 5 Geo. 1, in C. B.) Chief Justice *King* laid it down as a prevailing opinion, that the Canons of 1603 did not bind the laity.

"Having thus considered the cases which warrant our opinion, let us now take notice of the three cases relied on against it.

"The first is in Mo. 781, a very extraordinary case, and no precedent, for there both were clerks: and though it is laid down

pretty strongly, as if a bishop could bind his diocese; yet it is not said, that he could bind the laity therein.

"The second case is *Vaughan*, 327, and what he says there is certainly right, that a lawful canon is the law of the kingdom, as well as an act of parliament. But does he define what is a lawful canon, or that it will bind the laity without their consent? On the contrary, in the very next paragraph, he speaks of a canon as warranted by act of parliament.

"And as the case in 2 Ventr. 41, where *Vaughan* says, though no canons are confirmed by parliament, yet they are the laws which govern in ecclesiastical affairs: I observe that was only a dictum upon a motion, and was at the time expressly contradicted by Mr. Justice *Tyrrell*, who holds that the king and convocation without the parliament, cannot make any canons, which shall bind the laity.

"Upon this state, therefore, of the authorities on each side of the question, it is easy to see which preponderate; the three last resolve all into the dictum of Chief Justice *Vaughan*, to which I oppose all the rest, and lay it down as our considerate opinion, that the Canons of 1603 do not, *proprio vigore*, bind the laity.

"The second point I proposed to consider was, whether laying aside the Canons of 1603, the spiritual court has any jurisdiction under the former canon law received and allowed, to proceed against the plaintiffs for a clandestine marriage. And we are all of opinion, that in this respect their jurisdiction is well founded.

"It has been already proved, that the received canons bind the laity; and this appears by our statute law, 25 Hen. 8, c. 21 [*antè* 160], in the preamble, and 35 Hen. 8, c. 16 [*antè* 288], which continues the force of canons accustomed and used; and here rests the ecclesiastical power. My Lord *Hale*, in a manuscript I have seen of his, says it was first introduced by external power and discipline allowed or tacitly submitted to, which introduced it as a custom: it therefore only remains to inquire, whether the canons against clandestine marriages have been received or not. In the Decretal, (lib. 4, tit. 3, c. 3,) is one, which was adopted here, as appears by *Linwoode*, and it runs *quod hujusmodi contrahentes excommunicantur*.

"It was said, that in the books at Lambeth, there are innumerable instances of such proceedings; and I believe there are: but as they have passed *sub silentio*, let us rather look out for a judicial decision, and I have one; it is in Sir William Jones, 257, where it is held, that if any marry without banns or licence, they are citable for it into the ecclesiastical court, and no prohibition shall go.

"This case, therefore, is in point, and uncontradicted. And, indeed, it is not to be imagined, that so great an evil as clandestine marriages was unpunishable in the

licences, as aforesaid, shall forfeit the sum of five pounds, to be recovered with costs⁽¹⁾ of suit in manner as aforesaid by any person who shall inform or sue for the same. STAT. 7 & 8
GUL. 3, c. 35.

“V. And whereas divers children who are born within this kingdom are not christened according to the rites and ceremonies of the Church of England, and many are christened in private houses, nor are the parents of such children obliged by the aforesaid act to give notice to their respective ministers, of the births of such children; for want whereof an exact register of all persons born is not kept, and many persons chargeable with the duties in the said act mentioned do thereby escape the payment of the several sums due to his majesty, and charged upon them by the said act, by reason of the births of such children: for remedy whereof be it enacted by the authority aforesaid, that from and after the four and twentieth day of June, which shall be in the year one thousand six hundred ninety and six, the

Penalty on
parents not
giving notice

parties, till the statute of Gul. 3, inflicted a penalty of 10*l.* upon the husband.

“And this brings me to the third and last point I proposed to consider, which is, whether the statute of 7 & 8 Gul. 3, has, by inflicting that penalty, taken away the jurisdiction of the spiritual court.

“Before I consider this, I would make two observations: i. That though this was but for a short time at first, yet it is continued by subsequent laws, (the 8 & 9 Gul. 3, c. 19, and the 5 Ann. c. 19, s. 36,) for ninety-six years. ii. That the penalty is only upon the man, so that as to the woman, she indisputably remains subject to the ecclesiastical jurisdiction.

“But we are all of opinion, that as to the man, too, the jurisdiction was not taken away. In 2 Ventr. 41, it is held, that their jurisdiction was not taken away by the conventicle act. So in 2 Lev. 222. Sir T. Jones, 131, as to teaching school. Indeed, in Carth. 464, there was a prohibition, upon the maxim, *quod nemo bis puniri debet pro uno et eodem delicto*. And that to be sure is a strong objection, if the penalty, and the suit in the spiritual court, were *eo nomine*, and the intent the same.

“But this is a sort of middle case, where the penalty is not given as the punishment for the offence, but only to secure the payment of the stamp duty. For it is introduced by the words, ‘and for the better collecting,’ &c. It is, therefore, a proceeding *diverso intuitu*, as upon the Statute of *Articuli Cleri*.

“This is stronger than the cases of fathers and mothers of bastards, on 18 Eliz. c. 3, where there is a punishment for the act of lewdness, and yet the spiritual court proceeds hand in hand for incontinence.

“Here one jurisdiction punishes for the criminal act itself, and the other for an intended fraud upon the revenue.

“The Rubric ordains the publication of banns, and that is confirmed by 1 Eliz. c. 2, s. 16 [*antè* 368], and the Act of Uniformity, 13 & 14 Car. 2, c. 4 [*antè* 569]; the consequence of which is, that the Rubric binds the laity.

“And upon this a new point may arise, whether, supposing the statute was a repeal of the ancient jurisdiction, yet it can abrogate it, where it is confirmed by parliament. Now everybody knows, a new penalty is no

repeal of a former, without express words of repeal: without these, both may stand, and the last be considered only as a further penalty.

“There is nothing of that in this statute, and therefore we may warrantably determine, that the 7 & 8 Gul. 3, has not abrogated the ancient jurisdiction in the case of a clandestine marriage.

“I have thus largely gone through the several questions which have arisen in this case, that as we are all sensible, the evil of clandestine marriages is a growing one, it may be clearly understood, upon what foot the remedy stands.

“And upon the whole we are of opinion, that there ought to go a consultation as to all the points of the suit below but one, which is the hour at which the marriage is alleged to have been had. Now, as the confining marriages to be between eight and twelve in the morning, is only a regulation introduced by the Canons of 1603, which we have determined do not bind in this case; it is of consequence, that the spiritual court be restrained from making that any ground of their proceedings; in this respect, therefore, the prohibition must stand, and a consultation must go for the rest.”

(1) *Costs*.—After pronouncing this judgment, the plaintiff in the prohibition moved for costs, having prevailed in one point, and the statute of 8 & 9 Gul. 3, c. 11, s. 3, giving costs in all suits upon prohibitions to the plaintiff obtaining judgment, or any award of execution. And it was prayed, that they might be taxed from the time of the first motion, according to several determinations: and this last was acquiesced in, if the court should be of opinion for costs; as to which it was said, that the hour was not the “git” of the proceedings in the spiritual court, but only a circumstance amongst others to prove it a clandestine marriage; and that it would be very hard, that they who had prevailed upon the merits, should pay costs. *Sed per curiam*, “the words of the act are not to be got over, which give costs to the plaintiff, if he obtains any judgment: and this matter was under consideration in the House of Lords in *Dr. Bentley’s case*, where the prohibition stood as to some articles, and there went a consultation for the rest; to be sure it will be considered in the *quantum*, but we cannot deny costs.”

STAT. 7 & 8
GUL. 3, c. 35.
in five days
after the birth
of a child.

Distinct regis-
ters to be kept
of children not
christened, and
parents to pay
6d. for regis-
tering.

parents of every child, which shall at any time be born after the said day and year, and during the continuance of the said acts, or one of them, shall within five days after such birth give notice to the respective rector, vicar, curate, or clerk of the parish or place where such child was born, of the day of the birth of every such child: and in case any parent shall neglect to give such notice as aforesaid, he or she shall forfeit the sum of forty shillings, one moiety thereof to the king's majesty, and the other moiety to the informer; the which said rector, vicar, curate, or clerk of the parish, or their substitutes, are hereby required, during the continuance of the said act, to take an exact and true account, and keep a distinct register of all and every person or persons so born in his or their respective parishes or precincts, and not christened; for doing which the parents of such child, or one of them, shall pay to every such parson, rector, vicar, curate, or clerk of the parish, the sum of sixpence; and if any such rector, vicar, curate, parson, or minister, shall refuse or neglect to keep a true register thereof, as before is directed, such parson or other minister, so offending, shall forfeit the sum of forty shillings, to be recovered by such persons, and in such manner, as in the said recited act the forfeitures therein mentioned are appointed to be recovered; anything in the said law contained to the contrary notwithstanding."

[Expired.]

"Commissioners to administer oaths to the collectors. Parsons to produce twice a year, to the commissioners, such licences, certificates, and registers. 4 Ann. c. 12, § 10, indemnifies omissions in this case. Parsons to give notice, within ten days, of persons buried in their parishes."

STAT. 7 & 8
GUL. 3, c. 37.

XXXII. STAT. 7 & 8 GULIELMI 3, c. 37. A.D. 1696.

"An Act for the Encouragement of Charitable Gifts and Dispositions."

9 Geo. 2, c. 36.

"Whereas it would be a great hindrance to learning, and other good and charitable works, if persons well inclined may not be permitted to found colleges or schools for encouragement of learning, or to augment the revenues of colleges or schools already founded, by granting lands, tenements, rents, or other hereditaments to such colleges or schools, or to grant lands or other hereditaments, to other bodies politic or incorporated now in being, or hereafter to be incorporated, for other good and public uses; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that it shall and may be lawful to and for the king, our most gracious sovereign lord, and for his heirs and successors, when and as often, and in such cases as his majesty, his heirs or successors, shall think fit, to grant to any person or persons, bodies politic or corporate, their heirs and successors, licence to alien in mortmain, and also to purchase, acquire, take, and *hold in mortmain* (1), in perpe-

9 Hen. 3, c. 36.

The king may
grant licences
to alien, or
purchase in
mortmain.

(1) *Hold in mortmain*.—The pretended power of suspending statutes by the royal authority, having, at the time of the Revolution, been declared illegal, and the interest of *mesne* lords having at length been reduced almost to a shadow, it was thought prudent to confirm, by act of parliament, the king's power of granting licences in mortmain, in order, on the one hand, to prevent such licences from being confounded with a dispensation; and on the other, to remove all doubts, that might have been entertained of their validity.

Accordingly, it was enacted by Stat. 7 & 8 Gul. 3, c. 37, for the purpose of encouraging learning, and enabling such as should be so disposed, the more easily to endow new colleges and schools, or to increase the revenues of such as were already endowed, that the king, his heirs and successors, might grant, in such cases as they thought

proper, to any person or persons, bodies politic or corporate, their heirs and successors, licence to alienate in mortmain, and also to purchase, acquire, take, and *hold in mortmain*, in perpetuity or otherwise, any lands, tenements, rents, or hereditaments whatever, of *whomsoever* the same should be holden; and that no forfeiture should be incurred by reason of such alienation or acquisition.

This statute makes no reference to the writ of *ad quod damnum*, which anciently was thought an essential preliminary to the licence, in order that the king might know what prejudice would arise to himself or to others, from granting it. Since this statute, writs of *ad quod damnum*, previous to licences from the crown to alien in mortmain, have not been usual; (Co. Lit. 99 (a), n. (1);) but in modern acts of parliament enabling corporations to hold lands, there is

tuity or otherwise, any lands, tenements, rents, or hereditaments whatsoever, of whomsoever the same shall be holden.

"II. And it is hereby declared, that lands, tenements, rents, or hereditaments, so aliened, or acquired and licensed, shall not be subject to any forfeiture, for or by reason of such alienation or acquisition."

See 9 Geo. 2, c. 36, restraining gifts in mortmain by will.

XXXIII. STAT. 7 & 8 GULIELMI 3, c. 38. A.D. 1696.

"An Act to take away the Custom of Wales, which hinders Persons from disposing of their Personal Estates by their Wills."

"Whereas in several counties and places within the principality of Wales, and marches thereof, the widows and younger children of persons dying inhabitants therein, have often claimed and pretended to be entitled to a part of the goods and chattels of their late husbands or fathers, called her and their reasonable part, by virtue or colour of a custom or other usage within the said principality and marches thereof, notwithstanding any disposition of the same by their husbands' and fathers' last wills and testaments, or by deed in their lives' time, and notwithstanding a competent jointure, according to the agreement made for the livelihood of the said widows by their husbands, which have often occasioned great troubles disputes, and expenses, about and concerning such custom and usage, whereby many persons have been and are disabled from making sufficient provision for their families, younger children, and relations, and great disputes, troubles, and expenses have often happened concerning the same, to the great damage or ruin of many: for remedy whereof, and for preventing all questions, doubts, and difficulties, for the future, touching the said custom and usage, be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by

STAT. 7 & 8
GUL. 3, c. 37.

Lands so
aliened not
subject to
forfeiture.

STAT. 7 & 8
GUL. 3, c. 38.

Stat. *Wallia*,
12 Edw. 1.
27 Hen. 8,
c. 26.
34 & 35 Hen.
8, c. 26.
1 Edw. 6,
c. 10.
1 & 2 P. &
M. c. 15.
5 Eliz. cc. 25
& 28.
18 Eliz. c. 8.
27 Eliz. c. 9.
10 Car. 2, c. 5.
1 G. & M.
St. I. c. 27.
5 G. & M.
c. 4.

usually a dispensation with that writ, as well as with the statutes of mortmain.

Thus, a dispensing power is given to receive lands without any licence of mortmain, or writ of *ad quod damnum*, by Stat. 2 & 3 Ann. c. 11, s. 4, (authorizing gifts of land to the governors of Queen Anne's bounty;) by Stat. 43 Geo. 3, c. 107, Stat. 55 Geo. 3, c. 147, Stat. 7 Geo. 4, c. 66, (permitting corporations to sell lands and houses for parsonages and glebe;) by Stat. 43 Geo. 3, c. 108, Stat. 51 Geo. 3, c. 115, (for building churches;) by Stat. 10 Geo. 4, c. 25, (allowing gifts of land to Greenwich Hospital;) and by Stat. 3 & 4 Vict. c. 60, (for church purposes.)

None of the statutes of mortmain limit the extent to which a corporation may purchase lands; but the object of such statutes is to prevent a corporation from making any purchase without previous licence: with the king's licence, corporations may, in general, purchase lands to any extent they please; but when corporations are erected by act of parliament, for some particular purpose, it is frequently thought prudent to prohibit them from purchasing lands beyond a certain value.

The statutes of mortmain make no mention of personal property, and therefore the power of corporations aggregate, in general, to take such property, remains unlimited; but many particular corporations, established by act of parliament for some particular purpose, are limited in this respect, as well as in their power to purchase lands.

But all corporations, except expressly restrained, have an unlimited control over their respective properties, and may alienate in fee, or make what estates they please for years, for life, or in tail, as fully as any individual may do with respect to his own property. *Smith v. Barrett*, 1 Sid. 162. 1 Kyd on Corporations, 108.

Charters of incorporation usually contain a clause, declaring, that the intended corporation shall be a body politic and corporate, and, by the particular name given to it, "have perpetual succession; and for ever thereafter be able and capable in the law, and have power to purchase, receive, and possess any goods and chattels whatsoever, and (*notwithstanding* the statutes of mortmain,) to purchase, hold, and enjoy, to them and their successors, any lands, tenements, and hereditaments whatsoever, not exceeding, at the time or times of purchasing such lands, tenements, and hereditaments respectively, the yearly value, at a rack rent, of [a certain sum specified] in the whole, without incurring the penalties or forfeitures of the Statute of Mortmain, or any of them."

The mode of obtaining a licence in mortmain is by petition to the queen, which will be referred to the attorney and solicitor-general, and upon the report of those officers, the prayer of the petition will either be acquiesced in, or rejected, and if a licence be given, it will not be determined by the death of the sovereign who granted it. *Co. Lit.* 52 (b). *Fitz. N. B.* 513 (G). *Wroth's (Sir Thomas) case*, Plowd. 457.

STAT. 7 & 8
GUL. 3, c. 38.

Inhabitants of
Wales may,
for the future,
dispose of their
goods and
chattels by
will, &c.

the authority of the same, that from and after the twenty-fourth day of June, one thousand six hundred ninety-six, it shall and may be lawful for any person or persons, inhabiting or residing, or who shall have any goods or chattels within the principality of Wales, or marches thereof, by their last wills and testaments to give, bequeath, and dispose of, all and singular their goods, chattels, debts, and other personal estate, to their executor or executors, or to such other person or persons as the said testator or testators shall think fit, in as large and ample manner as by the laws and statutes of this realm any person or persons may give and dispose of the same, within any part of the province of Canterbury, or elsewhere; and that from and after the said twenty-fourth day of June, one thousand six hundred ninety-six, the widows, children, and other the kindred of such testator or testators, shall be barred to claim or demand any part of the goods, chattels, or other personal estate of such testator or testators, in any other manner than as by the said last wills and testaments is limited and appointed; any law, statute, custom, or usage to the contrary in any wise notwithstanding.

Not to take
away the right
of women
already mar-
ried, &c.

“II. Provided always, that nothing in this act contained shall extend to take away any right or title, which any woman now married, or younger children now born, may have to the reasonable part of their husbands’ or fathers’ estate, by virtue or colour of the said custom or usage.”

STAT. 8 & 9
GUL. 3, c. 11.

Plaintiff ob-
taining judg-
ment on an
action of waste,
&c. to recover
costs.

XXXIV. STAT. 8 & 9 GULIELMI 3, c. 11(1). A.D. 1697.

“An Act for the better preventing Frivolous and Vexatious Suits.”

“III. And be it further enacted by the authority aforesaid, that from and after the said five and twentieth day of March, in all actions of waste, and actions of debt upon the statute, for not setting forth of tithes, wherein the single value or damage found by the jury shall not exceed the sum of twenty nobles, and in all suits upon any writ or writs of *scire facias*, and suits upon prohibitions, the plaintiff obtaining judgment, or any award of execution after plea pleaded or demurrer joined therein, shall likewise recover his costs of suit; and if the plaintiff shall become nonsuit, or suffer a discontinuance, or a verdict shall pass against him, the defendant shall recover his costs, and have execution for the same in like manner as aforesaid.”

STAT. 8 & 9
GUL. 3, c. 14.

XXXV. STAT. 8 & 9 GULIELMI 3, c. 14. A.D. 1697.

“An Act for the completing the building and adorning the Cathedral Church of Saint Paul, London, and for repairing the Collegiate Church of Saint Peter, Westminster.”

STAT. 9 GUL.
3, c. 1. [IR.]

XXXVI. STAT. 9 GULIELMI 3, c. 1(2). [IRELAND.] A.D. 1697.

“An Act for banishing all Papists exercising any Ecclesiastical Jurisdiction, and all Regulars of the Popish Clergy, out of this Kingdom.”

[The mischiefs which the legislature were desirous of preventing by this statute, may be ascertained from the language of the first section, which is as follows:]

Mischief occa-
sioned by the
great number
of Romish
clergy in this
kingdom,
settling in fra-
ternities con-
trary to law,

“Whereas it is notoriously known, that the late rebellions in this kingdom have been contrived, promoted, and carried on by popish archbishops, bishops, jesuits, and other ecclesiastical persons of the Romish clergy; and forasmuch as the peace and public safety of this kingdom is in danger, by the great number of the said archbishops, bishops, jesuits, friars, and other regular Romish clergy now residing here, and settling in fraternities and societies, contrary to law, and to the great impoverishing of many of his majesty’s subjects of this kingdom, who are

(1) *Vide* Stat. 1 Gul. 4, c. 21. *Free Croft*, Ibid. 1062. *Gegge v. Jones*, Ibid. (D. D.) v. *Burgoyne*, 6 B. & C. 538. *Bale* 1149.
v. *Hodgetts*, 1 Bing. 182. *Haughton (Sir* (2) This statute was repealed in part by
Harry) v. *Starkey*, Str. 82. *Middleton v.* Stat. 5 Geo. 4, c. 25.

forced to maintain and support them; which said Romish clergy do not only endeavour to withdraw his majesty's subjects from their obedience, but do daily stir up, and move sedition and rebellion, to the great hazard of the ruin and desolation of this kingdom: for the prevention of all which mischiefs, his majesty is graciously pleased that it be enacted, and be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by authority of the same, that all popish archbishops, bishops, vicars-general, deans, jesuits, monks, friars, and all other regular popish clergy, and all papists exercising any ecclesiastical jurisdiction, shall depart out of this kingdom before the first day of May, which shall be in the year of our Lord one thousand six hundred ninety-eight; and if any of the said ecclesiastical persons shall be at any time after the said first day of May within this kingdom, they, and every of them, shall suffer imprisonment, and remain in prison, without bail or mainprize, till he or they shall be transported beyond seas, out of his majesty's dominions, wherever his majesty, his heirs or successors, or the chief governor or governors of this kingdom, for the time being, shall think fit; and if any person so transported shall return again into this kingdom, they, and every of them, shall be guilty of high treason; and every person so offending shall for his offence be adjudged a traitor, and shall suffer, lose, and forfeit, as in case of high treason."

STAT. 9 GUL. 3, c. 1. [Ir.] promoting rebellion, impoverishing the subject.

All popish ecclesiastics to depart before 1st of May, 1698, on pain of imprisonment till transportation. 2 Ann. c. 3. 2 Ann. c. 6. 2 Ann. c. 7. 4 Ann. c. 2. 8 Ann. c. 3. Returning afterwards, high treason.

XXXVII. STAT. 9 GULIELMI 3, c. 3(1). [IRELAND.] A.D. 1697.

"An Act to prevent Protestants intermarrying with Papists."

STAT. 9 GUL. 3, c. 3. [Ir.]

XXXVIII. STAT. 9 & 10 GULIELMI 3, c. 32(2). A.D. 1698.

"An Act for the more effectual suppressing of Blasphemy and Profaneness (3)."

STAT. 9 & 10 GUL. 3, c. 32.

"Whereas many persons have of late years openly avowed and published many blasphemous and impious opinions, contrary to the doctrines and principles of the Christian religion, greatly tending to the dishonour of Almighty God, and may

(1) *Vide* Stat. 3 & 4 Gul. 4, c. 102.

(2) This statute was partly repealed by Stat. 53 Geo. 3, c. 160.

A person offending under Stat. 9 & 10 Gul. 3, c. 32, was held to be also indictable at common law. *Rex v. Woolston*, Str. 834. Fitzg. 64. This doctrine was considered in *Rex v. Carlile*, (3 B. & A. 161,) where a motion was made in arrest of judgment, after conviction on an information for a blasphemous libel, on the ground, that this statute had put an end to the common law offence: but the court considered, that the provisions of this statute were cumulative.

The provisions contained in Stat. 1 G. & M. c. 18, and Stat. 9 & 10 Gul. 3, c. 32, respecting the denial of the Trinity, were repealed by Stat. 53 Geo. 3, c. 160, but such statute did not alter the common law with respect to impugning the doctrine of the Trinity,—it only removed the penalties imposed on persons denying such doctrines by Stat. 9 & 10 Gul. 3, c. 32, and extended to such persons the benefits conferred on all other protestant dissenters by Stat. 1 G. & M. c. 18 (*antè* 633).

(3) *Blasphemy and Profaneness*.—Upon the trial of an information against the defendant for uttering expressions grossly blasphemous, Chief Justice *Hale* observed, "that such kind of wicked blasphemous words, were not only an offence to God and religion, but a crime against the laws, state,

and government, and therefore punishable in the court of King's Bench: for to say, religion is a cheat, is to dissolve all those obligations whereby civil societies are preserved; and that Christianity is parcel of the laws of England, and therefore to reproach the Christian religion, is to speak in subversion of the law." *Rex v. Taylor*, Vent. 293. 3 Keb. 607. In *Rex v. Waddington*, (1 B. & C. 26,) where a publication stated, that Jesus Christ was an impostor, a murderer in principle, and a fanatic, a jurymen asked, whether a work denying the divinity of our Saviour was a libel; when Chief Justice *Abbott* answered, that "any publication in which our Saviour was spoken of in the language used in the publication for which the defendant was prosecuted, was a libel;" and the defendant was found guilty. Upon a motion for a new trial, on the ground that this was a wrong answer, the court held, that the answer was right, and refused the rule.

In a case where the defendant had been convicted for publishing several blasphemous libels, in which the miracles of our Saviour were turned into ridicule and contempt, and his life and conversation calumniated, it was moved, in arrest of judgment, that this was not an offence within the cognizance of the temporal courts at common law: but the court would not suffer the point to be argued, saying, that the Christian religion, as established in this kingdom, is part of the

STAT. 9 & 10
GUL. 3, c. 32.

Persons deny-
ing the
Trinity, &c.
being con-

prove destructive to the peace and welfare of this kingdom: wherefore, for the more effectual suppressing of the said detestable crimes, be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and the commons in this present parliament assembled, and by the authority of the same, that if any person or persons, having been educated in, or at any time having made profession of the Christian religion within this realm, shall by writing, printing, teaching, or advised speaking, deny any one of

law; and, therefore, that whatever derided Christianity derided the law, and consequently must be an offence against the law. *Rex v. Woolston*, Barnard.162. Str.834. Fitzg.64. It was also moved in arrest of judgment, that as the intent of the book was only to show, that the miracles of Jesus Christ were not to be taken in their literal sense, it could not be considered as attacking Christianity in general, but only as striking against one received proof of his being the Messiah; to which the court said, that the attacking Christianity in the way in which it was attacked in this publication was destroying the very foundation of it; and that, though there were professions in the book that its design was to establish Christianity upon a true bottom, by considering these narrations in Scripture as emblematical and prophetic, yet that such professions were not to be credited, and that the rule is, *allegatio contra factum non est admittenda*. But the court also said, that though to write against Christianity in general is clearly an offence at common law, they laid a stress upon the word *general*, and did not intend to include disputes between learned men upon particular controverted points; and, in delivering the judgment of the court, Lord *Raymond* said, "I would have it taken notice of, that we do not meddle with any differences of opinion, and that we interpose only, where the very root of Christianity itself is struck at." *Ibid.* Fitzg. 66.

The doctrine of the Christian religion constituting part of the law of the land, was recognised in a later case, where the judgment of the court of King's Bench was pronounced upon a person convicted of having published a very impious and blasphemous libel, called *Paine's Age of Reason*. This libel was of the worst kind, attacking the truth of the Old and New Testaments; arguing that there was no genuine revelation of the will of God existing in the world; and that reason was the only true faith which laid any obligations on the conduct of mankind. In other respects also, it ridiculed and vilified the prophets, our Saviour, his disciples, and the sacred Scriptures. Mr. Justice *Ashurst* said, "that although the Almighty did not require the aid of human tribunals to vindicate His precepts, it was nevertheless fit to show our abhorrence of such wicked doctrines, as were not only an offence against God, but against all law and government, from their direct tendency to dissolve all the bonds and obligations of civil society; and that it was upon this ground, that the Christian religion constituted part of the law of the land. That if the name of our Redeemer was suffered to be traduced, and his holy religion treated with contempt,

the solemnity of an oath, on which the due administration of justice depended, would be destroyed, and the law be stripped of one of its principal sanctions, the dread of future punishments." *Rex v. Williams*, cit. 1 Russell on Crimes by Greaves, 232. Vide etiam *Rex v. Carlile*, 3 B. & A. 162, and cases therein cited.

Contumely and contempt are what no establishment can tolerate; but, on the other hand, it would not be proper to lay any restraint upon rational and dispassionate discussions of the rectitude and propriety of the established mode of worship. 4 Black. Com. by Chitty, 51. It may not, however, be going too far to infer, from the principles and decisions, that no author or preacher who fairly and conscientiously promulgates the opinions with whose truth he is impressed, for the benefit of others, is, for so doing, amenable as a criminal; but a malicious and mischievous intention is in such case the broad boundary between right and wrong; and that if it can be collected, from the offensive levity with which so serious a subject is treated, or from other circumstances, that the act of the party was malicious, then, since the law has no means of distinguishing between different degrees of evil tendency, if the matter published contain any such tendency, the publisher becomes amenable to justice. 2 Starkie on Libel, 146.

Where a defendant was charged with publishing a libel upon a religious order, consisting of females, professing the Roman catholic faith, called the Scorton Nunnery, Mr. Baron *Alderson* observed, a person may, without being liable to prosecution for it, attack Judaism or Mahomedanism, or even any sect of the Christian religion, save the established religion of the country; and the only reason why the latter is in a different situation from the other, is because it is the form established by law, and is therefore a part of the constitution of the country. For the same reason, any general attack on Christianity is the subject of a criminal prosecution, because Christianity is the established religion of the country. Any person has a right to entertain his opinions, to express them, to discuss the subject of the Roman catholic religion, and its institutions; but he has no right, in so doing, to attack the characters of individuals. *Gathercole's case*, 2 Lewin C. C. 237.

As to the extent of this offence, and the nature and certainty of the words, it appears to be immaterial whether the publication is oral or written; though the committing mischievous matter to print or writing, and thereby affording it a wider circulation, would undoubtedly be considered as an aggravation, and affect the measure of punishment.

the persons in the Holy Trinity to be God, or shall assert or maintain there are more Gods than one, or shall deny the Christian religion to be true, or the Holy Scriptures of the Old and New Testament to be of divine authority, and shall, upon indictment or information in any of his majesty's courts at Westminster, or at the assizes, be thereof lawfully convicted by the oath of two or more credible witnesses; such person or persons for the first offence shall be adjudged incapable and disabled in law, to all intents and purposes whatsoever, to have or enjoy any office or offices, employment or employments, ecclesiastical, civil, or military, or any part in them, or any profit or advantage appertaining to them, or any of them: and if any person or persons so convicted as aforesaid, shall, at the time of his or their conviction, enjoy or possess any office, place, or employment, such office, place, or employment, shall be void, and is hereby declared void: and if such person or persons shall be a second time lawfully convicted as aforesaid, of all or any the aforesaid crime or crimes, that then he or they shall from thenceforth be disabled to sue, prosecute, plead, or use, any action or information in any court of law or equity, or to be guardian of any child, or executor or administrator of any person, or capable of any legacy or deed of gift, or to bear any office, civil or military, or benefice ecclesiastical, for ever within this realm, and shall also suffer imprisonment for the space of three years, without bail or mainprize, from the time of such conviction.

"II. Provided always, and be it enacted by the authority aforesaid, that no person shall be prosecuted by virtue of this act, for any words spoken, unless the information of such words shall be given upon oath before one or more justice or justices of the peace, within four days after such words spoken, and the prosecution of such offence be within three months after such information.

"III. Provided also, and be it enacted by the authority aforesaid, that any person or persons, convicted of all or any of the aforesaid crime or crimes, in manner aforesaid, shall, for the first offence, (upon his, her, or their acknowledgment and renunciation of such offence or erroneous opinions, in the same court where such person or persons was or were convicted, as aforesaid, within the space of four months after his, her, or their conviction,) be discharged from all penalties and disabilities incurred by such conviction; anything in this act contained to the contrary thereof in any wise notwithstanding."

STAT. 9 & 10 GUL. 3, c. 32.
victed thereof, disabled to hold any office, &c.

Further disabilities if a second time convicted thereof.

Limitation of prosecutions.

Offenders on renouncing their opinions, in four months after conviction, shall be discharged from penalty, &c.

XXXIX. STAT. 9 & 10 GULIELMI 3, c. 35 (1). A.D. 1698.

"An Act for preventing Frauds and Abuses in the charging, collecting, and paying of the Duties upon Marriages, Births, Burials, Bachelors, and Widows."

STAT. 9 & 10 GUL. 3, c. 35.

XL. STAT. 10 GULIELMI 3, c. 6 (2). [IRELAND.] A.D. 1698.

"An Act to encourage the building of Houses, and making other Improvements on Church Lands, and to prevent Dilapidations."

STAT. 10 GUL. 3, c. 6. [IR.]

"Forasmuch as the mansion-houses of several archbishops, bishops, and other ecclesiastical persons, have been ruined and destroyed by the frequent wars and rebellions that have happened in this kingdom, whereby residence is become very difficult, and is like to continue so, unless due encouragement be given them to rebuild and repair their former houses, and to erect new houses, where it shall be convenient, and to keep them in good repair after they are built: be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by authority of the same, that every archbishop, bishop, or other ecclesiastical person whatsoever, that heretofore did since the year one thousand six hundred and ninety, or shall hereafter at any time, make, build, erect, add to,

8 Geo. 1, c. 11.
8 Geo. 1, c. 12.
12 Geo. 1, c. 10.
1 Geo. 2, c. 15.
9 Geo. 2, c. 13.
15 Geo. 2, c. 5.
17 Geo. 2, c. 8.
Mansion houses of ecclesiastical persons destroyed by frequent wars. Residence

(1) Expired.
(2) *Vide* Stat. 15 Geo. 2, c. 5. (I.) Stat. 7 & 8 Geo. 4, c. 43. Stat. 10 Geo. 4, c. 58.
7 Geo. 3, c. 9. (I.) Stat. 11 & 12 Geo. 3, c. 37. Stat. 2 & 3 Gul. 4, c. 67. Stat. 3 & 4 Gul. 4, c. 37. Stat. 4 & 5 Gul. 4, c. 90. Stat. 6 & 7 Gul. 4, c. 99. Stat. 6 & 7 Vict. c. 57.
c. 17. (I.) Stat. 40 Geo. 3, c. 82. (I.) Stat.

STAT. 10 GUL.
3, c. 6. [1r.]
thereby become
difficult, unless
encouraged to
rebuild.

Ecclesiastical
persons build-
ing or making
necessary im-
provements on
church lands
shall have from
next successor
two-thirds
(necessary
annual repairs
excepted).

Altered by 12
Geo. 1, c. 10.

Ascertained by
certificate of
chief governors
in case of an
archbishop, &c.
Successor pay-
ing said two-
thirds shall
receive a
moiety from
next successor.
Said sums to
be paid on
removal by
four half-yearly
payments;
by two in case
of death. To be

or repair any house, out-house, garden, orchard, or any other necessary improve-
ment on his demesne, glebe, or mensal land, or in any other lands in his possession
belonging to his see or church, that shall be certified in the manner hereafter
mentioned in like cases to be fit and convenient, for the residence and habitation
of him and his successors, which from thenceforth shall be deemed and taken to
be part of the demesne, glebe, or mensal land of such see, dignity or benefit, shall
have and receive from his next and immediate successor, his executors or admin-
istrators respectively, two thirds of the sum or sums really and truly expended
and laid out in such buildings, additions, repairs, and improvements, (necessary
annual reparations only excepted,) which sum or sums shall be finally settled and
ascertained by certificate under the hand and seal of the chief governor or
governors for the time being, in the case of an archbishop, and of the archbishop
of the province in the case of a bishop, and by like certificate of the bishop of the
respective diocese in all other cases; and such successor as aforesaid, having paid
the two thirds of the sum or sums certified as aforesaid, shall and may receive one
moiety thereof; that is, one third of his first disbursement, from his next succes-
sor; which said sums shall be paid in all cases of removal or translation by four
equal half-yearly payments, to be accounted from such removal or translation;
and in case of death, by two equal half-yearly payments, to be accounted from the
day of such death, and shall and may be recovered by the party who ought to
receive the same, his executors or administrators, either by distress on any of the
lands or tenements of such archbishopric, bishopric, living, or benefice, belonging
to the successor hereby obliged to pay the same, or by sequestration of one moiety
of the rents and profits of such see or benefice, which sequestration is to be made
and granted by the chief governor or governors of this kingdom for the time being,
in case of an archbishop, and by the archbishop of the province in case of a bishop,
and by the bishop of the diocese in all other cases, who are hereby respectively
required to make and grant the same, or by action of debt in any of his majesty's
courts of record in this kingdom, at the election of the party who sues for the
same.

to be recovered by distress, or sequestration of a moiety, or by debt.

Ecclesiastical
persons may
with approba-
tion purchase
in their diocese
houses, &c. or
lands fit for
building for
perpetual resi-
dence, to be
part of their
demesne, un-
alienable.

To be certified,
and repaid by
successor, as
before.

Bishop of
Limerick may
convey his
house to use of
him and his
successors.
To be paid by
successor as
before.

“II. And because it may happen that more convenient houses, or more com-
modious situations, may be found for the residence of some archbishops, bishops,
and other ecclesiastical persons, than do yet belong to them; be it further enacted
by the authority aforesaid, that it shall and may be lawful to and for any arch-
bishop, by and with the approbation of the chief governor or governors of this
kingdom for the time being, and for any bishop, by and with the approbation of
the archbishop of his province, and for any other ecclesiastical person, by and with
the consent of the bishop of his diocese, certified in writing under their respective
hands and seals, to purchase to them and their successors respectively, within their
respective diocese, houses already built, with conveniences thereunto belonging,
or lands and tenements fit for such buildings and conveniences, for the habitation
and residence of them and their successors for ever, thenceforth to be part of their
demesne, glebe, or mensal land respectively, unalienable, and not to be let or dis-
posed of to any other use whatsoever; and that the purchase money for the same,
and the charges and expense of buildings, additions, and repairs as aforesaid, being
ascertained and certified as aforesaid, shall be repaid, as to two thirds thereof, by
the next immediate successor, who shall have and receive from his next successor
one moiety or half of what he pays, in like manner and with like remedy as
aforesaid.

“III. And that it shall and may be lawful, to and for Thomas, lord bishop
of Limerick, to convey his dwelling-house in Limerick with the appurtenances, to
the use of him and his successors, bishops of Limerick; and that in such case he
shall be paid for his disbursements, in purchasing, building, improving and repair-
ing the same, being first certified and ascertained as aforesaid, as to two thirds
thereof, by his next immediate successor, who shall likewise have one moiety or
half of his payment from his next successor, in like manner and with like remedy
as aforesaid.

“IV. Provided nevertheless, and be it further enacted by the authority aforesaid, that it shall and may be lawful to and for the Lord Bishop of Elphin, for the time being, to remove the timber and other materials from Elphin, to any other parts of the lands belonging to that see within his diocese and in his possession, where he or they, with the approbation of the archbishop of the province, certified in writing under his hand and seal, shall think fit, to build a manse house for the bishop of that see, pursuant to this act.

STAT. 10 GUL.
3, c. 6. [Ir.]

Bishop of Elphin, with approbation of archbishop, may remove timber to build a manse house.

“V. And that part of the lands of Magherilin, Killoglan, Ballymagin, and Carrick Mac Gingan, lying and being in the county of Down, and diocese of Dromore, containing about fifty-five Irish acres belonging to the said see, and now in possession of Tobias, lord bishop thereof, and by him purchased from the former lessees, and the house built thereon by him, with the out-houses and appurtenances, be ever hereafter added to the demesnes of the said bishopric of Dromore, and be for ever deemed, reputed, and taken to be the manse house, and part of the mensal lands of that see; and that the said Tobias, lord bishop of Dromore, his executors and administrators, shall be repaid two third parts of the charge of purchasing the said leases, and making and erecting the buildings, plantations, and improvements thereon, the same being first ascertained by certificate of the archbishop of the province under his hand and seal as aforesaid, by his next and immediate successor, who shall likewise receive one moiety thereof from his next successor, in like manner and with like remedy as aforesaid.

Lands purchased by Bishop of Dromore, and house built thereon, added to the see. Repaid by successor, as before.

“VI. And for preventing dilapidations for the future, be it enacted by the authority aforesaid, that if any archbishop, bishop, or other ecclesiastical person whatsoever, shall suffer or permit his or their mansion house, or any or either of them, or any of the buildings, out-houses, gardens, orchards, or other improvements, that now are or hereafter shall be built, made, or erected on their respective demesnes, glebes, or mensal lands, to decay, go to ruin, or be out of repair, that then his next and immediate successor or successors shall and may commence his or their suit in the ecclesiastical court, against such archbishop, bishop, or other ecclesiastical person, his or their executors or administrators, and have the full benefit of the ecclesiastical laws now in force in this kingdom in that behalf; or at his or their election may recover by action of debt against such archbishop, bishop, or other ecclesiastical person, his or their executors or administrators, in any of his majesty's courts of record at Dublin, such sum or sums as shall be sufficient to put such houses and improvements in such good repair as they were in at any time during the incumbency of his or their predecessor, so suffering or permitting the same to go to ruin and decay; which sum or sums of money, so recovered, levied, and paid to such successor or successors, shall forthwith be laid out and expended in the amendment and reparation of the respective houses and improvements, for the which the same shall be recovered as aforesaid, and in default thereof, by the space of six months after recovery and payment as aforesaid, the archbishopric, bishopric, or other ecclesiastical living, or benefice of such ecclesiastical person, shall be sequestered in such manner and by such persons as is before herein expressed, until such ecclesiastical person shall expend and lay out all such sums, so recovered and paid as aforesaid, in the reparation and amendment of their respective houses and improvements as aforesaid: and if the archbishop, bishop, or other ecclesiastical person, so recovering as aforesaid, shall happen to die before the sum recovered and paid to him be laid out in reparation and amendment as aforesaid, that then his next and immediate successor or successors shall and may recover from the executors and administrators of the person so dying double the sum, so recovered and paid as aforesaid, by action of debt in any of his majesty's courts of record at Dublin; unless such executors or administrators shall, and do voluntarily and without suit pay the same to such successor or successors, who is to expend and lay out the same in manner aforesaid, and under the like penalties and forfeitures as aforesaid: and if any archbishop, bishop, or other ecclesiastical person, that already hath or hereafter shall suffer dilapidations or decay in his manse house or improvements, contrary to this act, shall hereafter make any deed, devise, conveyance, grant, lease, bequest, colourable sale, or gift

Ecclesiastical persons suffering mansion house or improvements to decay, successor may sue them, their executors, &c. in ecclesiastical court.

Or recover by action of debt, sufficient to put into such good repair as at any time during incumbency of predecessor.

In default of so laying out the sum recovered in six months, the benefice to be sequestered.

If the person so recovering dies before the sum laid out, successor to recover double from his executors, &c. by action of debt, unless they voluntarily pay. Successor to lay out the same under like penalty.

STAT. 10 GUL.
3, c. 6. [1R.]
Colourable
conveyances
of personal
estate to de-
fraud successor
of said remedy,
void.
Eng. 13 Eliz.
c. 10.

Leases, aliena-
tions, &c. of
glebes for more
than one year,
void.

Certificates
required by this
act shall be
first entered in
registry of the
diocese.
Exemplifica-
tion thereof
evidence where
original cannot
be had.

Church of
Kiltorke, in
Leitrim, shall
be built at the
parish charge
in Carrick-
Drumruske, on
land set apart
by Sir George
St. George, and
be the parish
church.

(without full consideration) of his personal estate, or any part thereof, with intent to defraud his successor of the remedy intended him by this act; that all such deeds, devises, conveyances, grants, leases, bequests, sales, and gifts, shall be null and void, and of none effect, against such successor or successors; any former act, law, matter or thing, to the contrary notwithstanding.

“VII. Provided nevertheless, and it is hereby further enacted by the authority aforesaid, that from and after the first day of January, one thousand six hundred ninety and eight, it shall not be lawful for any rector, vicar, curate, or incumbent, or other ecclesiastical person whatsoever, having a glebe fit and convenient to be built and improved upon for the habitation and residence of him and his successors, or whereon a manse house is already built, or shall hereafter be built, or which shall lie so near or contiguous to such house so built or to be built, as to be conveniently made use of for the same, to alien, set, let, or demise such glebe, or any part thereof, to any person or persons whatsoever, for any longer term or time than one year from the making thereof, in possession, and not in reversion; but that all alienations and leases, or contracts, or agreements for leases of such glebes, or any part thereof, for more than one year as aforesaid, shall be null and void to all intents and purposes whatsoever.

“VIII. Provided always, and be it further enacted by the authority aforesaid, that all and singular the certificate and certificates, by this act required to be made in the several cases before mentioned, shall be entered at large in the public registry of such diocese, to which the same relate, before any benefit or advantage to be made thereof; and that the exemplification of such certificate or certificates, so registered and entered as aforesaid, under the hand and seal of the archbishop or bishop of the said diocese, shall be as good and effectual in the law to all the intents and purposes of this act, to be produced at any trial at law or otherwise, as the original would have been, in case the said original shall at any time happen to be lost or mislaid, or so detained, that the party concerned cannot have the same to produce and make use of as aforesaid.

“IX. And whereas the ancient parish church of the parish of Kiltorke, in the barony of Leitrim, in the county of Leitrim, is situated in the most uninhabited part of the said parish, remote from any of the protestant inhabitants of the said parish: and whereas Carrick-Drumruske, in the said parish and barony, is an English corporation, and wholly inhabited by protestants, and is therefore convenient for the situation of the said parish church: be it therefore further enacted by the authority aforesaid, that the said parish church shall and may be built at the charges of the said parish, in the town of Carrick-Drumruske aforesaid, in some convenient place in the said town to be set apart for that purpose by Sir George St. George, of Hedford, baronet; and that the said church so to be built, and no other, shall, from the time of its being so built, be and be deemed to be the parish church of the said parish of Kiltorke to all intents and purposes; and the land, to be set apart for the said church and church-yard thereof, shall belong and appertain for ever to the said church, freed and discharged of and from all claims, demands, and estates of the said Sir George St. George, and of any person or persons whatsoever claiming or deriving from, by, or under him the said Sir George St. George, or under Sir Oliver St. George, late of Hedford, baronet, deceased.”

STAT. 10 & 11
GUL. 3, c. 15.

XLI. STAT. 10 & 11 GULIELMI 3, c. 15. A.D. 1699.

“*An Act for continuing the Act [Stat. 7 & 8 Gul. 3, c. 6] for the more easy Recovery of Small Tithes [for seven years].*”

STAT. 10 & 11
GUL. 3, c. 16.

XLII. STAT. 10 & 11 GULIELMI 3, c. 16. A.D. 1699.

“*An Act to enable posthumous Children to take Estates, as if born in their Fathers' Lifetime.*”

“Whereas it often happens, that by marriage and other settlements, estates are limited in remainder to the use of the sons and daughters, the issue of such mar-

riage, with remainders over, without limiting an estate to trustees to preserve the contingent remainders limited to such sons and daughters, by which means such sons and daughters, if they happen to be born after the decease of their father, are in danger to be defeated of their remainder by the next in remainder after them, and left unprovided for by such settlements, contrary to the intent of the parties that made those settlements; be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this parliament assembled, and by the authority of the same, that where any estate already is or shall hereafter, by any marriage or other settlement, be limited in remainder to, or to the use of the first or other son or sons of the body of any person lawfully begotten, with any remainder or remainders over to, or to the use of any other person or persons, or in remainder to, or to the use of a daughter or daughters lawfully begotten, with any remainder or remainders to any other person or persons, that any son or sons, or daughter or daughters of such person or persons lawfully begotten or to be begotten, that shall be born after the decease of his, her, or their father, shall and may, by virtue of such settlement, take such estate so limited to the first and other sons, or to the daughter or daughters, in the same manner as if born in the life-time of his, her, or their father, although there shall happen no estate to be limited to trustees, after the decease of the father, to preserve the contingent remainder to such afterborn son or sons, daughter or daughters, until he, she, or they come *in esse*, or are born, to take the same; any law or usage to the contrary in any wise notwithstanding.

"II. Provided always, that nothing in this act shall extend, or be construed to extend, to divest any estate in remainder, that by virtue of any marriage or other settlement, is already come to the possession of any person or persons, or to whom any right is accrued, though not in actual possession, by reason or means of any afterborn son or sons, or daughter or daughters, not happening to be born in the life-time of his, her, or their father."

STAT. 10 & 11
GUL. 3, c. 16.

18 Vin. 408.
Estates limited in remainder to the lawful issue of the body of any person, son or daughter, born after the decease of the father, may take such estate as if born in his life-time, &c. although there be no limitation to trustees, &c.

XLIII. STAT. 10 & 11 GULIELMI 3, c. 24. A.D. 1699.

"An Act for making Billingsgate a free Market for sale of Fish."

"XIV. Provided nevertheless, that nothing in this act contained shall be construed to prohibit the importation of anchovies, sturgeon, botargo, or cavear, nor selling of mackerel before or after divine service on Sundays."

STAT. 10 & 11
GUL. 3, c. 24.

XLIV. STAT. 11 & 12 GULIELMI 3, c. 4(1). A.D. 1700.

"An Act for the further preventing the Growth of Popery."

STAT. 11 & 12
GUL. 3, c. 4.

XLV. STAT. 11 & 12 GULIELMI 3, c. 16(2). A.D. 1700.

"An Act for the better ascertaining the Tithes of Hemp and Flax."

STAT. 11 & 12
GUL. 3, c. 16.

"Whereas an act made in the third year of the reign of his majesty and the late queen, intituled, 'An Act for the better ascertaining the Tithes of Hemp and Flax,' was made to continue but for seven years, and to the end of the next session of parliament after such term ended, and is now expired: and whereas the said act hath by experience been found very useful and necessary; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that from and after the five and twentieth day of March which shall be in the year of our Lord one thousand seven hundred, all and every person or persons who shall sow or cause to be sown any hemp or flax in any parish or place in the kingdom of England, dominion of Wales, and town of Berwick upon Tweed, shall pay or cause to be paid to every parson, vicar, or

27 Hen. 8,
c. 20.
3 G. & M.
c. 3.

Ground sown with flax or hemp to pay 5s. per acre.

(1) Obsolete. *Vide* Stat. 3 Geo. 1, c. 18. (2) *Vide* Stat. 6 Ann. c. 28. Stat. 1 Stat. 18 Geo. 3, c. 60. Stat. 43 Geo. 3, c. Geo. 1, St. II. c. 26. Stat. 6 & 7 Gul. 4, 30. c. 71.

STAT. 11 & 12
GUL. 3, c. 16. impropriator of any such parish or place, yearly and every year, the sum of five shillings and no more, for each acre of hemp and flax so sown, before the same be carried off the ground, and so proportionably for more or less ground so sown; for the recovery of which sum or sums of money, the parson, vicar, or impropriator, shall have the common and usual remedy allowed of by the laws of the land.

"II. Provided, that this act, or anything therein contained, shall not extend to charge any lands discharged by any *modus decimandi*, ancient composition, or otherwise discharged of tithes by law.

Not to alter
payment of
tithes for
ground sown
with hemp or
flax between
2nd February,
1684, and
2nd February,
1691.

"III. Provided always, that nothing herein contained shall extend, or be construed to extend, to make any alteration in the right or manner of payment of tithes of flax and hemp to any ecclesiastical person, incumbent of any parsonage, vicarage, or curacy, or to any impropriator or body corporate, having or holding any impropriation, for such ground as hath at any time since the second day of February, one thousand six hundred eighty-four, and before the second day of February, one thousand six hundred ninety-one, been sown with flax or hemp, and paid tithe in kind to such incumbent, impropriator, or body corporate respectively, but that the same shall continue and be payable and paid, as fully and in such manner as formerly; anything in this act to the contrary notwithstanding.

Act to continue
seven years.

"IV. Provided, that this law shall continue in force for seven years, to be accounted from the said five and twentieth day of March, and from thence to the end of the next sessions of parliament, and no longer."

STAT. 11 & 12
GUL. 3, c. 21.

XLVI. STAT. 11 & 12 GULIELMI 3, c. 21. A.D. 1700.

"An Act for the Explanation and better Execution of former Acts made touching Watermen and Wherry-men rowing on the River of Thames, and for the better ordering and governing the said Watermen, Wherry-men, and Lightermen, upon the said River between Gravesend and Windsor."

"XIII. And whereas great numbers of idle and loose watermen and boys do work on the Lord's day, commonly called Sunday, and exact large prices from passengers, whose necessary occasions oblige them to pass and repass the river of Thames, and generally spend such their gains in drunkenness and profaneness the succeeding week; for the prevention whereof,"

[The rulers may appoint forty watermen to work on Sundays between Vauxhall and Limehouse, for carrying passengers across the river at 1*d.* each: watermen so appointed shall pay the money received every Monday morning to the rulers, and be only allowed for their labour: and the overplus shall be applied to the use of the poor, aged, decayed, and maimed watermen and lightermen and their widows.]

STAT. 12 & 13
GUL. 3, c. 2.

XLVII. STAT. 12 & 13 GULIELMI 3, c. 2(1). A.D. 1700.

"An Act for the further Limitation of the Crown (2), and better securing the Rights and Liberties of the Subject."

1 G. & M.
Sess. 2, c. 2.

"Whereas in the first year of the reign of your majesty, and of our late most gracious sovereign lady Queen Mary, (of blessed memory,) an act of parliament

(1) The Bill of Rights having omitted some important matters, and new abuses having called for new remedies, caused the enactment of Stat. 12 & 13 Gul. 3, c. 2. *Vide etiam* Stat. 13 Gul. 3, c. 6. Stat. 5 Ann. c. 8. Stat. 1 Geo. 1, St. II. c. 13. Stat. 8 Geo. 1, c. 6. Stat. 3 & 4 Vict. c. 52, s. 5.

(2) *Limitation of the Crown*:—The settlement of the crown at the Revolution, extended only to the descendants of William

and Anne. Upon the death of the Duke of Gloucester in 1700, it was determined, in order to destroy the hopes of the Jacobites, to make a new settlement of the crown on a *Protestant line of Princes*.

By the Act of Settlement, (Stat. 1 G. & M. Sess. 2, c. 2, *antè* 642,) that is, by the sovereign will of parliament, all prior claims of inheritance to the throne of these realms, save that of the issue of King William and the Princess Anne, were annulled, and given

was made, intituled, 'An Act for declaring the Rights and Liberties of the Subject, and for settling the Succession of the Crown,' wherein it was (amongst other things) enacted, established, and declared, that the crown and regal government of the kingdoms of England, France, and Ireland, and the dominions thereunto belonging, should be and continue to your majesty and the said late queen, during the joint lives of your majesty and the said queen, and to the survivor: and that after the decease of your majesty and of the said queen, the said crown and regal government should be and remain to the heirs of the body of the said late queen: and for default of such issue, to her royal highness the Princess Anne of Denmark, and the heirs of her body: and for default of such issue, to the heirs of the body of your majesty. And it was thereby further enacted, that all and every person and persons that then were, or afterwards should be reconciled to, or should hold communion with the see or church of Rome, or should profess the popish religion, or marry a papist, should be excluded, and are by that act made for ever incapable to inherit, possess, or enjoy the crown and government of this realm and Ireland, and the dominions thereunto belonging, or any part of the same, or to have, use, or exercise any regal power, authority, or jurisdiction within the same: and in all and every such case and cases the people of these realms shall be and are thereby absolved of their allegiance: and that the said crown and government shall from time to time descend to and be enjoyed by such person or persons, being protestants, as should have inherited and enjoyed the same, in case the said person or persons, so reconciled, holding communion, professing, or marrying as aforesaid, were naturally dead. After the making of which statute, and the settlement therein contained, your majesty's good subjects, who were restored to the full and free possession and enjoyment of their religion, rights, and liberties, by the providence of God giving success to your majesty's just undertakings and unwearied endeavours for that purpose, had no greater temporal felicity to hope or wish for, than to see a royal progeny descending from your majesty, to whom (under God) they owe their tranquillity, and whose ancestors have for many years been principal asserters of the reformed religion and the liberties of Europe, and from our said most gracious sovereign lady, whose memory will always be precious to the subjects of these realms: and it having since pleased Almighty God to take away our said sovereign lady, and also the most hopeful Prince William duke of Gloucester (the only surviving issue of her royal highness the Princess Anne of Denmark) to the unspeakable grief and sorrow of your majesty and your said good subjects, who under such losses being sensibly put in mind, that it standeth wholly in the pleasure of Almighty God to prolong the lives of your majesty and of her royal highness, and to grant to your majesty, or to her royal highness, such issue as may be inheritable to the crown and regal government aforesaid, by the respective limitations in the said recited act contained, do constantly implore the Divine mercy for those blessings: and your majesty's said subjects having daily experience of your royal care and concern for the present and future welfare of these kingdoms, and particularly recommending from your throne a further provision to be made for the succession of the crown in the protestant line, for the happiness of the nation, and the security of our religion; and it being absolutely necessary for the safety, peace, and quiet of this realm, to obviate all doubts and contentions in the same, by reason of any pretended title to the crown, and to maintain a certainty in the succession thereof, to which your subjects may safely have recourse for their protection, in case the limitations in the said recited act should deter-

STAT. 12 & 13
GUL. 3, c. 2.

to the Princess Sophia, and the heirs of her body being *protestants*; thus destroying all notions of hereditary or imprescriptible right to the British crown, and making the people's choice the primary foundation of magistracy; in fact, the common and the statute law are the sources from which alone the British sovereign derives her rights; they are the only sources from which the people derive their rights; and when James the

Second violated the fundamental laws of the Constitution, executed an avowed system of tyranny, and established slavery as a political, a moral, and a religious obligation, there cannot be a doubt, but that the people were entitled to resist his encroachments, and to adopt such precautions as were requisite for the preservation of their liberties. 1 De Lolme on the English Constitution by Stephens, 468-479.

STAT. 12 & 13
GUL. 3, c. 2.

Princess
Sophia de-
clared next
successor to
the crown,

after the king
and Princess
Anne of Den-
mark and their
issue, &c.

and to the
heirs of her
body, being
protestants.

Papists, &c.
incapacitated
from inheriting
the crown.

King and queen
to take the
coronation
oath, 1 G. &
M. Sess. 1, c. 6,

and subscribe
the declaration.

Conditions for
securing the
religion, laws,
&c. in default
of issue of the
Princess Anne
and the king.

mine: therefore, for a further provision of the succession of the crown in the protestant line, we your majesty's most dutiful and loyal subjects, the lords spiritual and temporal, and commons, in this present parliament assembled, do beseech your majesty, that it may be enacted and declared, and be it enacted and declared by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that the most excellent Princess Sophia, electress and duchess dowager of Hanover, daughter of the most excellent Princess Elizabeth, late queen of Bohemia, daughter of our late sovereign lord King James the First, of happy memory, be and is hereby declared to be the next in succession, in the protestant line, to the imperial crown and dignity of the said realms of England, France, and Ireland, with the dominions and territories thereunto belonging, after his majesty, and the Princess Anne of Denmark, and for default of issue of the said Princess Anne, and of his majesty respectively: and that from and after the deceases of his said majesty, our now sovereign lord, and of her royal highness the Princess Anne of Denmark, and for default of issue of the said Princess Anne, and of his majesty respectively, the crown and regal government of the said kingdoms of England, France, and Ireland, and of the dominions thereunto belonging, with the royal state and dignity of the said realms, and all honours, styles, titles, regalities, prerogatives, powers, jurisdictions and authorities, to the same belonging and appertaining, shall be, remain, and continue to the said most excellent Princess Sophia, and the heirs of her body, being protestants; and thereunto the said lords spiritual and temporal, and commons, shall and will, in the name of all the people of this realm, most humbly and faithfully submit themselves, their heirs and posterities; and do faithfully promise, that after the deceases of his majesty, and her royal highness, and the failure of the heirs of their respective bodies, to stand to, maintain, and defend the said Princess Sophia, and the heirs of her body, being protestants, according to the limitation and succession of the crown in this act specified and contained, to the utmost of their powers, with their lives and estates, against all persons whatsoever that shall attempt anything to the contrary.

"II. Provided always, and it is hereby enacted, that all and every person and persons, who shall or may take or inherit the said crown, by virtue of the limitation of this present act, and is, are, or shall be reconciled to, or shall hold communion with, the see or church of Rome, or shall profess the popish religion, or shall marry a papist, shall be subject to such incapacities, as in such case or cases are by the said recited act provided, enacted, and established; and that every king and queen of this realm, who shall come to and succeed in the imperial crown of this kingdom, by virtue of this act, shall have the coronation oath administered to him, her, or them, at their respective coronations, according to the act of parliament made in the first year of the reign of his majesty, and the said late Queen Mary, intituled, 'An Act for establishing the Coronation Oath,' and shall make, subscribe, and repeat the declaration in the act first above recited, mentioned, or referred to, in the manner and form thereby prescribed.

"III. And whereas it is requisite and necessary that some further provision be made for securing our religion, laws, and liberties, from and after the death of his majesty and the Princess Anne of Denmark, and in default of issue of the body of the said princess, and of his majesty respectively; be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in parliament assembled, and by the authority of the same,

"That whosoever shall hereafter come to the possession of this crown, shall join in communion with the church of England, as by law established.

"That in case the crown and imperial dignity of this realm shall hereafter come to any person, not being a native of this kingdom of England, this nation be not obliged to engage in any war for the defence of any dominions or territories which do not belong to the crown of England, without the consent of parliament.

"That no person who shall hereafter come to the possession of this crown, shall go out of the dominions of England, Scotland, or Ireland, without consent of parliament. STAT. 12 & 13 GUL. 3, c. 2.

"That from and after the time that the further limitation by this act shall take effect, all matters and things relating to the well-governing of this kingdom, which are properly cognizable in the privy council by the laws and customs of this realm, shall be transacted there, and all resolutions taken thereupon shall be signed by such of the privy council as shall advise and consent to the same. Repealed by 1 Geo. 1, St. II. c. 51. Repealed by 4 Ann. c. 8, s. 24.

"That after the said limitation shall take effect as aforesaid, no person born out of the kingdoms of England, Scotland, or Ireland, or the dominions thereunto belonging, (although he be naturalized or made a denizen, except such as are born of English parents,) shall be capable to be of the privy council, or a member of either house of parliament, or to enjoy any office or place of trust, either civil or military, or to have any grant of lands, tenements, or hereditaments from the crown, to himself or to any other or others in trust for him. This clause extends not to persons naturalized at or before the accession of King George 1 to the crown.

"That no person who has an office or place of profit under the king, or receives a pension from the crown, shall be capable of serving as a member of the House of Commons. Repealed by 4 Ann. c. 8, s. 25. 6 Ann. c. 7. 1 Geo. 1, c. 56.

"That after the said limitation shall take effect as aforesaid, judges' commissions be made *quamdiu se bene gesserint*, and their salaries ascertained and established; but upon the address of both houses of parliament it may be lawful to remove them.

"That no pardon under the great seal of England be pleadable to an impeachment by the commons in parliament.

"And whereas the laws of England are the birthright of the people thereof, and all the kings and queens, who shall ascend the throne of this realm, ought to administer the government of the same according to the said laws, and all their officers and ministers ought to serve them respectively according to the same. The said lords spiritual and temporal, and commons, do therefore further humbly pray, that all the laws and statutes of this realm, for securing the *established religion* (1), and the rights and liberties of the people thereof, and all other laws and statutes of the same now in force, may be ratified and confirmed, and the same are by his majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, and by authority of the same, ratified and confirmed accordingly." All laws for securing the established religion, &c. confirmed. See farther, 13 Gul. 3, c. 6.

(1) *Established religion*.—The church of England became, at the Revolution, an authorized and paid establishment, supported by government, but rendered incapable of persecution; and its duties are to guard the spiritual concerns of the nation, by making us know our relative duties to God and our neighbour; in fact, the union of the church and state was not intended to make the church political, but the state religious.

The only difference in the "English catholic church," as it existed previous to the dynasty of the Tudors, and as it stood at the termination of the reign of William the Third, was, that certain ecclesiastical abuses had arisen, which were corrected by parliament and the clerical synods in convocation; but the identity of the "English catholic church" was never destroyed.

That sect which is now commonly called "Roman catholics," are nothing but a mere body of dissenters from the "English catholic church," and have never, *constitutionally* speaking, been arbitrarily deprived of a vested right. However numerous and respectable, they did and could dissent only in their individual and private, and not in any

corporate or collective capacity, from the authoritative regulations and changes made by the legally-constituted powers, to whom alone belonged the right to decide on matters of doctrine and practice.

The church of Rome at the present day, cannot be identified with the church of England previous to the Reformation; the Roman catholic bishops in England and Scotland, are bishops of foreign sees, and neither they, nor those who have been schismatically consecrated for the sees in Ireland, which at the time were canonically filled, can trace any descent from the bishops of the ancient churches in these kingdoms: the now bishops of the church of England, being the only representatives by *episcopal succession* of the ancient Celtic and Anglo-Saxon churches; and the strongest illustration of this position is, that the votaries of the Roman catholic religion are distinguished by the adoption of a new creed, which the "English catholic church," at no one period of her existence, ever recognised. 1 De Lolme on the English Constitution by Stephens, 310.

STAT. 13 GUL.
3. c. 6.

XLVIII. STAT. 13 GULIELMI 3, c. 6(1). A.D. 1701.

"An Act for the further Security of His Majesty's Person, and the Succession of the Crown in the Protestant Line, and for extinguishing the Hopes of the pretended Prince of Wales, and all other Pretenders, and their open and secret Abettors."

(1) *Vide* Stat. 1 Geo. 1, St. II. c. 13.

This statute, after reciting Stat. 1 G. & M. Sess. 2, c. 2 (*antè* 642), and Stat. 12 & 13 Gul. 3, c. 2 (*antè* 674), proceeds: "On which said acts the safety of your majesty's royal person and government, the continuance of the monarchy of England, the pre-

servation of the protestant religion, the maintenance of the church of England as by law established, the security of the ancient and undoubted rights and liberties, and the future peace and tranquillity of this kingdom, do, under God, entirely depend."

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I. STAT. 1 ANNÆ, ST. I. c. 22 (1). A.D. 1701.

STAT. 1 ANN.
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"An Act to declare the Alterations in the Oath appointed to be taken by the Act, intituled, 'An Act for the further Security of His Majesty's Person, and the Succession of the Crown in the Protestant Line, and for extinguishing the Hopes of the pretended Prince of Wales, and all other Pretenders, and their open and secret Abettors,' and for declaring the Association to be determined."

II. STAT. 1 ANNÆ, ST. I. c. 30. A.D. 1701.

STAT. 1 ANN.
ST. I. c. 30.

"An Act to oblige the Jews to maintain and provide for their Protestant Children."

"To the end that sufficient maintenance be provided and allowed for the children of Jewish parents, who shall turn protestants; be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the twenty-fourth day of June, one thousand seven hundred and two, if any Jewish *parent* (2), in order to the compelling of his or her protestant child to change his or her religion, shall refuse to

(1) *Vide* Stat. 1 Geo. 1, St. II. c. 13.

(2) *Parent*:—In *Vincent v. Fernandez*, (1 P. Wms. 525,) it appeared, that the Jewish parent was dead, and had given his personal estate from his daughter to his executor, and the daughter, who petitioned

upon this statute, was married, and forty-four years old: upon such facts, Lord Chancellor *Parker* observed, "I strongly incline to think this case within the act." "Suppose the child of a Jew turns protestant, and the Jew, the parent, by will gives his estate

STAT. 1 ANN.
ST. I. c. 30.

allow such child a fitting maintenance, suitable to the degree and ability of such parent, and to the age and education of such child, then (upon complaint thereof made to the lord high chancellor of England, or lord keeper of the great seal, or commissioners for the great seal for the time being) it shall and may be lawful for the said lord chancellor, lord keeper, or commissioners, to make such order therein, for the maintenance of such protestant child, as he or they shall think fit."

STAT. 1 ANN.
ST. I. c. 31.

III. STAT. 1 ANNÆ, ST. I. c. 31. A.D. 1701.

"An Act for making more effectual the Provision out of the forfeited Estates in Ireland, for the building of Churches, and augmenting small Vicarages in Ireland."

11 & 12 Gul.
3, c. 2.

"Whereas by an act lately made, intituled, 'An Act for granting an Aid to His Majesty by Sale of the forfeited and other Estates and Interests in Ireland, and by a Land Tax in England, for the several Purposes therein mentioned,' it is enacted, that the trustees therein named, or any seven or more of them, should and might, and they are thereby required, after such a time, and in such a manner as is therein mentioned, to convey all and every the rectories impropriate, with the tithes, oblations, obventions, glebes, advowsons of vicarages, and other things thereunto severally and respectively belonging or appertaining, forfeited by reason of the rebellion therein mentioned, and therein before vested in the said trustees, to such person or persons, and their heirs, as the bishop of each respective diocese, wherein such rectories impropriate respectively are, shall nominate, in trust for the rebuilding or repairing parish churches, and for the perpetual augmentation of small rectories or vicarages in the kingdom of Ireland, in such manner as is therein mentioned: and whereas several such rectories impropriate, tithes, oblations, obventions, glebes, advowsons of vicarages, and other things thereunto severally and respectively belonging or appertaining, have been jointly charged or incumbered, or liable to the payment of some debts, charges, or incumbrances, together with other lands, tenements, or hereditaments, by the said act vested in the said trustees: wherefore for the making the before-mentioned trust more effectual and beneficial for the pious ends and purposes aforesaid, be it enacted . . . that where any such rectories impropriate, tithes, advowsons, or other things, so vested in the said trustees, and directed to be conveyed in trust as aforesaid, are charged with, or liable unto any debts, charges, or incumbrances jointly with any other lands, tenements, or hereditaments, by the said act vested in the said trustees, such other lands, tenements, or hereditaments, in the first place be liable to, and shall answer and satisfy such debts, charges, and incumbrances; and the said trustees, or any seven of them, are hereby authorized and required, to make sale of such other lands, tenements, or hereditaments, or of a competent part thereof, for or towards the paying off, clearing, and discharging such debts, charges, and incumbrances: and as soon as conveniently may be, from and after such sale, and the clearing and discharging such debts and incumbrances, such rectories impropriate, tithes, advowsons, and other things, so vested in the said trustees, and directed to be conveyed in trust as aforesaid, as are, together with such other lands, tenements, or hereditaments, jointly charged or incumbered, shall be conveyed, and the said trustees, or any seven of them, are hereby authorized and required to convey the same, to such person and persons, and in such manner, and to such uses, intents, and purposes, as in the said recited act is directed and appointed, freed and discharged of and from all such debts, charges, and incumbrances, be the same by matter of record, mortgage, or otherwise."

Where any rectories impropriate, forfeited by the late rebellion, are charged with incumbrances jointly with other lands, &c. such lands first liable to answer the debts, &c.
See farther,
5 Ann. c. 25.

to trustees, upon a secret trust, that if the child turn Jew, the child shall have the estate, and not otherwise: as this would be clearly within the mischief, so every one must wish it to be within the meaning of the act." "Then as to the refusal of the parent, it is not to be intended that the parent, the Jew, must make an actual refusal in

words, for by that construction the statute might easily be evaded, and rendered useless. If the Jewish father does by will dispose of all his estate from his child, this is in law a refusal; and unless some other reason be made appear, it shall be intended because the child was a protestant."

IV. STAT. 1 ANNÆ, ST. I. c. 32. A.D. 1701.

STAT. 1 ANN.
ST. I. c. 32.

"An Act for the Relief of the Protestant Purchasers of the forfeited Estates in Ireland."

V. STAT. 1 ANNÆ, ST. II. c. 1 (1). A.D. 1702.

STAT. 1 ANN.
ST. II. c. 1.

"An Act for granting to Her Majesty a Land Tax, for carrying on the War against France and Spain."

[Residentiaries of cathedral churches not to be taxed for their dividends.]

VI. STAT. 1 ANNÆ, ST. II. c. 12. A.D. 1702.

STAT. 1 ANN.
ST. II. c. 12.

"An Act for finishing and adorning the Cathedral Church of St. Paul's, London."

VII. STAT. 1 ANNÆ, ST. II. c. 17. A.D. 1702.

STAT. 1 ANN.
ST. II. c. 17.

"An Act for enlarging the Time for taking the Oath of Abjuration, and also for recapitulating and indemnifying such Persons as have not taken the same by the time limited, and shall take the same by a time to be appointed; and for the further Security of Her Majesty's Person, and the Succession of the Crown in the Protestant Line; and for extinguishing the Hopes of the pretended Prince of Wales, and all other Pretenders, and their open and secret Abettors."

VIII. STAT. 2 ANNÆ, c. 3 (2). [IRELAND.] A.D. 1703.

STAT. 2 ANN.
c. 3. [Ir.]

"An Act to prevent Popish Priests from coming into this Kingdom."

IX. STAT. 2 ANNÆ, c. 6 (3). [IRELAND.] A.D. 1703.

STAT. 2 ANN.
c. 6. [Ir.]

"An Act to prevent the further Growth of Popery."

X. STAT. 2 ANNÆ, c. 7 (4). [IRELAND.] A.D. 1703.

STAT. 2 ANN.
c. 7. [Ir.]

"An Act for registering the Popish Clergy."

XI. STAT. 2 ANNÆ, c. 9 (5). [IRELAND.] A.D. 1703.

STAT. 2 ANN.
c. 9. [Ir.]

"An Act for quieting Ecclesiastical Persons in their Possessions."

XII. STAT. 2 ANNÆ, c. 10 (6). [IRELAND.] A.D. 1703.

STAT. 2 ANN.
c. 10. [Ir.]

"An Act for the Exchange of Glebes belonging to Churches in this Kingdom."

"Whereas several glebes in this kingdom lie at a great distance from the churches to which they belong, and some in other parishes, whereby the residence of the incumbents on the said glebes is become either impracticable or less useful than is fitting: for remedy whereof, be it enacted by the queen's most excellent majesty, and by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by authority of the

8 Geo. 1, cc. 11
& 12.

10 Geo. 1, c. 4.

1 Geo. 2, c. 15.

5 Geo. 2, c. 6.

23 Geo. 2, c. 8.

29 Geo. 2, c. 8.

(1) Expired.

(2) Obsolete.

(3) Vide Stat. 1 Gul. 4, c. 26, s. 2.

(4) Obsolete.

(5) Expired.

(6) Vide Stat. 8 Geo. 1, c. 11. (I.) Stat.

8 Geo. 1, c. 12. (I.) Stat. 12 Geo. 1, c. 10.

(I.) Stat. 1 Geo. 2, c. 15. (I.) Stat. 3 Geo.

2, c. 12. (I.) Stat. 9 Geo. 2, c. 13. (I.)

Stat. 17 Geo. 2, c. 8. (I.) Stat. 31 Geo. 2,

c. 11. (I.) Stat. 7 Geo. 3, c. 9. (I.) Stat.

7 Geo. 3, c. 17. (I.) Stat. 11 & 12 Geo. 3,

c. 17. (I.) Stat. 13 & 14 Geo. 3, c. 27. (I.)

Stat. 15 & 16 Geo. 3, c. 17. (I.) Stat. 23 &

24 Geo. 3, c. 49. (I.) Stat. 25 Geo. 3, c. 21.

(I.) Stat. 29 Geo. 3, c. 27. (I.) Stat. 31

Geo. 3, c. 19. (I.) Stat. 40 Geo. 3, c. 82.

(I.) Stat. 54 Geo. 3, c. 117. Stat. 6 Geo.

4, c. 8. Stat. 7 Geo. 4, c. 66. Stat. 7 & 8

Geo. 4, c. 43. Stat. 10 Geo. 4, c. 58. Stat.

2 & 3 Gul. 4, c. 67.

STAT. 2 ANN.
c. 10. [Ir.]

31 Geo. 2, c. 11.

Rectors, &c.
may by deed
exchange
glebes, or part,
at a distance,
for lands of
equal value
contiguous.

8 Geo. 1, c. 11.

Bishops, &c.
may exchange,
5 Geo. 2, c. 6,
though not so near the church, 31 Geo. 2, c. 11, at any distance, with approbation of bishop or patron.

Sheriff, at re-
quest of bishop,
&c. to call a
jury to inquire
of value and
quantity of the
lands, and
conveniency of
exchange;
3 Geo. 2, c. 12;
and return to
bishop.

Said return
and deeds of
exchange
recorded in
Exchequer.
Sheriff's fees
10s.

Remem-
brancer's,
6s. 8d.

The lands
exchanged
enjoyed as
glebe for ever.
The old glebe
to such uses as
the other land
formerly
limited.

Bishop, dig-
nitary, or
prebendary,
having land of
the see, &c.
convenient for
a glebe for a
church not
endowed with
twenty acres,
may, with con-
sent of dean
and chapter,
grant not above
twenty acres to
rector, &c. at a
moiety of the
present rent,
or above.
Said rent
payable by four

This act to
continue

same, that it shall and may be lawful to and for the several rectors, vicars, and other persons, having any cure of souls in this kingdom, by deed or deeds to exchange such glebes as lie at a distance from the parish church, or any part of such glebes, with any archbishop, bishop, or other person, for lands of equal value, worth, and purchase, lying near and convenient to the said church; provided the bishop of the diocese, with his dean and chapter, under his and their common seals, and the patron of such church, or his lawful attorney, where the patronage is in any other than the bishop, under his hand and seal to such deed or deeds of exchange, approve thereof; and where the patronage is in the crown, the chief governor or governors of the kingdom for the time being shall be and are hereby empowered to give consent to such deed or deeds of exchange in writing under his or their hands and seals.

though not so near the church, 31 Geo. 2, c. 11, at any distance, with approbation of bishop or patron.

"II. And to avoid all fraud, covin, or mistake, in such exchange; be it enacted by the authority aforesaid, that before the sealing and perfecting such deeds of exchange, the sheriff of the county, where both or either of the lands to be exchanged as aforesaid shall be, at the request of the bishop, patron, and parties concerned, may call a jury of twelve good and indifferent freeholders, whereof notice shall be given at some preceding county court, and likewise of the time and place where and when the said jury is to meet; and the said jury shall inquire of the true value and quantity of the lands and conveniency of the exchange of the said lands to be so exchanged, by the oaths of good, knowing, and substantial witnesses; and the said value and conveniency so found, together with the mears and bounds thereof, shall return to the bishop, where both or either of the said lands so to be exchanged are; who shall procure the said return and deeds of exchange to be recorded in the court of Exchequer, in the first remembrancer's office, for which inquest the sheriff shall receive by way of fees ten shillings; and the said remembrancer shall put the same on record, and for the recording the same, and the said deeds, shall receive six shillings and eight pence, and no more.

"III. And be it enacted, that the said lands so given in exchange for such glebes, or any part thereof so exchanged, shall be held and enjoyed by such rectors or vicars, and their successors for ever, as glebe, notwithstanding the same did formerly belong to any archbishop, bishop, tenant for life, or entail, with the consent of the person immediately next in remainder; in all which cases such old glebe, or the part of the said glebe so given in exchange, shall remain and be to such uses as the land given for the same was formerly limited.

"IV. And be it further enacted, that it shall and may be lawful to and for every archbishop and bishop, dean, dignitary, or prebendary, having land belonging to their bishoprics, deanery, dignity, or prebend, near any church, and convenient for a glebe for the said church, not already endowed with twenty acres of glebe, by and with the advice and consent of his respective dean and chapter, to grant any quantity thereof, not exceeding twenty acres, plantation measure, to the rector or vicar, or other ecclesiastical person having the actual cure of souls, and their successors, at the moiety of the present yearly rent per annum, or for any greater sum; which rent shall be paid by such rectors or vicars, and other ecclesiastical persons having the actual cure of souls, and their successors, to the said bishop, dean, dignitary, or prebendary, and their respective successors for ever, by four equal portions, (that is to say,) at the feast of the Annunciation of the blessed Virgin Mary, the feast of St. John Baptist, the feast of St. Michael the Archangel, and of the Nativity of our blessed Lord and Saviour; and in case of non-payment that it shall be lawful for the said bishop, dean, dignitary, or prebendary, his or their successors, to distrain or sue for the same, and all arrears thereof.

portions. Liberty to distrain or sue. Said twenty acres taken as glebe.

"V. And be it enacted, that the said twenty acres, or lesser quantity of land so granted as aforesaid, shall be reputed and taken as the glebe of the parish, to

whose incumbent and successors it is granted; this act to be in force for one and twenty years, and no longer." STAT. 2 ANN. c. 10. [Ir.]

twenty-one years. Further, by 10 Geo. 1, c. 4; 5 Geo. 2, c. 6; 23 Geo. 2, c. 8; 29 Geo. 2, c. 8; 17 & 18 Geo. 3, c. 36, s. 1, for twenty-one years, &c.

XIII. STAT. 2 ANNÆ, c. 11. [IRELAND.] A.D. 1703.

STAT. 2 ANN. c. 11. [Ir.]

"An Act for building several Parish Churches in more convenient Places."

[Churches of Fanlobbus, Kimacomoge, Drumaul, Finvoy, Kilead, to be rebuilt: Churches of Kilcommon, Robeen, and Tokeen, to be united by name of Kilcommon or Hollymoath: Churches of Aglish, Ilanedin, and Drumrany, intermixed with Breaghwy and Turlough in Tuam, to be united by name of Aglish or Castlebar: Churches of Ballywater, Ballyhabbert, and Inishargy, in Down, to be united: Church to be built in Inishargy: Abbey of Arklow may be converted into a parish church.]

XIV. STAT. 2 & 3 ANNÆ, c. 4(1). A.D. 1703.

STAT. 2 & 3 ANN. c. 4.

"An Act for the public registering of all Deeds, Conveyances, and Wills, that shall be made of any Honours, Manors, Lands, Tenements, or Hereditaments, within the West Riding of the County of York, after the Nine and twentieth Day of September, One thousand seven hundred and four."

XV. STAT. 2 & 3 ANNÆ, c. 5. A.D. 1703.

STAT. 2 & 3 ANN. c. 5.

"An Act to repeal a Proviso in an Act of the fourth Year of King William and Queen Mary, which prevents the Citizens of the City of York from disposing of their Personal Estates by their Wills, as others inhabiting within the Province of York by that Act may do."

XVI. STAT. 2 & 3 ANNÆ, c. 11(2). A.D. 1703.

STAT. 2 & 3 ANN. c. 11.

"An Act for the making more effectual Her Majesty's gracious Intentions for the Augmentation of the Maintenance of the poor Clergy, by enabling Her Majesty to grant in perpetuity the Revenues of the First-fruits and Tenths; and also for enabling any other Persons to make Grants for the same Purpose."

"Whereas at a parliament holden in the six and twentieth year of the reign of King Henry the Eighth, the first-fruits, revenues, and profits for one year, upon every nomination or appointment to any dignity, benefice, office, or promotion spiritual, within this realm, or elsewhere within the said king's dominions, and also a perpetual yearly rent or pension, amounting to the value of the tenth part of all the revenues and profits belonging to any dignity, benefice, or promotion spiritual whatsoever, within any diocese of this realm, or in Wales, were granted to the said King Henry the Eighth, his heirs and successors; and divers other statutes have since been made touching the first-fruits and annual tenths of the clergy, and the ordering thereof: and whereas a sufficient settled provision for the clergy, in many parts of this realm, hath never yet been made, by reason whereof divers mean and stipendiary preachers are in many places entertained to serve the cures, and officiate there, who depending for their necessary maintenance upon the good will and liking of their hearers, have been, and are thereby under temptation of too much complying and suiting their doctrines and teaching to the humours rather than the good of their hearers, which hath been a great occasion of faction and schism, and contempt of the ministry: and forasmuch as your majesty, taking into your princely and serious consideration the mean and insufficient maintenance belonging to the clergy in divers parts of this your kingdom, hath been most graciously pleased, out of your most religious and tender concern for the church of 26 Hen. 8, c. 3.

(1) Vide Stat. 5 Ann. c. 18.

10. Stat. 43 Geo. 3, c. 107. Stat. 7 Geo.

(2) Vide Stat. 5 Ann. c. 24. Stat. 1 4, c. 66. Stat. 1 & 2 Vict. c. 20. Geo. 1, St. 11. c. 10. Stat. 3 Geo. 1, c.

STAT. 2 & 3
ANN. C. 11.

England (whereof your majesty is the only supreme head on earth) and for the poor clergy thereof, not only to remit the arrears of your tenths due from your poor clergy, but also to declare unto your most dutiful and loyal commons your royal pleasure and pious desire, that the whole revenue arising from the first-fruits and tenths of the clergy might be settled for a perpetual augmentation of the maintenance of the said clergy, in places where the same is not already sufficiently provided for: we your majesty's most dutiful and loyal subjects, the commons of England, in parliament assembled, to the end that your majesty's most gracious intentions may be made effectual, and that the church may receive so great and lasting an advantage from your majesty's parting with so great a branch of your revenue, towards the better provision for the clergy not sufficiently provided for; and to the intent your majesty's singular zeal for the support of the clergy, and the honour, interest, and future security of the church, as by law established, may be perpetuated to all ages, do most humbly beseech your majesty that it may be enacted; and be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that it shall and may be lawful for the queen's most excellent majesty, by her letters patents under the great seal of England, to incorporate such persons as her majesty shall therein nominate or appoint, to be one body politic and corporate, to have a common seal, and perpetual succession; and also at her majesty's will and pleasure, by the same, or any other letters patents, to grant, limit, or settle, to or upon the said corporation, and their successors for ever, all the revenue of first-fruits, and yearly perpetual tenths of all dignities, offices, benefices, and promotions spiritual whatsoever, to be applied and disposed of, to and for the augmentation of the maintenance of such parsons, vicars, curates, and ministers, officiating in any church or chapel within the kingdom of England, dominion of Wales, and town of Berwick upon Tweed, where the liturgy and rites of the church of England, as now by law established, are or shall be used and observed, with such lawful powers, authorities, directions, limitations, and appointments, and under such rules and restrictions, and in such manner and form, as shall be therein expressed; the statute made in the first year of her said majesty's reign, intituled, 'An Act for the better Support of Her Majesty's Household, and of the Honour and Dignity of the Crown,' or any other law to the contrary in any wise notwithstanding.

The queen may erect a corporation, and settle on them and their successors, their first-fruits and tenths, for augmentation of the maintenance of the meaner clergy. By 3 Geo. 1, c. 10, a collector is to be appointed. 1 Ann. St. I. c. 7.

All statutes, &c. relating to first-fruits and tenths to continue in force.

"II. Provided always, and it is hereby declared, that all and every the statutes and provisions, touching or concerning the ordering, levying, and true answering and payment, or qualification of the said first-fruits and tenths, or touching the charge, discharge, or alteration of them, or any of them, or any matter or thing relating thereunto, which were in force at the time of making this act, shall be, remain, and continue in their full force and effect, and be observed and put in due execution according to the tenours and purports of the same, and every of them, for such intents and purposes nevertheless, as shall be contained or directed in or by the said letters patents.

Act not to avoid any grant, &c. heretofore made of any the said revenues.

"III. Provided also, that this act, or anything therein contained, shall not extend to avoid, or any way to impeach or affect any grant, exchange, alienation, or incumbrance, at any time heretofore made, of or upon the said revenues of first-fruits and tenths, or any part thereof; but that the same shall, during the continuance of such grant, exchange, alienation, or incumbrance respectively, be and remain of and in such force and virtue, and no other, to all intents and purposes, as if this act had not been made.

"IV. And for the encouragement of such well-disposed persons as shall, by her majesty's royal example, be moved to contribute to so pious and charitable a purpose, and that such their charity may be rightly applied; be it enacted by the authority aforesaid, that all and every person and persons, having in his or their own right any estate or interest in possession, reversion, or contingency, of or in any lands, tenements, or hereditaments, or any property of or in any goods or chattels, shall have full power, licence, and authority, at his, her, and their will and pleasure, by deed inrolled, in such manner, and within such time, as is directed

by the statute made in the twenty-seventh year of the reign of King Henry the Eighth, for inrolment of bargains and sales, or by his, her, or their last will or testament in writing, duly executed according to law, to give and grant to, and vest in the said corporation, and their successors, all such his, her, or their estate, interest, or property in such lands, tenements, and hereditaments, goods and chattels, or any part or parts thereof, for and towards the augmentation of the maintenance of such ministers as aforesaid, officiating in such church or chapel, where the liturgy and rites of the said church are or shall be so used or observed as aforesaid, and having no settled competent provision belonging to the same, and to be for that purpose applied according to the will of the said benefactor, in and by such deed inrolled, or by such will or testament, executed as aforesaid, expressed: and in default of such direction, limitation, or appointment, in such manner as by her majesty's letters patents shall be directed and appointed as aforesaid: and such corporation, and their successors, shall have full capacity and ability to purchase, receive, take, hold, and enjoy, for the purposes aforesaid, as well from such persons as shall be so charitably disposed to give the same, as from all other persons as shall be willing to sell or aliene to the said corporation any manors, lands, tenements, goods, or chattels, without any licence or writ of *ad quod damnum*; the statute of mortmain, or any other statute or law to the contrary notwithstanding.

“V. Provided always, that this act or anything therein contained, shall not extend to enable any person or persons, being within age, or of nonsane memory, or women covert, without their husbands, to make any such gift, grant, or alienation; anything in this act contained to the contrary in any wise notwithstanding.

“VI. And whereas four bonds for four half-yearly payments of the first-fruits, as the same are rated, and also a fifth bond for a further value or payment, in respect of the same first-fruits, have been required and taken from the clergy, to their great and unnecessary burden and grievance; for remedy thereof, be it enacted and declared by the authority aforesaid, that from and after the twenty-fifth day of March in the year of our Lord one thousand seven hundred and four, one bond only shall in such case be given or required for the four payments of the said first-fruits; which said first-fruits, as well as the tenths payable by the clergy, shall hereafter be answered and paid by them according to such rates and proportions only as the same have heretofore been usually rated and paid: and no such fifth bond already given shall, from and after the said twenty-fifth day of March in the year one thousand seven hundred and four, be sued or recovered.”

XVII. STAT. 3 & 4 ANNÆ, c. 7. A.D. 1704.

“An Act for the effectual securing the Kingdom of England from the apparent Dangers that may arise from several Acts lately passed in the Parliament of Scotland.”

“XII. Provided always, and be it enacted and declared by the authority aforesaid, that the commissioners to be named in pursuance of this act, shall not, by virtue of such commission, treat of or concerning any alteration of the liturgy, rites, ceremonies, discipline or government of the church, as by law established within this realm.”

XVIII. STAT. 3 & 4 ANNÆ, c. 18. A.D. 1704.

“An Act for making perpetual an Act [7 & 8 Gul. 3, c. 6, ante 656,] for the more easy Recovery of Small Tithes. . . .”

XIX. STAT. 4 ANNÆ, c. 2(1). [IRELAND.] A.D. 1705.

“An Act to explain and amend an Act, intituled, ‘An Act for registering the Popish Clergy.’”

STAT. 2 & 3 ANN. c. 11.

27 Hen. 8, c. 16.

Persons may give lands, tenements, or goods, &c. to the said corporation;

or sell or aliene any manors, lands, &c.

Persons excepted from making such gifts, &c.

One bond only to be taken for the four payments of the first-fruits.

STAT. 3 & 4 ANN. c. 7.

Commissioners not to treat of altering the liturgy or government of the church of England.

STAT. 3 & 4 ANN. c. 18.

STAT. 4 ANN. c. 2. [IR.]

STAT. 4 ANN.
c. 5. [Ir.]

XX. STAT. 4 ANNÆ, c. 5(1). [IRELAND.] A.D. 1705.
“*An Act for Relief of Creditors against fraudulent Devices.*”

STAT. 4 ANN.
c. 8.

XXI. STAT. 4 ANNÆ, c. 8(2). A.D. 1705.
“*An Act for the better Security of Her Majesty's Person and Government, and of the Succession to the Crown of England in the Protestant Line.*”

STAT. 4 ANN.
c. 14.

XXII. STAT. 4 ANNÆ, c. 14(3). A.D. 1705.
“*An Act for the better collecting Charity Money on Briefs, by Letters Patents, and preventing Abuses in relation to such Charities.*”

STAT. 4 ANN.
c. 16.

XXIII. STAT. 4 ANNÆ, c. 16(4). A.D. 1705.
“*An Act for the Amendment of the Law, and the better Advancement of Justice.*”

STAT. 4 ANN.
c. 26.

XXIV. STAT. 4 ANNÆ, c. 26. A.D. 1705.
“*An Act for making effectual a Grant of their late Majesties King William and Queen Mary, of the Town and Lands of Seatown, to the Archbishoprick of Dublin, and for restoring the same to the said See.*”

STAT. 5 ANN.
c. 5.

XXV. STAT. 5 ANNÆ, c. 5(5). A.D. 1706.
“*An Act for securing the Church of England as by Law established.*”

STAT. 5 ANN.
c. 8.

XXVI. STAT. 5 ANNÆ, c. 8. A.D. 1706.
“*An Act for an Union of the two Kingdoms of England and Scotland.*”

See 3 Bur.
1317.

“MOST GRACIOUS SOVEREIGN : Whereas Articles of Union were agreed on, the twenty-second day of July in the fifth year of your majesty's reign, by the commissioners nominated on behalf of the kingdom of England, under your majesty's great seal of England, bearing date at Westminster the tenth day of April then last past, in pursuance of an act of parliament made in England, in the third year of your majesty's reign, and the commissioners nominated on the behalf of the kingdom of Scotland, under your majesty's great seal of Scotland, bearing date the twenty-seventh day of February, in the fourth year of your majesty's reign, in pursuance of the fourth act of the third session of the present parliament of Scotland, to treat of and concerning an union of the said kingdoms : and whereas an act hath passed in the parliament of Scotland, at Edinburgh, the sixteenth day of January in the fifth year of your majesty's reign, wherein 'tis mentioned, that the estates of parliament considering the said Articles of Union of the two kingdoms, had agreed to and approved of the said Articles of Union, with some additions and explanations, and that your majesty, with the advice and consent of the estates of parliament, for establishing the protestant religion and presbyterian church government within the kingdom of Scotland, had passed in the same session of parliament an act, intituled, ‘An Act for securing of the Protestant Religion and Presbyterian Church Government,’ which by the tenour thereof was appointed to be inserted in any act ratifying the treaty, and expressly declared to be a fundamental and essential condition of the said treaty or union in all times coming : the tenour of which articles, as ratified and approved of, with additions and explanations by the said act of Parliament of Scotland, follows :

Succession to
the monarchy.

“ART. II. That the succession of the monarchy to the United Kingdom of Great Britain, and of the dominions thereto belonging, after her most sacred

(1) Repealed by Stat. 11 Geo. 4 & 1 Gul. 4, c. 47.

(2) Stat. 1 Geo. 1, St. II. c. 13. Stat. 1 Geo. 2, St. II. c. 23.

(3) Repealed by Stat. 9 Geo. 4, c. 42.

(4) Vide Stat. 6 Geo. 4, c. 50. Stat. 7 Gul. 4 & 1 Vict. c. 26.

(5) Expired. Vide Stat. 5 Ann. c. 8, s. 7.

majesty, and in default of issue of her majesty, be, remain, and continue, to the most excellent Princess Sophia, electress and duchess dowager of Hanover, and the heirs of her body being protestants, upon whom the crown of England is settled by an act of parliament made in England in the twelfth year of the reign of his late majesty King William the Third, intituled, 'An Act for the further Limitation of the Crown, and better securing the Rights and Liberties of the Subject:' and that all papists, and persons marrying papists, shall be excluded from, and for ever incapable to inherit, possess, or enjoy, the imperial crown of Great Britain, and the dominions thereunto belonging, or any part thereof; and in every such case the crown and government shall from time to time descend to, and be enjoyed by such person being a protestant, as should have inherited and enjoyed the same, in case such papist, or person marrying a papist, was naturally dead according to the provision for the descent of the crown of England, made by another act of parliament in England, in the first year of the reign of their late majesties King William and Queen Mary, intituled, 'An Act declaring the Rights and Liberties of the Subject, and settling the Succession of the Crown.'"

STAT. 5 ANN.
c. 8.

12 & 13 Gul.
3, c. 2.
Papists
excluded.

1 G. & M.
Sess. 2, c. 2.

XXVII. STAT. 5 ANNÆ, c. 9. A.D. 1706.

"An Act for rendering more effectual an Act passed in the first Year of Her Majesty's Reign, intituled, 'An Act for the better preventing Escapes out of the Queen's Bench and Fleet Prisons.'"

STAT. 5 ANN.
c. 9.

"III. And be it declared and enacted, that it is and shall be lawful to apprehend and take, upon the *Lord's day* (1), any person or persons by virtue of any warrant or warrants granted in pursuance of this or of the said former act [Stat. 1 Ann. St. II. c. 6]."

Persons may
be apprehended
by warrant on
a Sunday.

XXVIII. STAT. 5 ANNÆ, c. 24(2). A.D. 1706.

"An Act for discharging small Livings from their First-fruits and Tenths, and all Arrears thereof."

STAT. 5 ANN.
c. 24.

"I. Whereas, pursuant to an act of parliament made in the second year of her majesty's reign, intituled, 'An Act for the making more effectual her Majesty's gracious Intentions for the Augmentation of the Maintenance of the poor Clergy, by enabling her Majesty to grant in perpetuity the Revenues of the First-fruits and Tenths, and also for enabling any other Persons to make Grants for the same Purpose;' the queen's most excellent majesty, by letters patents, bearing date the third day of November, in the third year of her majesty's reign, did make, appoint, nominate, constitute, and establish certain persons and officers therein named, to be one body politic and corporate, by the name of 'The Bounty of Queen Anne, for the Augmentation of the Maintenance of the poor Clergy;' and did thereby give and grant to the said governors all the revenues of first-fruits and yearly perpetual tenths of all dignities, offices, benefices, and promotions spiritual whatsoever, payable to her majesty, her heirs and successors, by virtue of an act of parliament made in the twenty-sixth year of the reign of King Henry the Eighth, or by virtue of an act of parliament made in the first year of the reign of the late Queen Elizabeth, for restitution of first-fruits and tenths to the crown, or by virtue of any other act or acts of parliament whatsoever, and all arrears of the said first-fruits and tenths then due and undischarged (except as herein excepted) to be applied and disposed of to and for the augmentation of the maintenance of such parsons, vicars, curates, and ministers, officiating in any church or chapel within the kingdom of England, dominion of Wales, and town of Berwick upon Tweed, where the liturgy and rites of the church of England, as now by law established, shall be used and observed, under such rules, restrictions, and directions, and in such manner and form, as should be established pursuant to those letters patents: and whereas it is thought that the payment of first-fruits and tenths for small

2 & 3 Ann.
c. 11.

26 Hen. 8,
c. 3.
1 Eliz. c. 4.

(1) *Lord's day*: — Vide *Sir William v. Jameson*, 5 T. R. 25. *Antè* 537; 614. *Moore's case*, 2 Ld. Raym. 1028. *Atkinson* (2) Vide Stat. 6 Ann. c. 27.

STAT. 5 ANN.
c. 24.

Benefices not
exceeding 50*l.*
per annum,
discharged
from first-
fruits, &c.
Enforced by
6 Ann. c. 27,
and 1 Geo. 1,
St. II. c. 10.

Bishops, &c.
to certify into
Exchequer the
clear yearly
value of small
benefices with
cure of souls
within their
dioceses, &c.

Not to dis-
charge tenths
of benefices
granted for
ever.

First-fruits
once applied
&c. to continue
so for ever.

Minister, &c.
to receive the
same.

Public act.

Not to dimi-
nish pensions

livings with cure of souls, is a very heavy burden upon the poorer clergy, for whom her majesty's unparalleled bounty was designed; and that the immediate discharging of the said first-fruits and tenths, and the arrears thereof, of the said small livings, will be a present proper augmentation of the same (several whereof by reason of the said charges are now held in sequestration by temporary curates, without being regularly filled with institution and induction). Be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that all ecclesiastical benefices with cure of souls, not exceeding the clear yearly value of fifty pounds by the improved valuations of the same, (the tenths whereof are by the said recited charter vested in the said corporation,) and the incumbents thereof for the time being, and every of them, their respective heirs, executors, administrators, successors, and sureties, shall be free and clearly discharged and acquitted for ever of and from the said first-fruits and tenths, of and from all arrears of the same.

"II. And for the ascertaining of the clear improved yearly valuations of the said ecclesiastical benefices with cure of souls, intended by this act to be discharged from payment of first-fruits and tenths; be it further enacted by the authority aforesaid, that the respective bishops of every diocese, or the guardians of the spiritualities *sede vacante*, and the ordinaries of peculiars, and places of exempt jurisdictions, shall and are hereby empowered and required, as well by oaths of two or more credible witnesses, (which they or others duly commissioned by them, under their hands and seals, are hereby empowered to administer,) as by all other lawful ways and means, to inform themselves of the clear improved yearly value of every benefice with cure of souls, within their respective dioceses and jurisdictions, the clear improved yearly value whereof doth not exceed fifty pounds; and on or before the five and twentieth day of March, which shall be in the year of our Lord one thousand seven hundred and eight, under their respective hands and seals, or seals of their respective offices, to certify into her majesty's court of Exchequer at Westminster, the clear improved yearly value of every such benefice with cure of souls, the clear improved yearly value whereof doth not exceed fifty pounds; and such certificate being made, and filed in the said court of Exchequer, shall ascertain the clear yearly value of the benefice with cure of souls, intended by this act to be discharged from first-fruits and tenths.

"III. Provided always, and it is hereby declared, that this act, or anything herein contained, shall not extend to discharge any benefices with cure of souls, the tenths whereof were granted away by any of her majesty's predecessors, to any person or persons, bodies politic or corporate, in perpetuity, before the said third day of November, in the third year of her majesty's reign.

"IV. And whereas the said former act was intended for the augmentation of the maintenance, not only of parsons and vicars, but also of curates, and other ministers officiating in churches or chapels, as is therein mentioned; now for the preventing all doubts touching the capacity of such ministers to take any certain estate to them and their successors, of or in any part or portion of the first-fruits and tenths, as shall to them be allotted or applied; be it enacted and declared by the authority aforesaid, that when any part or portion of the first-fruits or tenths remaining to be applied or disposed of by virtue of the said former act, shall be annually or otherwise applied or disposed of for or towards the maintenance of any minister officiating in any church or chapel as aforesaid, such part or portion shall from thenceforth for ever be in like manner continued to the minister from time to time so officiating in the same church or chapel; and every such minister, whether parson, vicar, curate, or other minister for the time being, so officiating in such church or chapel, shall and may from time to time take and receive, and by virtue hereof is and shall be entitled to have and enjoy the same for ever.

"V. And be it further enacted and declared by the authority aforesaid, that this act shall be taken and accepted in all courts and places whatsoever, as a public act.

"VI. Provided nevertheless, that this act, or anything herein contained, shall

not extend, or be construed to extend to avoid or diminish any annual sum, stipend, pension, or annuity now in being, which hath heretofore been granted to any person or persons, body politic or corporate, and charged upon the said revenues of first-fruits and tenths, or any part thereof; but in case it shall so happen that by discharging such small livings, or benefices with cure of souls, as afore-mentioned, of the payment of first-fruits and tenths, and all arrears thereof, the first-fruits and tenths which hereafter shall be collected in any diocese or dioceses, shall not be sufficient to pay and satisfy such annual sums as they now stand respectively charged with, then the whole revenues arising from the first-fruits and tenths, throughout the kingdom of England, dominion of Wales, and town of Berwick upon Tweed, shall be liable to make good all such deficiencies; and the said deficiencies shall, out of the said revenues (during the continuance of such grants, from time to time as any such annual payments shall become due) be paid and satisfied to all such person and persons as shall in any wise be entitled to receive the same, in such proportions as are limited and appointed in such respective grants."

STAT. 5 ANN.
c. 24.

&c. heretofore granted out of first-fruits.

Whole revenues, &c. liable to payment of such, &c. See farther, 3 Geo. 1, c. 10, which appoints a collector of the perpetual yearly tenths.

XXIX. STAT. 5 ANNÆ, c. 25(1). A.D. 1706.

"An Act for making the Acts more effectual for appropriating the forfeited Impropriations in Ireland, for the building of Churches, and augmenting poor Vicarages there."

STAT. 5 ANN.
c. 25.

XXX. STAT. 6 ANNÆ, c. 7(2). A.D. 1707.

"An Act for the Security of Her Majesty's Person and Government, and of the Succession to the Crown of Great Britain in the Protestant Line."

STAT. 6 ANN.
c. 7.

XXXI. STAT. 6 ANNÆ, c. 14. A.D. 1707.

"An Act for the better Security of Her Majesty's Person and Government."

STAT. 6 ANN.
c. 14.

XXXII. STAT. 6 ANNÆ, c. 16(3). [IRELAND.] A.D. 1707.

"An Act for the more effectual preventing the taking away and marrying Children against the Wills of their Parents or Guardians."

STAT. 6 ANN.
c. 16. [Ir.]

XXXIII. STAT. 6 ANNÆ, c. 21. A.D. 1707.

"An Act for the avoiding of Doubts and Questions touching the Statutes of divers Cathedral and Collegiate Churches."

STAT. 6 ANN.
c. 21.

"I. Whereas several doubts and questions have arisen, and may hereafter arise, in relation to the validity and force of the statutes of divers cathedral and collegiate churches, founded by King Henry the Eighth, of famous memory, which doubts and questions have been occasioned, partly by a temporary act of parliament made in the first year of the reign of Queen Mary the First, in relation to such statutes made by the said late King Henry the Eighth, and in order to defeat the true and pious ends and designs of the said foundations, and partly by reason of the known loss of many records and evidences during the late rebellion in this kingdom: and whereas the said doubts and disputes may in time not only turn to the great disquiet and prejudice of the said foundations, but may prove a manifest obstruction to the peace, order, good government, and discipline of the church, unless some speedy and effectual remedy be provided; be it therefore enacted and declared by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and the commons in this present parliament assembled, and by the authority of the same, that in all cathedral and collegiate churches, founded by the said King Henry the Eighth, such statutes as have been usually received and practised in the government of the same respectively, since

1 Mar. 1,
Sess. 3.

Statutes of cathedral and collegiate churches practised since the restoration of King Charles

- (1) Obsolete.
(2) Partly repealed by Stat. 1 Geo. 2, St. II. c. 23. Stat. 10 Geo. 4, cc. 25 & 62.
(3) So much as makes it felony for Roman

catholic clergymen to celebrate marriages between protestants, repealed by Stat. 3 & 4 Gul. 4, c. 102, s. 1.

STAT. 6 ANN.
c. 21.

the Second, to
be good and
valid.

the late happy restoration of King Charles the Second, and to the observance whereof the deans and prebendaries, and other members of the said churches, from the said time have used to be sworn at their instalments or admissions, shall be and shall be taken and adjudged to be good and valid in law, and shall be and be taken and adjudged to be the statutes of the said churches respectively; nevertheless so far forth only as the same, or any of them, are in no manner repugnant to, or inconsistent with, the constitution of the church of England, as the same is now by law established, or the laws of the land.

No prosecution
for non-ob-
servance of
statutes, before
9th March,
1707.

“II. Provided always, and be it further enacted by the authority aforesaid, that no person or persons shall at any time hereafter be liable to any prosecution, censure, or punishment whatsoever, for not having observed any of the statutes hereby ratified and confirmed, or for having done anything contrary to the same, on or before the ninth day of March, one thousand seven hundred and seven; anything herein contained to the contrary notwithstanding.

Queen may
alter, revoke,
or enlarge the
statutes, and
make new
ones, &c.

“III. Provided always, and be it enacted, that it shall and may be lawful for her majesty, during her life, (which God long preserve,) from time to time to alter, amend, correct, revoke, diminish, or enlarge, the said statutes, or any of them, and to make new statutes and ordinances for the said cathedral and collegiate churches, and for resuming or settling the local visitation of them, or any of them, in such manner, from time to time, as to her majesty shall seem meet.”

STAT. 6 ANN.
c. 27.

XXXIV. STAT. 6 ANNÆ, c. 27 (1). A.D. 1707.

“An Act to enlarge the Time for returning the Certificates of all Ecclesiastical Livings, not exceeding the yearly Value of Fifty Pounds; as also for discharging all Livings of that Value from the payment of First-fruits; and for allowing Time to Archbishops and Bishops, and other Dignitaries, for the Payment of their First-fruits.”

5 Ann. c. 24.

Enforced by
1 Geo. 1,
St. II. c. 10.

“Whereas by an act made in the fifth year of the reign of her present majesty, intituled, ‘An Act for discharging Small Livings, from their First-fruits and Tenths, and all Arrears thereof,’ it is provided, that the said act, or anything therein contained, shall not extend to discharge any benefices, with cure of souls, the tenths whereof were granted away by any of her majesty’s predecessors to any person or persons, bodies politic or corporate, in perpetuity, before the third day of November, in the third year of her majesty’s reign; which clause was intended only to save the rights of such persons who had grants of tenths from the crown before the said third day of November, and not otherwise: but forasmuch as the first-fruits of the aforesaid benefices with cure of souls, the tenths whereof were so granted, as aforesaid, were, notwithstanding the said grants, reserved to the crown, and are now granted by her majesty to the governors of the bounty of Queen Anne for the augmentation of the maintenance of the poor clergy, and their successors: and forasmuch as the discharging of the first-fruits and arrears thereof of small livings, the tenths of which are not vested in the said governors, will be a present proper augmentation of the same; be it therefore enacted by the queen’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that all ecclesiastical benefices with cure of souls, not exceeding the clear yearly value of fifty pounds by the improved valuations of the same, the tenths whereof are not vested in the corporation of the said governors, and the incumbents thereof for the time being, and every of them, their respective heirs, executors, administrators, successors, and sureties, shall be free and clearly discharged and acquitted for ever of and from the said first-fruits, and of and from all arrears of the same; anything in the aforesaid act to the contrary notwithstanding: and the ascertaining of the clear improved yearly valuations of the said ecclesiastical benefices with the cure of souls, hereby intended to be discharged from the payment of first-fruits, shall be by the same persons, and in the same manner and form, as for other livings mentioned in the said act.

Benefices not
exceeding 50l.
per ann. &c.
discharged
from first-
fruits, &c.

“II. Provided nevertheless, that the certificates by the proper ordinaries into her majesty’s court of Exchequer at Westminster, of the yearly valuation of such livings intended by this act to be discharged from the payment of first-fruits, may be made at any time before the twenty-fourth day of December, which shall be in the year of our Lord one thousand seven hundred and eight; anything herein to the contrary notwithstanding. STAT. 6 ANN. c. 27.

“III. And whereas by the said act of parliament made in the said fifth year of her majesty’s reign, the time limited for certifying into the court of Exchequer the valuation of such livings intended by the said act to be discharged from the payment of first-fruits and tenths is found not sufficient with respect to some dioceses and places; be it therefore enacted by the authority aforesaid, that such certificates which shall be made into the said court of Exchequer, of the yearly valuation of such livings intended to be discharged from the payment of first-fruits and tenths by the said act of parliament, at any time before the said twenty-fourth day of December which shall be in the year of our Lord one thousand seven hundred and eight, shall be as good and effectual for the purposes by the said act intended, as if the same were made and certified on or before the twenty-fifth day of March, one thousand seven hundred and eight; anything in this or the said act to the contrary thereof notwithstanding.

“IV. And be it further enacted and declared by the authority aforesaid, that this act shall be taken and accepted in all courts and places whatsoever as a public act.

“V. And whereas it has been usual for the kings and queens of England, by their letters of privy seal, to allow the archbishops and bishops four years time for the payment of their first-fruits to the crown, by way of instalment, which, since her majesty has been graciously pleased to give the first-fruits and tenths for the maintenance of the poor clergy, cannot now be done: and whereas the first-fruits of archbishoprics and bishoprics amount to near the full annual value thereof, and the other charges of coming into archbishoprics and bishoprics are very great: and whereas archbishops and bishops have not the profits of their bishoprics from the death of their predecessors, as rectors and vicars have, but from the time that such bishoprics are conferred upon them: and whereas no provision has been made for any abatements of the first-fruits of archbishops or bishops, as there is for rectors and vicars, in case of death or removal, within the times allowed for the payment of such first-fruits: be it enacted by the authority aforesaid, that every archbishop and bishop shall have four years allowed him, when he or they shall compound for the same, for the payment of his first-fruits, which shall commence from the time of restitution of his temporalities; and that in every year he shall pay one-fourth part of the whole sum: and if it shall please God he shall die, or be removed, before the full term of four years shall be expired, he, his heirs, executors, or administrators, shall be discharged of so much as did not become due or payable at or before the time or times of his death or removal, in like manner as the heirs, executors, and administrators of rectors and vicars are authorized to do.

Four years allowed to archbishops and bishops to pay their first-fruits. Proviso in case of death.

“VI. And be it further enacted by the authority aforesaid, that all deans, archdeacons, prebendaries, and other dignitaries, shall compound for their respective first-fruits, in such manner and form as rectors and vicars have been accustomed to do; and in case of death or removal within the time usually allowed to rectors and vicars for payment of their said first-fruits, they the said deans, archdeacons, prebendaries, and other dignitaries, shall be in the like condition, and have the same benefit as is allowed to rectors and vicars by the statute made in the first year of the reign of the late Queen Elizabeth, intituled, ‘An Act for the Restitution of the First-fruits to the Crown.’”

Deans, &c. to compound for first-fruits, &c.

1 Eliz. c. 4.

XXXV. STAT. 6 ANNÆ, c. 28 (1). A.D. 1707.

STAT. 6 ANN. c. 28.

“An Act for continuing the Act [11 & 12 Gul. 3, c. 16] for ascertaining the Tithes of Hemp and Flax.”

(1) *Vide* Stat. 1 Geo. 1, St. II. c. 26.

STAT. 6 ANN.
c. 35.

XXXVI. STAT. 6 ANNÆ, c. 35. A.D. 1707.

"An Act for the public registering of all Deeds, Conveyances, Wills, and other Incumbrances that shall be made of, or that may affect any Honours, Manors, Lands, Tenements, or Hereditaments, within the East Riding of the County of York, or the Town and County of the Town of Kingston-upon-Hull, after the Nine and twentieth Day of September, One thousand seven hundred and eight; and for the rendering the Register in the West Riding more complete."

STAT. 7 ANN.
c. 5.

XXXVII. STAT. 7 ANNÆ, c. 5 (1). A.D. 1708.

"An Act for naturalizing Foreign Protestants."

STAT. 7 ANN.
c. 14.

XXXVIII. STAT. 7 ANNÆ, c. 14. A.D. 1708.

"An Act for the better Preservation of Parochial Libraries in that Part of Great Britain called England."

In every parish where a library shall be erected, it shall be preserved for the uses to which it is given, &c.

"Whereas in many places in the south parts of Great Britain called England and Wales, the provision for the clergy is so mean, that the necessary expense of books for the better prosecution of their studies cannot be defrayed by them; and whereas of late years, several charitable and well-disposed persons have by charitable contributions erected libraries within several parishes and districts in England and Wales; but some provision is wanting to preserve the same, and such others as shall be provided in the same manner, from embezzlement: be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that in every parish or place where such a library is or shall be erected, the same shall be preserved for such use and uses, as the same is and shall be given, and the orders and rules of the founder and founders of such libraries shall be observed and kept.

Incumbents, &c. before they use the library, shall give security to preserve it.

"II. And for the encouragement of such founders and benefactors, and to the intent they may be satisfied that their pious and charitable intent may not be frustrated; be it also enacted by the authority aforesaid, that every incumbent, rector, vicar, minister, or curate of a parish, before he shall be permitted to use and enjoy such library, shall enter into such security by bond or otherwise, for preservation of such library, and due observance of the rules and orders belonging to the same, as the proper ordinaries within their respective jurisdictions, in their discretion shall think fit; and in case any book or books belonging to the said library shall be taken away and detained, it shall and may be lawful for the said incumbent, rector, vicar, minister, or curate for the time being, or any other person or persons, to bring an action of trover and conversion, in the name of the proper ordinaries within their respective jurisdictions; whereupon treble damages shall be given with full costs of suit, as if the same were his or their proper book or books, which damages shall be applied to the use and benefit of the said library.

If any book be taken away, &c. the incumbent may bring trover, and shall recover treble damages, to the use of the library.

The ordinary, &c. may inquire into the state of the library, and amend the defects; and appoint persons to inspect the library;

"III. And it is further enacted by the authority aforesaid, that it shall and may be lawful to and for the proper ordinary, or his commissary or official in his respective jurisdiction, or the archdeacon, or by his direction his official or surrogate, if the said archdeacon be not the incumbent of the place where such library is, in his or their respective visitation, to inquire into the state and condition of the said libraries, and to amend and redress the grievances and defects of and concerning the same, as to him or them shall seem meet; and it shall and may be lawful to and for the proper ordinary, from time to time, as often as shall be thought fit, to appoint such person or persons, as he shall think fit, to view the state and condition of such libraries, and the said ordinaries, archdeacons, or officials respectively, shall have free access to the same at such times as they shall respectively appoint.

“IV. And be it also further enacted by the authority aforesaid, that where any library is appropriated to the use of the minister of any parish or place, every rector, vicar, minister, or curate of the same, within six months after his institution, induction, or admission, shall make or cause to be made a new catalogue of all books remaining in, or belonging to such library, and shall sign the said catalogue, thereby acknowledging the custody and possession of the said books; which said catalogue so signed, shall be delivered to the proper ordinary within the time aforesaid, to be kept registered in his court, without any fee or reward for the same.

“V. And be it further enacted by the authority aforesaid, that where there are any parochial libraries already erected, the incumbent, rector, vicar, minister, or curate of such parish or place, shall make or cause to be made a catalogue of all books in the same, thereby acknowledging the custody and possession thereof; which catalogue so signed, shall be delivered to the proper ordinary, on or before the nine and twentieth day of September, which shall be in the year of our Lord one thousand seven hundred and nine; and where any library shall at any time hereafter be given and appropriated to the use of any parish or place, where there shall be an incumbent, rector, vicar, minister, or curate in possession, such incumbent, rector, vicar, minister, or curate, shall make or cause to be made a catalogue of all the books, and deliver the same, as aforesaid, within six months after he shall receive such library.

“VI. And to prevent any embezzlement of books upon the death or removal of any incumbent, be it also enacted by the authority aforesaid, that immediately after the death or removal of any incumbent, rector, vicar, minister, or curate, the library belonging to such parish or place shall be forthwith shut up, and locked, or otherwise secured by the churchwarden or churchwardens for the time being, or by such person or persons as shall be authorized or appointed by the proper ordinary, or archdeacon respectively, so that the same shall not be opened again, till a new incumbent, rector, vicar, minister, or curate, shall be inducted or admitted into the church of such parish or place.

“VII. Provided always, that in case the place where such library is or shall be kept, shall be used for any public occasion for meeting of the vestry, or otherwise, for the dispatch of any business of the said parish, or for any other public occasion, for which the said place hath been ordinarily used, the place shall nevertheless be made use of as formerly for such purposes, and after such business dispatched shall be again forthwith shut and locked up or otherwise secured, as is before directed.

“VIII. And be it also further enacted by the authority aforesaid, that for the better preservation of the books belonging to such libraries, and that the benefactions given towards the same may appear, a book shall be kept within the said library for the entering and registering of all such benefactions, and such books as shall be given towards the same, and therein the minister, rector, vicar, or curate of the said parish or place, shall enter, or cause to be fairly entered, such benefactions, and an account of all such books as shall from time to time be given, and by whom given.

“IX. And, for the better governing the said libraries, and preserving of the same, it is hereby further enacted by the authority aforesaid, that it shall and may be lawful to and for the proper ordinary, together with the donor of such benefaction (if living), and after the death of such donor, for the proper ordinary alone, to make such other rules and orders concerning the same, over and above, and besides, but not contrary to such as the donor of such benefactions shall in his discretion judge fit and necessary; which said orders and rules so to be made, shall from time to time be entered in the said book, or some other book to be prepared for that purpose, and kept in the said library.

“X. And it is further enacted and declared by the authority aforesaid, that none of the said books shall in any case be alienable, nor any book or books that shall hereafter be given by any benefactor or benefactors shall be alienated, without

STAT. 7 ANN.
C. 14.

To make a catalogue of the books to be delivered to the ordinary, and registered without fee.

Where libraries are already erected, such catalogue to be made, &c. before 29th September, 1709.

And where any shall be erected within six months after.

Upon the death or removal of any incumbent, the churchwardens shall lock up the library.

The vestry, &c. may meet in such libraries, if they did so formerly.

The incumbent shall enter the benefactions and books.

The ordinary and donor may make orders concerning the library;

which shall be entered as aforesaid.

Books not to be alienable without consent of the ordinary.

STAT. 7 ANN.
c. 14.

If any book be lost, a justice of peace may grant a warrant to search for it; and if found, it shall be restored to the library.

the consent of the proper ordinary, and then only when there is a duplicate of such book or books; and that in case any book or books be taken or otherwise lost out of the said library, it shall and may be lawful to and for any justice of peace within the county, riding, or division, to grant his warrant to search for the same, and in case the same be found, such book or books so found shall immediately, by order of such justice, be restored to the said library; any law, statute, or usage to the contrary in any wise notwithstanding.

“XI. Provided always, that nothing in this act contained shall extend to a public library lately erected in the parish of Ryegate, in the county of Surrey, for the use of the freeholders, vicar, and inhabitants of the said parish, and of the gentlemen and clergymen inhabiting in parts thereto adjacent; the said library being constituted in another manner than the libraries provided for by this act.”

STAT. 7 ANN.
c. 18.

XXXIX. STAT. 7 ANNÆ, c. 18. A.D. 1708.

“*An Act to preserve the Rights of Patrons to Advowsons.*”

No usurpation shall displace the estate of the patron; but he may maintain a *quare impedit*.

If coparceners, &c. be seised of an advowson, &c., and a partition is made to present by turns, each shall be seised of a separate estate to present accordingly.

“Forasmuch as the pleading in a *quare impedit* is found very difficult, whereby many patrons are either defeated of their rights of presentation, or put to great charge and trouble to recover their right, which is occasioned by the law as it now is: for remedy whereof, be it enacted by the queen’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in parliament assembled, and by the authority of the same, that no usurpation upon any avoidance in any church, vicarage, or other ecclesiastical promotion, shall displace the estate (1) or interest of any person entitled to the advowson or patronage thereof, or turn it to a right, but he or she that would have had a right, if no usurpation had been, may present or maintain his or her *quare impedit* upon the next, or any other avoidance, if disturbed, notwithstanding such usurpation: and if coparceners, or joint tenants, or tenants in common, be seised of any estate of inheritance in the advowson of any church or vicarage, or other ecclesiastical promotion, and a partition is or shall be made between them to present by turns, that thereupon every one shall be taken and adjudged to be seised of his or her *separate part of the advowson* (2) to present in his or her turn; as if there be two, and they make such partition, each shall be said to be seised, the one of the one moiety to present in the first turn, the other of the other moiety to present in the second turn; in like manner, if there be three, four, or more, every one shall be said to be seised of his or her part, and to present in his or her turn.”

STAT. 7 ANN.
c. 20.

XL. STAT. 7 ANNÆ, c. 20. A.D. 1708.

“*An Act for the public registering of Deeds, Conveyances, and Wills, and other Incumbrances which shall be made of, or that may affect any Honours, Manors, Lands, Tenements, or Hereditaments within the County of Middlesex after the Twenty-ninth day of September, One thousand seven hundred and nine.*”

STAT. 7 ANN.
c. 22.

XLI. STAT. 7 ANNÆ, c. 22. A.D. 1708.

“*An Act for the Queen’s most Gracious, General, and Free Pardon.*”

[Convicted recusants; procurations, synodals, and other payments out of any ecclesiastical promotion; adultery and other enormous crimes in clergymen; excepted from pardon.]

(1) *Displace the estate*:—It was decided in *Attorney-General v. Litchfield* (Bishop of), (5 Ves. 828) that this statute was not retrospective.

(2) *Separate part of the advowson*:—*Vide* 1 Inst. 363 (b). Mirehouse on Advowsons, 46. *Salisbury* (Bishop of) v. *Philips*, 1 Ld. Raym. 536. 1 Salk. 43.

XLII. STAT. 8 ANNÆ, c. 3(1). [IRELAND.] A.D. 1709.

STAT. 8 ANN.
c. 3. [IR.]

"An Act for explaining and amending an Act, intituled, 'An Act to prevent the further Growth of Popery.'"

XLIII. STAT. 8 ANNÆ, c. 13. [IRELAND.] A.D. 1709.

STAT. 8 ANN.
c. 13. [IR.]

"An Act for dissolving the Union of the Parishes of Tynan and Derrynoose, and for building several Parish Churches in more convenient Places in the Diocese of Armagh."

XLIV. STAT. 8 ANNÆ, c. 15. A.D. 1709.

STAT. 8 ANN.
c. 15.

"An Act for explaining and enlarging an Act of the Sixth Year of Her Majesty's Reign, intituled, 'An Act for the Security of Her Majesty's Person and Government.'"

XLV. STAT. 9 ANNÆ, c. 12(2). [IRELAND.] A.D. 1710.

STAT. 9 ANN.
c. 12. [IR.]

"An Act for uniting several Parishes, and building several Parish Churches in more convenient Places."

[Union of Kilkeevin, Baslick, and Ballintobber, in Elphin; the church at Castlereagh the parish church: Union of Oran and Drumtemple in Elphin; the church at Oran to be rebuilt: Union of Tullomagmagh, Ballynecarrig, Ballyrogne, and Kelly's Town, in Leighlin; by name of Staplestown: Parish church of Churchtown in Cloyne to be removed to more convenient place: Union of Ballyoughtra, Mogely, and Cahirulton, in Cloyne, by name of Castlemarter, and a new church built, the ground by Henry Boyle: Parishes of Inistar, Mathy, Garrycloyne, and Granagh, in Cloyne, for some time united, may be divided into two parishes, and another church built: A new parish church to be built in more convenient place in Aghada, in Cloyne; and in Kilwatermoy, in Waterford; and at Mogh in parish of Carrowgallen, in Kilmore; and in parish of Drumgagh, in Dromore; and in parish of Shankill, in Dromore; and in the parish of Kilcomin, in Killala: The church at Coote Hill to be the parish church of Drumgoone, in Kilmore: Union of Kiltullagh, Knokamagh, Becan, Aghamore, and Templetogether in Tuam, by name of Kiltullah, and a new church at Ballinlogh: Lands conveyed by Jos. Mitchell, saving to queen and archbishop: Union of Kilmichalogue, Killmechue, and Killkavan, in Ferns, by name of Newborough: Church of Drumenagh to be the parish church of Ennis-Mac-faint, in Clogher: New church to be built in parish of Slane, in Meath: Union of Cain and Kiltome, in Elphin; the church to be built at Miltonpass; land conveyed by Luke Dillon, and Edmund and John Kelly: Union of Kilbegnet, Ballynekill, Kilroan, and Donamon, in Elphin, or &c., by name of Donamon: New church to be built on Cappavaroggy, in Elphin, by name of Castlebackney, *alias* Killoholan; conveyance by Robert Blackney: Union of Ballymackward and Clonkeen, in Clonfert, by name of Ballymackward: Church of Killpatrick to be the parish church of the union of Drakestown, Killpatrick, and Knough, in Meath: The church at Gernonstown, *alias* Castlebellingham, to be the parish church of Kilsaran, in Armagh: All the ancient church-yards to be kept fenced at charge of the parishes: Materials of the old churches may be used for the new: This a public act: Patrons at time of the union may agree as to right of presentation: Said agreement to be enrolled in Chancery, and conclusive: Saving to the queen.]

XLVI. STAT. 9 ANNÆ, c. 22. A.D. 1710.

STAT. 9 ANN.
c. 22.

"An Act for granting to Her Majesty several Duties upon Coals, for building fifty new Churches in and about the Cities of London and Westminster, and Suburbs thereof, and other Purposes therein mentioned."

(1) Obsolete. Vide Stat. 3 & 4 Gul. 4. (2) Partly repealed by Stat. 10 Geo. 4, c. 102. c. 58.

STAT. 9 ANN.
c. 23.

XLVII. STAT. 9 ANNÆ, c. 23. A.D. 1710.

"An Act for licensing and regulating Hackney Coaches and Chairs"

Coachmen, &c.
may ply on the
Lord's day.
29 Car. 2, c. 7.

"XX. And whereas by an act of parliament made in the twenty-ninth year of the reign of King Charles the Second, and other acts formerly made for the better observation of the *Lord's day* (1), commonly called Sunday, the standing to hire, and driving hackney coaches, and the standing to hire, and carrying of chairs, on the Lord's day, are or may be understood to be forbidden or restrained: and whereas the said restraint is many times found inconvenient, as well in order to the observation of the day, as otherwise: be it therefore enacted by the authority aforesaid, that it shall and may be lawful to and for any licensed hackney coachman, or his *driver* (2), or any chairman, to ply and stand with their coaches and chairs, and to drive and carry the same respectively, on the Lord's day, within the limits of the said weekly bills of mortality; the said former acts, or any of them, or any construction thereupon to the contrary notwithstanding."

STAT. 10 ANN.
c. 1.

XLVIII. STAT. 10 ANNÆ, c. 1 (3). A.D. 1711.

"An Act for granting an Aid to Her Majesty to be raised by a Land Tax. . ."

[The aid by a land tax shall not extend to the sites of the two universities, nor to the colleges of Windsor, Eton, Winton, or Westminster; nor to the stipends of masters or ushers of free schools; nor to the houses or lands belonging to the sites of any college or hall, or any hospital in London or Southwark, or to the corporation of clergymen's widows, or to Bromley College; nor to any revenues of hospitals to be employed for the immediate relief of the poor.]

STAT. 10 ANN.
c. 2.

XLIX. STAT. 10 ANNÆ, c. 2. A.D. 1711.

"An Act for preserving the Protestant Religion, by better securing the Church of England, as by Law established; and for confirming the Toleration granted to Protestant Dissenters by an Act, intituled, 'An Act for exempting their Majesties' Protestant Subjects, dissenting from the Church of England, from the Penalties of certain Laws,' and for supplying the Defects thereof; and for the further securing the Protestant Succession, by requiring the Practisers of the Law in North Britain to take the Oaths, and subscribe the Declaration therein mentioned."

13 Car. 2,
St. II. c. 1.
25 Car. 2, c. 2.

"Whereas an act was made in the thirteenth year of the reign of the late King Charles the Second, intituled, 'An Act for the well-governing and regulating of Corporations;' and another act was made in the five and twentieth year of the reign of the said late King Charles the Second, intituled, 'An Act for the preventing Dangers which may happen from Popish Recusants;' both which acts were made for the security of the church of England, as by law established: now for the better securing the said church, and quieting the minds of her majesty's protestant subjects dissenting from the church of England, and rendering them secure in the exercise of their religious worship, as also for the further strengthening the provision already made for the security of the succession to the crown in the house of Hanover; be it enacted, &c."

This act
repealed to the
seventh sec-
tion, by 5 Geo.
1, c. 4, s. 1.

Repealed.

[After 25th March, 1712, if any officer, civil or military, &c., who receives any salary, &c., or if any magistrate of a corporation, &c., who by the Acts of 13 & 25 Car. 2, are obliged to receive the sacrament, shall after their admission into their office, and during their office, and during their continuance in it, be present at any conventicle, &c., such person shall forfeit 40*l.* to be recovered by the prosecutor. Every person so convicted, shall be disabled to hold his office, &c., and incapable of any employment in England, &c. Person, after conviction, conforming to the church of England, for one year, &c., shall be capable of the grant of any office.

(1) *Lord's day*:—*Vide* ante 537, 538, 22, s. 37.
614–618.

(3) Expired.

(2) *Driver*:—*Vide* Stat. 1 & 2 Gul. 4, c.

Every such person to make oath the next term after admission into any office, or at the quarter session, &c., that he hath conformed, &c. Oath to be made of the offence within ten days, and prosecution within three months, &c. This act shall not vacate any office of inheritance, so as a sufficient deputy be appointed to execute it.]

STAT. 10 ANN.
c. 2.

“VII. And it is hereby further enacted and declared by the authority aforesaid, that the toleration granted to the protestant dissenters, by the act made in the first year of the reign of King William and Queen Mary, intituled, ‘An Act for exempting their Majesties’ Protestant Subjects, dissenting from the Church of England, from the penalties of certain Laws,’ shall be, and is hereby ratified and confirmed, and that the same act shall at all times be inviolably observed for the exempting of such protestant dissenters as are thereby intended, from the pains and penalties therein mentioned.

The toleration granted to protestant dissenters by 1 G. & M. Sess. 1, c. 18, confirmed.

“VIII. And for the rendering the said last-mentioned act more effectual, according to the true intent and meaning thereof; be it further enacted and declared by the authority aforesaid, that if any person dissenting from the church of England, (not in holy orders, or pretended holy orders, or pretending to holy orders, nor any preacher or teacher of any congregation,) who should have been entitled to the benefit of the said last-mentioned act, if such person had duly taken, made, and subscribed the oaths and declaration, or otherwise qualified him or herself, as required by the said act, and now is or shall be prosecuted upon or by virtue of any of the penal statutes, from which protestant dissenters are exempted by the said act, shall at any time during such prosecution, take, make, and subscribe the said oaths and declaration, or being of the people called Quakers, shall make and subscribe the aforesaid declaration, and also the declaration of fidelity, and subscribe the profession of their Christian belief, according to the said act, or before any two of her majesty’s justices of the peace, (who are hereby required to take and return the same to the next quarter sessions of the peace, to be there recorded,) such person shall be, and is hereby entitled to the benefit of the said act, as fully and effectually as if such person had duly qualified himself within the time prescribed by the said act, and shall be thenceforth exempted and discharged from all the penalties and forfeitures incurred by force of any the aforesaid penal statutes.

If any dissenter (not in holy orders, &c.), who would have been entitled to the benefit of that act, &c. shall be prosecuted, and shall, during such prosecution, take the oaths, &c., he shall be entitled to the benefit of the said act.

“IX. And whereas it is or may be doubted whether a preacher or teacher of any congregation of dissenting protestants, duly in all respects qualified according to the said act, be allowed, by virtue of the said act, to officiate in any congregation in any county, other than that in which he so qualified himself, although in a congregation or place of meeting duly certified and registered as is required by the said act; be it declared and enacted by the authority aforesaid, that any such preacher or teacher, so duly qualified according to the said act, shall be and is hereby allowed to officiate in any congregation, *although the same be not* (1) in the county wherein he was so qualified; provided that the said congregation, or place of meeting, hath been, before such officiating, duly certified and registered or recorded according to the said act; and such preacher or teacher shall, if required, produce a certificate of his having so qualified himself, under the hand of the clerk of the peace for the county or place where he so qualified himself, which certificate such clerk of the peace is hereby required to make; and shall also, before any justice of the peace of such county or place where he shall so officiate, make, and subscribe such declaration, and take such oaths as are mentioned in the said act, if thereunto required.

A dissenting teacher, qualified according to the said act, may officiate in any other county than where he was qualified.

“X. And be it further enacted by the authority aforesaid, that on or before the fifteenth day of June next, all advocates, writers to the signet, notaries public, and other members of the college of justice, within that part of her majesty’s kingdom of Great Britain called Scotland, shall be and are hereby obliged to take and sub-

All advocates, &c. in Scotland, shall take the oath appointed by

(1) *Although the same be not*:—It was adjudged in *Reg. v. Peach*, (2 Salk. 572,) that a licence in one county would not warrant a dissenting minister to officiate in another county; and, probably, that judgment occasioned this clause.

STAT. 10 ANN.
c. 2.

6 Ann. c. 14.
Farther provisions relating
hereto, 10 Ann.
c. 32, s. 2.

Refusing, &c.
shall be judged incapable to exercise his employment.

None shall be
admitted to the
employment of
advocate, &c.
till he hath
taken the said
oath. See
1 Geo. 1, c. 13.

scribe the oath appointed by the act of the sixth year of her majesty's reign, intituled, 'An Act for the better Security of Her Majesty's Person and Government,' before the lords of session of the aforesaid part of her majesty's kingdom; except such of the said persons who have already taken the same; and if any of the persons aforesaid do or shall neglect or refuse to take and subscribe the said oath, as aforesaid, such person shall be *ipso facto* adjudged incapable, and disabled in law to have, enjoy, or exercise in any manner his said employment or practice.

"XI. And be it further enacted by the authority aforesaid, that in all time coming no person or persons shall be admitted to the employment of advocate, writer to the signet, notary public, or any office belonging to the said college of justice, until he or they have taken and subscribed the aforesaid oath, in manner as is above directed."

L. STAT. 10 ANNÆ, c. 5. A.D. 1711.

STAT. 10 ANN.
c. 5.

"An Act to repeal the Act of the seventh year of Her Majesty's reign, intituled, 'An Act for Naturalizing Foreign Protestants,' except what relates to the Children of Her Majesty's natural-born Subjects born out of Her Majesty's Allegiance."

7 Ann. c. 5.

"Whereas an act of parliament was made and passed in the seventh year of her majesty's reign, intituled, 'An Act for naturalizing foreign Protestants;' and whereas divers mischiefs and inconveniences have been found by experience to follow from the same, to the discouragement of the natural-born subjects of this kingdom, and to the detriment of the trade and wealth thereof; be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that the before-mentioned act, and all the matters and things therein contained, (except so much of the said act by which the children of all natural-born subjects born out of the allegiance of her majesty, her heirs and successors, are to be deemed, adjudged, and taken to be natural-born subjects of this kingdom,) shall be, and is hereby repealed, annulled, and made void, to all intents and purposes whatsoever; provided nevertheless, that such repeal shall not in any sort prejudice or impeach the naturalization of any persons who have been or shall be naturalized at any time before the fourth day of February, which shall be in the year of our Lord one thousand seven hundred and eleven, pursuant to the directions of the before-mentioned act."

STAT. 10 ANN.
c. 7.

LI. STAT. 10 ANNÆ, c. 7 (1). A.D. 1711.

"Act to prevent the disturbing those of the Episcopal Communion in that part of Great Britain called Scotland, in the Exercise of their Religious Worship, and in the Use of the Liturgy of the Church of England; and for repealing the Act passed in the Parliament of Scotland, intituled, 'An Act against Irregular Baptisms and Marriages.'"

It shall be free
for those of the
episcopal com-
munion in
Scotland, to

"Whereas since the abolishing of episcopal government in Scotland, those of the episcopal persuasion there have been frequently disturbed and interrupted in their religious assemblies, and their ministers prosecuted for reading the English service in their congregations, and for administering the sacraments according to the form and manner prescribed in the liturgy of the Church of England; be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, that it shall be free and lawful for all those of the episcopal communion in that part of Great Britain called Scotland, to meet and assemble for the exercise of divine worship, to be performed after their own manner by pastors ordained by a protestant bishop,

and who are not established ministers of any church or parish, and to use in their congregation the liturgy of the Church of England, if they think fit, without any let, hindrance, or disturbance, from any person whatsoever: and all sheriffs of shires, stewards of stewartries, and magistrates of boroughs, and justices of the peace, are hereby strictly required to give all manner of protection, aid, and assistance to such episcopal ministers, and those of their own communion, in their meetings and assemblies for the worship of God, held in any town or place, except parish churches, within the extent and jurisdiction of that part of Great Britain called Scotland.

“II. Provided always, and be it enacted by the authority aforesaid, that none shall presume to exercise the function of a pastor in the said episcopal meetings and congregations, except such as shall have received holy orders from the hands of a protestant bishop; and that every person who shall be called or appointed to be a pastor or minister of any episcopal congregation or assembly, before he take upon him to officiate as pastor of the said congregation, be hereby obliged and required to present his letters of orders to the justices of peace, at their general or quarter sessions to be held for the shire, stewartry, city, town, or other place in which the said episcopal congregation is or shall be; and that the said letters of orders be there entered on record by the register or clerk of the said meeting of the justices, for which there shall be no greater fee or reward taken than the sum of one shilling.

“III. And be it further enacted by the authority aforesaid, that all ministers of the established church of Scotland, and all and every person and persons, who is or are pastor or pastors, minister or ministers of any episcopal congregation in Scotland, shall be obliged, and are hereby required, on or before the first day of August next, to come to take and subscribe the following oaths, in such manner, and under such penalties, as all officers, civil and military, in Scotland, are obliged to take the oath recited in the fourteenth act of the sixth year of her majesty's reign, intituled, ‘An Act for the better Security of Her Majesty's Person and Government;’ and that all ministers of the established church of Scotland, hereafter to be admitted into their respective churches or benefices, and all and every person and persons, who shall hereafter be pastor or pastors, minister or ministers of any episcopal congregation, shall, before such admission or exercise of their respective functions, be obliged to take and subscribe likewise the following oaths, in the same manner and under the same penalties above mentioned.

“I, *A. B.*, do sincerely promise and swear, that I will be faithful, and bear true allegiance to her majesty Queen Anne: So help me God.”

“I, *A. B.*, do truly and sincerely acknowledge, profess, testify, and declare in my conscience, before God and the world, that our sovereign lady Queen Anne is lawful and rightful queen of this realm, and of all other her majesty's dominions and countries thereunto belonging; and I do solemnly and sincerely declare, that I do believe in my conscience, the person pretended to be Prince of Wales, during the life of the late King James, and since his decease pretending to be, and taking upon himself the style and title of King of England, by the name of James the Third, or of Scotland, by the name of James the Eighth, or the style and title of King of Great Britain, hath not any right or title whatsoever to the crown of this realm, or any other the dominions thereunto belonging; and I do renounce, refuse, and abjure any allegiance or obedience to him. And I do swear, that I will bear faith and true allegiance to her majesty Queen Anne, and her will defend, to the utmost of my power, against all traitorous conspiracies and attempts whatsoever, which shall be made against her person, crown, or dignity. And I will do my best endeavour to disclose and make known to her majesty, and her successors, all treasons and traitorous conspiracies which I shall know to be against her, or any of them. And I do faithfully promise, to the utmost of my power, to support, maintain, and defend the succession of the crown against him the said James, and all other persons whatsoever, as the same is and stands settled by an act, intituled, “An Act declaring the Rights and Liberties of the Subject, and settling the Succession of the Crown,” to her present majesty, and the heirs of her body being

STAT. 10 ANN.
C. 7.

assemble for
divine worship
after their own
manner, &c.

21 Geo. 2,
c. 34.
And see farther,
26 Geo. 2, c. 29.

Ministers of the
established
church, and of
the episcopal
congregations,
to take the
oaths, &c.
6 Ann. c. 14.

Farther provisions relating hereto, 10 Ann. c. 32.

The oaths.

1 Geo. 1, c. 13.
5 Geo. 1, c. 29,
s. 3.

1 G. & M.
c. 2, s. 2.

STAT. 10 ANN.

c. 7.

12 & 13 Gul.

3, c. 2.

Episcopal meetings to be held with doors not locked, &c. and persons frequenting them not exempted from tithes, &c.

The act made in 1695 repealed; and no person shall incur any penalty for resorting to episcopal meetings, &c. Episcopal ministers may preach, &c.

Children christened by episcopal ministers registered where the parents reside. No episcopal minister shall marry any whose banns have not been published, &c. Ministers of churches obliged to publish the banns. All laws against immorality, &c. shall be in force.

This act shall not give any ease, &c. to papists, &c.

protestants; and as the same, by one other act, intituled, "An Act for the further Limitation of the Crown, and better securing the Rights and Liberties of the Subject," is and stands settled and entailed after the decease of her majesty, and for default of issue of her majesty, to the Princess Sophia, electress and duchess dowager of Hanover, and the heirs of her body, being protestants. And all these things I do plainly and sincerely acknowledge and swear, according to these express words by me spoken, and according to the plain and common sense and understanding of the same words, without any equivocation, mental evasion, or secret reservation whatsoever. And I do make this recognition, acknowledgment, abjuration, renunciation, and promise, heartily, willingly, and truly, upon the true faith of a Christian.

So help me God.'

"IV. Provided always, that the assembly of persons for religious worship in the episcopal meetings, be held with doors not locked, barred, or bolted, during such assembly; and that nothing herein contained shall be construed to exempt any of the persons frequenting the said episcopal congregations from paying of tithes or other parochial duties to the church or minister of the parish to which they belong, and in which they reside.

"V. And whereas since the establishment of the Presbyterian government in Scotland, some laws have been made by the parliament in Scotland against the episcopal clergy of that part of the United Kingdom, and particularly an act passed in the parliament held in the year one thousand six hundred ninety-five, intituled, 'Act against irregular Baptisms and Marriages,' by which all episcopal ministers, who were turned out of their churches, are prohibited to baptize any children, or to solemnize any marriage, upon pain of perpetual imprisonment or banishment; be it therefore enacted by the authority aforesaid, that the said act above-mentioned be hereby repealed and annulled; and that in all time coming no person or persons shall incur any disability, forfeiture, or penalty whatsoever, upon account of his or their resorting to the said episcopal meetings held for the worship of God; and that it shall be free and lawful for all the subjects in that part of Great Britain called Scotland, to assemble and meet together for Divine service, without any disturbance, and to settle their congregations in what towns or places they shall think fit to choose, except parish churches, and for the episcopal ministers, not only to pray and preach in the episcopal congregations, but to administer the sacraments, and marry, without incurring any pain or penalty whatsoever; any law or statute to the contrary notwithstanding.

"VI. Provided always, that the parents who have their children christened by episcopal ministers, be hereby obliged to enter the birth and christening of their children in the register books for christenings belonging to the respective parishes in which they live: and provided likewise, that no episcopal minister or ministers residing within that part of the United Kingdom called Scotland, presume to marry any persons but those whose banns have been duly published three several Lord's days in the episcopal congregations which the two parties frequent, and in the churches to which they belong as parishioners, by virtue of their residence; and that upon the same pains and punishments as are already inflicted by the laws of Scotland in cases of clandestine marriages; and the ministers of the parish churches are hereby obliged to publish the said banns; and in case of neglect or refusal, it shall be sufficient to publish the said banns in any episcopal congregation alone; any law, statute, or custom to the contrary notwithstanding.

"VII. Provided always, and it is the true intent and meaning of this act, that all the laws made against profaneness and immorality, and for the frequenting of Divine services on the Lord's day, commonly called Sunday, shall be still in force, and executed against all persons that offend against the said laws, or shall not resort either to some church, or to some congregation or assembly of religious worship allowed and permitted by this act.

"VIII. Provided likewise, that neither this act, nor any clause, article, or thing herein contained, shall extend, or be construed to extend to give any ease, benefit, or advantage to any papist or popish recusant whatsoever, or to any person that shall deny, in his preaching or writing, the doctrine of the blessed Trinity.

“IX. And be it further enacted by the authority aforesaid, that if any person or persons, at any time after the twenty-fifth day of March next to come, shall willingly, and of purpose, maliciously or contemptuously come into any congregation or assembly of religious worship, permitted by this act, and disquiet or disturb the same, or give any disturbance to the said congregation at the doors or windows, or misuse any minister or pastor of such congregation, such person or persons, upon proof thereof before two justices of the peace, by two or more sufficient witnesses, shall find two sureties to be bound by recognizance in the penal sum of fifty pounds sterling, for his or their appearance at the next general or quarter sessions, or before the court of judicatory, or other judge or judges competent, and in default of such sureties shall be committed to prison, and upon conviction of the said offence, at the said general or quarter sessions, or before the said court of judicatory, or other judge or judges competent, shall forfeit the sum of one hundred pounds sterling; one moiety thereof to the informer, the other to be disposed of for the use of the poor of the parish where such offence shall be committed; and if the magistrates of any town or place, or others pretending to have authority or jurisdiction anywhere in Scotland, shall, in contempt of this law, forbid or hinder those of the episcopal persuasion from meeting or assembling together for divine worship, in the places subject to their jurisdiction, or shall shut up, or cause to be shut up, the doors of the houses, or other places where such episcopal assemblies are held, or intended to be held, such magistrates and others so offending, upon proof thereof before the court of judicatory, by two or more sufficient witnesses, shall forfeit the sum of one hundred pounds sterling, to be distributed as aforesaid.

“X. And be it further declared and enacted by the authority aforesaid, that no civil pain or forfeiture, or disability whatsoever, shall be in any ways incurred by any person or persons, by reason of any excommunication or prosecution in order to excommunication by the church judicatories in that part of Great Britain called Scotland; and all civil magistrates are hereby expressly prohibited and discharged to force or compel any person or persons to appear, when summoned, or to give obedience to any such sentence when pronounced; any law or custom to the contrary notwithstanding.

“XI. And be it further enacted by the authority aforesaid, that every minister and preacher, as well of the established church in that part of Great Britain called Scotland, as those of the episcopal communion protected and allowed by this act shall, at some time during the exercise of the Divine service in such respective church, congregation, or assembly, pray, in express words, for her most sacred majesty Queen Anne, and the most excellent Princess Sophia, electress and duchess dowager of Hanover, while living, and all the royal family: and every such minister or preacher neglecting so to do, shall for the first offence forfeit the sum of twenty pounds sterling, to be recovered and distributed in such manner as touching the other penalties in this act is herein before directed; and for the second offence every minister of the established church in that part of Great Britain called Scotland, being thereof convicted by the oaths of two sufficient witnesses before the lords of judicatory, shall be *ipso facto* deprived, and declared incapable of any church or ecclesiastical living, during the space of three years; and every episcopal minister allowed and protected by this act, being thereof in like manner convicted, shall from thenceforth forfeit and lose the benefit of this act, and be declared incapable of officiating as pastor of any episcopal congregation, during the space of three years.

“XII. Provided always, that no minister or preacher offending herein, shall suffer such penalties, or either of them, unless he be prosecuted for the same within the space of two months after the offence is committed.”

STAT. 10 ANN. c. 7.

Punishment of such as shall disturb any congregation of religious worship:

and of magistrates hindering those of the episcopal congregations to meet, &c

No forfeiture, &c. shall be incurred by reason of any excommunication by the church judicatories, &c.

All ministers, &c. to pray for the queen, &c.

Forfeiture for first offence, 20*l*.; for the second, every minister of the established church to be deprived, &c. And every episcopal minister to lose the benefit of this act, &c.

Prosecution to be within two months after the offence.

STAT. 10 ANN.
c. 11.

LII. STAT. 10 ANNÆ, c. 11. A.D. 1711.

"An Act for enlarging the Time given to the Commissioners appointed by Her Majesty, pursuant to an Act for granting to Her Majesty several Duties on Coals, for building fifty new Churches in and about the Cities of London and Westminster, and Suburbs thereof, and other Purposes therein mentioned; and also for giving the said Commissioners further Powers for better effecting the same; and for appointing Moneys for rebuilding the Parish Church of St. Mary Woolnoth in the City of London."

STAT. 10 ANN.
c. 12.

LIIL. STAT. 10 ANNÆ, c. 12. A.D. 1711.

"An Act to restore the Patrons to their ancient Rights of presenting Ministers to the Churches vacant in that part of Great Britain called Scotland."

"Whereas by the ancient laws and constitutions of that part of Great Britain called Scotland, the presenting of ministers to vacant churches did of right belong to the patrons, until by the twenty-third act of the second session of the first parliament of the late King William and Queen Mary, held in the year one thousand six hundred and ninety, intituled, 'Act concerning Patronages,' the presentation was taken from the patrons and given to the heritors and elders of the respective parishes; and in place of the right of presentation, the heritors and life renters of every parish were to pay to the respective patrons a small and inconsiderable sum of money, for which the patrons were to renounce their right of presentation in all times thereafter: and whereas by the fifteenth act of the fifth session, and by the thirteenth act of the sixth session of the first parliament of the said King William, the one intituled, 'An Act for encouraging of Preachers at Vacant Churches be-north Forth,' and the other intituled, 'Act in favours of Preachers be-north Forth,' there are several burdens imposed upon vacant stipends, to the prejudice of the patron's right of disposing thereof: and whereas that way of calling ministers has proved inconvenient, and has not only occasioned great heats and divisions among those who by the aforesaid act were entitled and authorized to call ministers, but likewise has been a great hardship upon the patrons, whose predecessors had founded and endowed those churches, and who have not received payment or satisfaction for their right of patronage from the aforesaid heritors or life renters of the respective parishes, nor have granted renunciations of their said rights on that account; be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that the aforesaid act made in the year one thousand six hundred and ninety, intituled, 'Act concerning Patronages,' in so far as the same relates to the presentation of ministers by heritors and others therein mentioned, be and is hereby repealed and made void; and that the aforesaid fifteenth act of the fifth session, and thirteenth act of the sixth session, of the first parliament of King William, be and are hereby likewise repealed and made void; and that in all time coming, the right of all and every patron or patrons to the presentation of ministers to churches and benefices, and the disposing of the vacant stipends for pious uses within the parish, be restored, settled, and confirmed to them, the aforesaid acts, or any other act, statute, or custom to the contrary in any wise notwithstanding; and that from and after the first day of May, one thousand seven hundred and twelve, it shall and may be lawful for her majesty, her heirs and successors, and for every other person or persons, who have right to any patronage or patronages of any church or churches whatsoever, in that part of Great Britain called Scotland, (and who have not made and subscribed a formal renunciation thereof under their hands,) to present a qualified minister or ministers to any church or churches whereof they are patrons, which shall, after the said first day of May, happen to be vacant; and the presbytery of the respective bounds shall and is hereby obliged to receive and admit in the same manner such qualified person or persons, minister or ministers,

The rights of
patrons re-
stored.

Crown, and
others who
have right to
patronages,
may present
qualified
ministers, and
the presby-
teries shall
receive them.

as shall be presented by the respective patrons, as the persons or ministers presented before the making of this act ought to have been admitted.

STAT. 10 ANN.
c. 12.

“II. Provided always, that in case any patron or patrons have accepted of, and received any sum or sums of money from the heritors or life renters of any parish, or from the magistrates or town council of any borough, in satisfaction of their right of presentation, and have discharged or renounced the same under their hand, that nothing herein shall be construed to restore such patron or patrons to their right of presentation; anything in this present act to the contrary notwithstanding.

Not to restore the right to patrons who have sold the same.

“III. Provided also, and it is hereby enacted by the authority aforesaid, that in case the patron of any church aforesaid shall neglect or refuse to present any qualified minister to such church that shall be vacant the said first day of May, or shall happen to be vacant at any time thereafter, for the space of six months, after the said first day of May, or after such vacancy shall happen, that the right of presentation shall accrue and belong for that time to the presbytery of the bounds where such church is, who are to present a qualified person for that vacancy *tanquam jure devoluto*.

Patron not presenting in six months, the right shall accrue to the presbytery.

“IV. And be it further enacted and declared by the authority aforesaid, that the patronage and right of presentations of ministers to all churches which belonged to archbishops, bishops, or other dignified persons, in the year one thousand six hundred eighty-nine, before episcopacy was abolished, as well as those which formerly belonged to the crown, shall and do of right belong to her majesty, her heirs and successors, who may present qualified ministers to such church or churches, and dispose of the vacant stipends thereof for pious uses, in the same way and manner as her majesty, her heirs and successors, may do in the case of other patronages belonging to the crown.

Patronages which, before episcopacy was abolished, belonged to archbishops, &c. shall belong to her majesty, &c.

“V. Declaring always, that nothing in this present act contained shall extend, or be construed to extend, to repeal and make void the aforesaid twenty-third act of the second session of the first parliament of the late King William and Queen Mary, excepting so far as relates to the calling and presenting of ministers, and to the disposing of vacant stipends in prejudice of the patrons only.

How far the statute of 1 G. & M. Sess. 2, c. 23, shall be repealed.

“VI. And be it further enacted by the authority aforesaid, that all and every patron and patrons, who have not taken, or shall not take, at any time before his or their presenting a minister or ministers to any church or churches aforesaid, the oath appointed to be taken by persons in public trust, by an act made in the sixth year of her majesty's reign, intituled, ‘An Act for the better Security of Her Majesty's Person and Government,’ shall, and are hereby obliged, at their signing such presentation, to take and subscribe the aforesaid oath before the sheriff of the shire, steward of the stewartry, or before any two or more justices of the peace of the county or place where such patron resides; and in case such patron or patrons, who have not formerly taken the aforesaid oath, refuse or neglect to take the same at the signing of such presentation, that the same shall be and is hereby declared to be void, and the right of presentation, and of the disposing the vacant stipends for that time, shall belong to her majesty, her heirs and successors, who may present a qualified person to such church or benefice, at any time within the space of six months after such neglect or refusal; anything in this present act, or in any other act, to the contrary notwithstanding.

Patrons to take the oath in 6 Ann. c. 14.

Refusing the presentation shall be void, and the crown shall present.

“VII. And whereas the right of patronage of churches may belong to papists, be it therefore enacted by the authority aforesaid, that any person or persons, known or suspected to be papists, and who have a right of presenting ministers, shall be obliged, at or before his or their signing any presentation, to purge himself of popery, by taking and signing the formula contained in the third act of the parliament of Scotland, held in the year one thousand seven hundred, intituled, ‘An Act for preventing the Growth of Popery;’ and in case such popish patron or patrons shall refuse to take and subscribe the formula aforesaid, the same being tendered to him or them by the sheriff of the shire, steward of the stewartry, or any two or more justices of the peace within their respective jurisdiction, who are

Known or suspected papists shall take the formula before they present, otherwise the presentation shall be void, and her majesty, &c. may present.

STAT. 10 ANN. c. 12. hereby empowered to administer the same, the presentation, and the right of disposing the vacant stipends, shall for that time belong to her majesty, her heirs and successors, who may present any qualified person or persons within six months after such neglect or refusal; anything in this present act, or any other act, to the contrary notwithstanding."

STAT. 10 ANN. c. 19.

LIV. STAT. 10 ANNÆ, c. 19 (1). A.D. 1711.

"An Act for laying several Duties, &c."

Clause to prevent clandestine marriages. See farther, 26 Geo. 2, c. 33.

"CLXXVI. And whereas great loss hath happened of the duties already laid upon stamped vellum, parchment, and paper, and other inconveniences daily grow from clandestine marriages; for remedy thereof for the future, be it enacted by the authority aforesaid, that every parson, vicar, or curate, or other person in holy orders, beneficed or not beneficed, who shall, after the four and twentieth day of June, one thousand seven hundred and twelve, marry any person in any church or chapel, exempt or not exempt, or in any other place whatsoever, without publication of the banns of matrimony between the respective parties according to law, or without licence first had and obtained from the proper ordinary for the said marriage, shall for every such offence forfeit the sum of one hundred pounds, to be recovered with full costs of suit, by action of debt, bill, plaint, or information, in any of her majesty's courts of record at Westminster, wherein no essoin, protection, or wager of law, or more than one imparlance shall be allowed; one moiety thereof to the queen, her heirs and successors, and the other moiety to him or them who shall sue for the same; and if such offender shall be a prisoner in any prison or gaol (other than a county gaol) at the time of such offence committed, and shall be duly convicted of such offence, by action or information, as aforesaid, then upon oath made of such imprisonment before any judge of her majesty's courts of record at Westminster, and upon producing a copy of the record of such conviction, to be likewise proved upon oath before the said judge, (which oath the said judge is hereby empowered to administer,) the said judge is hereby required to grant his warrant to the keeper of the gaol or prison where such offender is a prisoner, (which warrant such keeper is hereby required to obey,) to remove such offender to the gaol of that county where such offender is a prisoner, there to remain charged in execution with the penalty inflicted by this act, and with all and every the causes of his former imprisonment; and if any gaoler or keeper of any prison shall be privy to, or knowingly permit, any marriage to be solemnized in his said prison, before publication of banns, or licence obtained, as aforesaid, he shall for every such offence forfeit the sum of one hundred pounds, to be recovered and distributed, as aforesaid.

Salvo for archbishops &c. jurisdiction.

"CLXXVII. Saving nevertheless to all archbishops, bishops, archdeacons, and other ordinaries, their vicars general, commissaries, and officials, the free exercise of all ecclesiastical jurisdiction, and full power and authority of inflicting all such pains and censures for this or any other crime or crimes, as they might have done if this act had not been made.

Not to extend to Scotland.

"CLXXVIII. Provided always, that the said provision for marriages do not extend to that part of Great Britain called Scotland."

STAT. 12 ANN. ST. I. c. 4.

LV. STAT. 12 ANNÆ, ST. I. c. 4. A.D. 1713.

"An Act for making Inclosures of some part of the Common Grounds in the West Riding of the County of York, for the endowing poor Vicarages and Chapelries, for the better Support of their Ministers."

"Whereas in the West Riding of the county of York there are divers parishes of great extent, and very populous, which hath occasioned the erecting of divers

(1) Superseded by Stat. 4 Geo. 4, c. Gul. 4 & 1 Vict. c. 22; Stat. 3 & 4 Vict. 76; Stat. 6 & 7 Gul. 4, c. 85; Stat. 7 c. 72.

chapels of ease for the benefit of the inhabitants: but there being very small or no settled provision made for the maintenance of the ministers that perform divine offices in those chapels, or for the vicars of many of the parish churches within the said West Riding; and there being large commons or waste grounds, within many of the said parishes, which yield little or no profit or advantage to any person, it would be a great advantage and encouragement to the vicars and ministers there, if they might, by inclosing some parts of the said commons and waste grounds, improve the same for the benefit of themselves and their successors: may it therefore please your most excellent majesty, at the humble suit of the justices of the peace, gentlemen, clergy, freeholders, and other inhabitants of the said riding, that it may be enacted; and be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in parliament assembled, and by the authority of the same, that from and after the nine and twentieth day of September, which shall be in the year of our Lord one thousand seven hundred and thirteen, it shall and may be lawful for any of the inhabitants of any parish in the West Riding of the county of York, wherein any such chapels of ease, as aforesaid, now are, or hereafter shall be erected or built, and wherein there are large wastes or commons, with the consent of the lord or lords of the manor wherein such waste ground lies, (and if there be above two lords of such manor, then with the consent of the major part of them,) and with the consent of three parts of four of all freeholders and others, who have any right of common therein, according to their number, and the value of their respective estates, to inclose any part of the waste or common grounds within such parish (or chapelry therein) not exceeding sixty acres, or a sixth part of such common land, where the said sixth part shall not exceed sixty acres, and to settle the same in trustees and their heirs, for the benefit, and as a maintenance and support of such ministers as shall not have a settled provision of above forty pounds per annum for their maintenance; and shall reside within the same parish or chapelry, and perform divine offices in the parish church or chapel therein, according to the usage of the church of England, and be licensed by the Archbishop of York, or the guardian of the spiritualities, (*sede vacante*,) any former law or usage to the contrary notwithstanding.

"II. Saving always, and reserving unto all lords of manors, and other owners and proprietors of royalties within the said riding, their heirs and assigns, all and all manner of mines and quarries of stone, coal, and ore, and other mines, with full power, and free liberty to dig, get, and sough for the same, in and through any such inclosures that shall be made pursuant to this act; and the same so got, with carts, wains, and carriages to take, lead, and carry away.

"III. And be it further enacted by the authority aforesaid, that after any such inclosure and settlement, it shall not be in the power of any trustee or minister, or any other person whatsoever, to alienate and employ any of the profits of such inclosed lands to any other use or uses, but only for the support and maintenance of the vicar or minister who shall serve the cure, (if it belong to a vicarage,) and to the minister that performs divine service in the chapel, according to the usage of the church of England, (if it be appropriated to any chapel,) and not otherwise.

"IV. And be it further enacted, that it shall and may be lawful for any of the said trustees and their heirs, from time to time, by any writing or writings under their hands and seals, with the consent of the vicar or minister, for whose use such inclosure is made, to be testified by his being made a party to, and signing and sealing such writing, to demise or lease any common or waste grounds, or any parcel or parcels thereof, that shall be inclosed by virtue of this act, for any term or number of years not exceeding one and twenty, so as upon every such demise or lease there be reserved, payable half-yearly, during the said term, as much rent as can, at the making such lease, be really gotten for the same; and that such rent be made payable to or for the only use and benefit of such vicar and minister of such vicarage or chapelry, and their successors, and so as no fine, income, or other consideration be taken for the same.

"V. And it is hereby enacted, that all leases made of such inclosures in any

STAT. 12 ANN.
ST. I. c. 4.

After 29th September, 1713, the inhabitants of the West Riding of Yorkshire, where there are chapels of ease, may, with the consent of the lords of manors, &c. inclose part of the wastes, and settle the same in trustees for the support of ministers who have not a settled provision of above 40*l.* per annum.

Saving to lords of manors all mines, &c.

No trustee, &c. shall alienate the profits of such inclosed lands to any other use but for support of the minister.

Trustees, &c. with consent of the minister, may lease the grounds so inclosed for twenty-one years, reserving rent payable half-yearly for the use of the minister.

Lease otherwise made, void.

STAT. 12 ANN.
ST. I. c. 4.

other manner, shall not be good or available in the law, but shall be *ipso facto* void.

General issue.

“VI. And be it further enacted by the authority aforesaid, that if any action, suit, or information, shall be commenced or prosecuted against any person or persons, for anything that he or they shall do or cause to be done in pursuance or in execution of this act, such person or persons so sued in any court whatsoever, shall and may plead the general issue of not guilty; and upon any issue joined may give this act and the special matter in evidence; and if in any such suit the plaintiff or prosecutor shall become nonsuit, or forbear prosecution, or suffer a discontinuance, or if a verdict shall pass against him upon a demurrer, then in any of the said cases, the defendant or defendants shall recover full costs, for which he or they shall have the like remedy as is allowed in any case where costs are to be recovered by any former law.

Public act.

“VII. And be it further enacted, that this act shall be taken and allowed in all courts within this kingdom, as a public act.

Waste of manors belonging to the queen may be inclosed with consent of the crown, and settled in trustees for the said uses.

“VIII. And whereas some manors within the said West Riding do belong to her majesty in right of the crown; be it further enacted by the authority aforesaid, that by and with the consent of her majesty, her heirs and successors, and with the consent of three parts of four of the freeholders and others, who have right of common therein, according to their number, and the value of their respective estates, it shall and may be lawful to inclose any part of the waste or common grounds of such manors not exceeding sixty acres, or a sixth part of such common land where the said sixth part shall not exceed sixty acres; and to settle the same in trustees and their heirs, for the charitable purposes aforementioned; any law or statute to the contrary thereof in any wise notwithstanding.”

STAT. 12 ANN.
ST. I. c. 17.

LVI. STAT. 12 ANNÆ, ST. I. c. 17. A.D. 1713.

“An Act to vest in the Commissioners for building Fifty new Churches in and about London and Westminster, and Suburbs thereof, as much of the Street near the May Pole in the Strand in the County of Middlesex as shall be sufficient to build one of the said Churches upon; and for restoring to the Principal and Scholars of King’s Hall and College of Brazen Nose, in the University of Oxon, their right of Presentation to Churches and Chapels in Stepney Parish.”

STAT. 12 ANN.
ST. II. c. 6.

LVII. STAT. 12 ANNÆ, ST. II. c. 6. A.D. 1713.

“An Act for taking away Mortuaries within the Dioceses of Bangor, Landaff, St. David’s, and St. Asaph, and giving a Recompense therefore to the Bishops of the said respective Dioceses; and for confirming several Letters Patents granted by Her Majesty, for perpetually annexing a Prebend of Gloucester to the Mastership of Pembroke College in Oxford; and a Prebend of Rochester to the Provostship of Oriel College in Oxford; and a Prebend of Norwich to the Mastership of Catharine Hall in Cambridge.”

21 Hen. 8,
c. 6, s. 7.

“Whereas by an act of parliament passed in the one and twentieth year of the reign of the late King Henry the Eighth, intituled, ‘An Act where Mortuaries ought to be paid, for what Persons, and how much, and in what case none is due,’ and by a proviso or clause therein contained, it is provided (among other things) that it shall be lawful to the Bishops of Bangor, Landaff, St. David’s, and St. Asaph, to take such mortuaries of the priests within their dioceses and jurisdictions as then-tofore had been accustomed; and the bishops of the said dioceses for the time being have accordingly used to demand and take, and continue to demand and take, mortuaries upon the death of any clergyman within their said dioceses and jurisdictions; which said mortuaries, consisting of several of the best goods of the deceased, do oftentimes amount to a very considerable part of his estate, and the payment thereof does very much lessen that small provision which generally the clergy of those dioceses are able to make for the support of their families, and tends to the great impoverishing of the same: for the remedying whereof for the future, and for abolishing and taking away all mortuaries or corse-presents, and the custom

or usage of taking and paying mortuaries or corse-presents upon the death of clergymen within the said dioceses and jurisdictions: and to the end a reasonable recompense and satisfaction for the same may be provided and established for the bishops of the said dioceses for ever; be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and of the commons, in this present parliament assembled, and by the authority of the same, that the said proviso or clause in the said act, and all and every proviso or clause in the same act, so far as the same do or doth relate to the taking any mortuary or corse-present upon the death of any clergyman within the said respective dioceses or jurisdictions, shall immediately, from and after the respective times herein after-mentioned, that is to say, within the said diocese of St. Asaph, from and after the four and twentieth day of June, in the year of our Lord one thousand seven hundred and fourteen; and within the said diocese of Bangor, immediately from and after such time any rectory *sine cura* shall next happen to be void and be in the collation of the present bishop of the said diocese of Bangor, or of any of his successors; and within the said diocese of Landaff, immediately from and after such time as the treasurership, with the prebend thereto annexed, founded in the cathedral church of Landaff, shall next happen to be void, such treasurership and prebend being in the collation of the bishop of the said diocese of Landaff; and within the said diocese of St. David's, immediately from and after such time as the prebend of Langamarch, founded in the collegiate church of Brecon, now enjoyed by John Medley, archdeacon of St. David's, shall next happen to be void, the same being in the collation of the Bishop of St. David's, stand and be absolutely repealed, annulled, and void, and all and every and any custom, and usage of and for paying, demanding, or taking any mortuary or corse-present, or any goods, thing or things, for or in the name of a mortuary or corse-present, upon the death of any clergyman within the said respective dioceses or jurisdictions, shall, from the respective times aforesaid, for ever, be absolutely abolished and void; and no mortuary or corse-present, or sum or sums of money for or in lieu of the same, or in the name thereof, shall be yielded, paid, answered, or satisfied, or be due or payable by any person or persons to any bishop of either of the said dioceses, or other person or persons claiming by, from, or under any such bishop: and that from and after the respective times aforesaid, it shall not be lawful to or for the respective bishops of the said dioceses, or any of them, their or any or either of their successors, farmers, bailiffs, or lessees, or any of them, or any other person or persons whatsoever, claiming by or under such bishops, or any or either of them, to take, receive, or demand of any person or persons, any manner of mortuary or corse-present, or any sum or sums of money or other thing, for or in the name, lieu, or stead of any mortuary or corse-present, or to convene, cite, sue, or prosecute any person or persons before any judge spiritual, or in any of her majesty's courts of law, or other court whatsoever, for the recovery of, or for, touching or concerning any mortuary or corse-present, or anything in lieu thereof, for or by reason or on account of the death of any priest or clergyman within the said respective dioceses or jurisdictions, at any time after the respective times aforesaid; anything in the said recited act, or any law, custom, or usage whatever to the contrary notwithstanding.

“II. And be it further enacted by the authority aforesaid, that in recompense and satisfaction to the Bishop of St. Asaph and his successors, for such mortuaries as might arise or become due or payable to the said Bishop of St. Asaph, or his successors, by virtue of the said recited act, upon the death of any priest or clergyman, the rectory, *sine cura*, which shall first after the said four and twentieth day of June, one thousand seven hundred and fourteen, happen to be void, and be in the collation of the bishop of the said diocese of St. Asaph, or any of his successors, shall immediately upon such vacancy, and from thenceforth be annexed and united to the said bishoprick of St. Asaph for ever, and all and every the profits, rights, dues, benefits, and advantages whatsoever, of the same rectory, or thereto in any wise belonging or appertaining, shall or may be had, received, taken, and enjoyed by the bishop of the said diocese and his successors for ever.

STAT. 12 ANN.
ST. 11. c. 6.

The clause in the recited act, so far as it relates to the taking any mortuary in the dioceses of Bangor, Landaff, St. David's, and St. Asaph, repealed.

And the bishops of the said dioceses shall not take any mortuaries after the times limited above.

Recompense to the Bishop of St. Asaph and his successors for such mortuaries.

STAT. 12 ANN.
ST. II. C. 6.

Recompense to
the Bishop of
Bangor, &c.

The Bishops of
St. Asaph and
Bangor shall
not lease the
rectories united
to their bi-
shoprics for
any longer
term than they
continue
bishops.

Recompense
to the Bishop
of Landaff.

To the Bishop
of St. David's.

The queen's
letters patents
to the master
of Pembroke
College, and
to the provost
of Oriel Col-
lege, in Oxon,
and to the
warden of
Catharine Hall,
in Cambridge,
confirmed.

“III. And be it further enacted by the authority aforesaid, that in recompense and satisfaction to the Bishop of Bangor and his successors, for such mortuaries as might arise or become due or payable to the said Bishop of Bangor or his successors, by virtue of the said recited act, upon the death of any priest or clergyman, the rectory, *sine cura*, which shall next happen to be void, and be in the collation of the bishop of the said diocese of Bangor, or any of his successors, shall, immediately upon such vacancy, and from thenceforth be annexed and united to the said bishoprick of Bangor for ever; and all and every the profits, rights, dues, benefits, and advantages whatsoever, of the same rectory, or thereto in any wise belonging or appertaining, shall or may be had, received, taken, and enjoyed by the bishop of the said diocese of Bangor and his successors for ever.

“IV. Provided always, that nothing in this act shall extend to enable any bishop in either of the said dioceses of St. Asaph and Bangor, to demise, let, or set; and that it shall not be lawful to or for the bishops of either of the said dioceses, or any of their successors, to demise, lease, set, or let to farm, or otherwise, either of such rectories, *sine cura*, annexed and united to the respective bishopricks of St. Asaph and Bangor, as afore-mentioned, or any of the rights, dues, benefits, or profits thereof, for any longer time than such bishop, by whom any lease of either of the said rectories, *sine cura*, shall be made, shall continue bishop of the said diocese; any statute, law, or usage whatsoever to the contrary notwithstanding.

“V. And be it further enacted by the authority aforesaid, that in recompense and satisfaction to the Bishop of Landaff and his successors, for such mortuaries as might arise or become due or payable to the said Bishop of Landaff, or his successors, by virtue of the said recited act, upon the death of any priest or clergyman, whensoever the treasurership, with the prebend thereto annexed, founded in the cathedral church of Landaff, shall next happen to be void, the said treasurership and prebend shall, immediately upon such vacancy, and from thenceforth be annexed and united to the said bishoprick of Landaff for ever; and all and every the profits, rights, dues, benefits, and advantages whatsoever, of the said treasurership and prebend, or thereto in anywise belonging or appertaining, shall or may be had, received, taken, and enjoyed by the bishop of the said diocese of Landaff, and his successors for ever.

“VI. And be it further enacted by the authority aforesaid, that in recompense and satisfaction to the Bishop of St. David's and his successors, for such mortuaries as might arise or become due or payable to the said Bishop of St. David's, or his successors, by virtue of the said recited act, upon the death of any priest or clergyman, whensoever the said prebend of Langamarch shall next happen to be void, the said prebend shall, immediately upon such vacancy, and from thenceforth be annexed and united to the said bishoprick of St. David's for ever; and all and every the profits, rights, dues, benefits, and advantages whatsoever, of the same prebend, or thereto in any wise belonging or appertaining, shall or may be had, received, taken and enjoyed by the bishop of the said diocese of St. David's, and his successors for ever, in as full and ample manner as the said John Medley now hath or enjoyeth, or might or ought to have and enjoy the same.

“VII. And whereas her majesty has been graciously pleased, by her letters patents under the great seal of Great Britain, bearing date at Westminster the eleventh day of November, in the twelfth year of her reign, to incorporate Collwell Brickenden, doctor in divinity, the master of Pembroke College in the University of Oxford, and his successors, masters of the same college, by the name, style, and title of Master of Pembroke College in the University of Oxford; and did thereby grant to the said master and his successors, masters of the same college, for their better support and maintenance, that canonship or prebend in the cathedral church of the holy and undivided Trinity of Gloucester, which should first happen to be void, and in the gift of her majesty, her heirs, and successors, from and after the date of the said grant; to have and to hold the said canonship or prebend, to the said Collwell Brickenden, master of the said college, and his successors, masters of the same college, of her majesty, her heirs, and successors, in pure and perpetual alms, for and during his and their respective continuance in the said mastership;

and did thereby likewise unite such canonship or prebend, as aforesaid, to the said corporation for ever; and whereas her majesty has been also graciously pleased, by other her letters patents under the great seal of Great Britain, bearing date at Westminster the fourteenth day of January, in the twelfth year of her reign, to incorporate George Carter, doctor in divinity, the provost of Oriel College in the University of Oxford, and his successors, provosts of the same college, by the name, style, and title of Provost of the House of the blessed Virgin Mary, in Oxon, commonly called Oriel College, of the foundation of Edward the Second, some time king of England, of famous memory; and did thereby grant to the said provost, and his successors, provosts of the same college, for their better support and maintenance, that canonship or prebend in the cathedral church of Christ, and of the blessed Virgin Mary, of Rochester, which should first happen to be void, and in the gift of her majesty, her heirs, and successors, from and after the date of the said grant; saving always the right of the archdeacons of the said church for the time being, to one of the said canonships, by virtue of a former grant; to have and to hold the said canonship or prebend, to the said George Carter, provost of the said college, and his successors, provosts of the same college, of her majesty, her heirs, and successors, in pure and perpetual alms, for and during his and their continuance in the said provostship; and did thereby likewise unite such canonship or prebend, as aforesaid, to the said corporation for ever: and whereas her majesty has been further graciously pleased, by other her letters patents under the great seal of Great Britain, bearing date at Westminster the six and twentieth day of April, in the thirteenth year of her reign, to incorporate Thomas Sherlock, doctor in divinity, master or warden of St. Catharine's College or Hall in the University of Cambridge, and his successors, masters or wardens of the same college or hall, by the name, style, and title of Master or Warden of St. Catharine's College or Hall, in the University of Cambridge; and did thereby grant to the said master or warden, and his successors, masters or wardens of the same college or hall, for their better support and maintenance, that canonship or prebend in the cathedral church of the holy and undivided Trinity in Norwich, of the foundation of King Edward the Sixth, which should first happen to be void, and in the gift of her majesty, her heirs, and successors, from and after the date of the said grant; to have and to hold the said canonship or prebend to the said Thomas Sherlock, master or warden of the said college or hall, and his successors, masters, or wardens, of the same college or hall, of her majesty, her heirs, and successors, in pure and perpetual alms for and during his and their continuance in the said mastership or wardenship; and did thereby likewise unite such canonship or prebend, as aforesaid, to the said corporation for ever; as by the said several and respective recited letters patents (relation being thereunto had) may more fully and at large appear: be it therefore enacted by the authority aforesaid, that the said several and respective recited letters patents, and all and singular the clauses, articles, and things therein respectively contained, shall be and are hereby ratified and confirmed, and the said several and respective canonships or prebends shall be, from time to time, for ever, held and enjoyed, according to the true intent and meaning of the several and respective letters patents above recited.

STAT. 12 ANN.
ST. II. c. 6.

“VIII. And be it further enacted, that this act shall be taken and allowed in all courts within this kingdom as a public act.

A public act.

“IX. Saving nevertheless, and always reserved unto her majesty, her heirs, and successors, all and singular first-fruits and tenths, in anywise due or payable to her majesty, her heirs, and successors, for or in respect of such rectories *sine cura*, and treasurership, and prebend thereunto annexed, founded in the cathedral church of Landaff, and the said prebend of Langamarch, and all such right and title, as her said majesty hath in or to such first-fruits and tenths, or any of them, and which shall continue to be levied and paid in like manner as heretofore; anything herein contained to the contrary in any wise notwithstanding.

Saving to the crown all first-fruits, &c. for such rectories, &c.

“X. Saving also to the queen's majesty, her heirs, and successors, and to the respective lessee or lessees of the said treasurership and prebend thereunto annexed, founded in the cathedral church of Landaff, and to the said prebend of Langamarch,

Another saving to the lessees, &c.

STAT. 12 ANN.
ST. II. c. 6.

See 28 Geo. 2,
c. 6, for taking
away mortua-
ries in Chester.

and to all and every other person or persons, all such estate, right, title, and interest, in, to, or out of the said treasurership and prebend thereto annexed, and the said prebend of Langamarch, as any such lessee or lessees, or other person or persons, have or might have or claim, in, to, or out of the said treasurership and prebend thereunto annexed, and the said prebend of Langamarch, if this act had not passed."

STAT. 12 ANN.
ST. II. c. 7.

LVIII. STAT. 12 ANNÆ, ST. II. c. 7 (1). A.D. 1713.

"An Act to prevent the Growth of Schism, and for the further Security of the Churches of England and Ireland, as by Law established."

13 & 14 Car.
2, c. 4.

"Whereas by an act of parliament made in the thirteenth and fourteenth years of his late majesty King Charles the Second, intituled, 'An Act for the Uniformity of public Prayers, and Administration of Sacraments, and other Rites and Ceremonies; and for establishing the Form of making, ordaining, and consecrating Bishops, Priests, and Deacons, in the Church of England,' it is, amongst other things, enacted, that every schoolmaster keeping any public or private school, and every person instructing or teaching any youth in any house or private family, as a tutor or schoolmaster, should subscribe, before his or their respective archbishop, bishop, or ordinary of the diocese, a declaration or acknowledgment, in which, amongst other things, was contained as follows, *viz.*, 'I, A. B., do declare, that I will conform to the liturgy of the church of England, as it is now by law established;' and if any schoolmaster, or other person instructing or teaching youth in any private house or family, as a tutor or schoolmaster, should instruct or teach any youth as a tutor or schoolmaster before licence obtained from his respective archbishop, bishop, or ordinary of the diocese, according to the laws and statutes of this realm, for which he should pay twelve pence only, and before such subscription and acknowledgment made, as aforesaid, then every such schoolmaster and other instructing and teaching, as aforesaid, should, for the first offence, suffer three months' imprisonment, without bail or mainprize, and for every second and other such offence should suffer three months' imprisonment without bail or mainprize, and also forfeit to his majesty the sum of five pounds: and whereas notwithstanding the said act, sundry papists and other persons dissenting from the church of England, have taken upon them to instruct and teach youth, as tutors or schoolmasters, and have for such purpose openly set up schools and seminaries, whereby, if due and speedy remedy be not had, great danger might ensue to this church and state: for the making the said recited act more effectual, and preventing the danger aforesaid, &c."

See farther,
23 Geo. 2,
c. 28.

STAT. 12 ANN.
ST. II. c. 12.

LIX. STAT. 12 ANNÆ, ST. II. c. 12 (2). A.D. 1713.

"An Act for the better Maintenance of Curates within the Church of England; and for preventing any Ecclesiastical Persons from buying the next Avoidance (3) of any Church Preferment."

"Whereas the absence of beneficed ministers ought to be supplied by curates that are sufficient and licensed preachers, and no curates or ministers ought to serve in any place without the examination and admission of the bishop of the diocese, or ordinary of the place, having episcopal jurisdiction: but nevertheless, for want of sufficient maintenance and encouragement of such curates, the cures within that part of Great Britain called England, have been in several places meanly supplied: for remedy whereof, be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that if any rector or vicar (4) having cure of souls shall, from and after the

(1) This statute was repealed by Stat. 5 Geo. 1, c. 4; it has however been inserted, because references have been made to its provisions.

(2) *Vide* Stat. 36 Geo. 3, c. 83. Stat. 53 Geo. 3, c. 149. Stat. 57 Geo. 3, c. 99. Stat. 1 & 2 Vict. c. 106. Stat. 2 & 3 Vict. c. 49.

(3) *Buying the next avoidance*:—*Vide ante* 447-460.

(4) *Any rector or vicar*:—Stat. 12 Ann. St. II. c. 12, is understood as only prohibiting clergymen from purchasing livings for themselves.

nine and twentieth day of September, in the year of our Lord one thousand seven hundred and fourteen, nominate and present any curate to the bishop or ordinary, to be licensed or admitted to serve the cure of such rector or vicar in his absence, the said bishop or ordinary, having regard to the greatness of the cure, and the value of the ecclesiastical benefices of such rector or vicar, shall, on or before the granting such license, appoint by writing under his hand and seal a sufficient certain stipend or allowance, not exceeding fifty pounds per annum, nor less than twenty pounds per annum, to be paid or answered at such times as he shall think fit, by such rector or vicar, to such curate, for his support and maintenance; and if it shall appear to the bishop or ordinary, upon complaint or otherwise, that any curate of such rector or vicar, licensed or admitted before the said nine and twentieth day of September in the year of our Lord one thousand seven hundred and fourteen, hath not a sufficient maintenance, it shall be lawful to and for the said bishop or ordinary to appoint him a certain stipend or allowance in like manner as before mentioned; and in case any difference shall arise between any rector or vicar and his curate, touching such stipend or allowance, or the payment thereof, the bishop or ordinary, on complaint to him made, shall summarily hear and determine the same; and in case of neglect or refusal to pay such stipend or allowance, may sequester the profits of such benefice, for or until payment thereof.

“II. And whereas some of the clergy have procured preferments for themselves by buying ecclesiastical livings, and others have been thereby discouraged; be it further enacted by the authority aforesaid, that if any person, from and after the twenty-ninth day of September, one thousand seven hundred and fourteen, shall or do, for any sum of money, reward, gift, profit, or advantage, directly or indirectly, or for or by reason of any promise, agreement, grant, bond, covenant, or other assurance, of or for any sum of money, reward, gift, profit, or benefit whatsoever, directly or indirectly, in his own name, or in the name of any other person or persons, take, procure, or accept the next avoidance of, or presentation to any benefice with cure of souls, dignity, prebend, or living ecclesiastical, and shall be presented or collated thereupon, that then every such presentation or collation, and every admission, institution, investiture, and induction upon the same, shall be utterly void, frustrate, and of no effect in law, and such agreement shall be deemed and taken to be a simoniacal contract; and that it shall and may be lawful to and for the queen's majesty, her heirs, and successors, to present or collate unto, or give or bestow every such benefice, dignity, prebend, and living ecclesiastical, for that one time or turn only; and the person so corruptly taking, procuring, or accepting any such benefice, dignity, prebend, or living, shall thereupon, and from thenceforth, be adjudged a disabled person in law, to have and enjoy the same benefice, dignity, prebend, or living ecclesiastical, and shall also be subject to any punishment, pain, or penalty, limited, prescribed, or inflicted by the laws ecclesiastical, in like manner as if such corrupt agreement had been made after such benefice, dignity, prebend, or living ecclesiastical, had become vacant; any law or statute to the contrary in any wise notwithstanding.”

LX. STAT. 12 ANNÆ, ST. II. c. 14 (1). A.D. 1713.

“An Act for rendering more Effectual an Act made in the third year of the Reign of King James the First, intituled, ‘An Act to prevent and avoid Dangers which may grow by Popish Recusants;’ and also of one other Act made in the first year of the Reign of their late Majesties King William and Queen Mary, intituled, ‘An Act to vest in the two Universities the Presentations of Benefices belonging to Papists;’ and for vesting in the Lords of Justiciary, Power to inflict the same Punishments against Jesuits, Priests, and other trafficking Papists, which the Privy Council of Scotland was empowered to do by an Act passed in the Parliament of Scotland, intituled, ‘An Act for preventing the Growth of Popery.’”

“Forasmuch as by an act of parliament made in the third year of the reign of King James the First, intituled, ‘An Act to prevent and avoid Dangers which

STAT. 12 ANN.
ST. II. c. 12.

Bishop, &c.
to appoint a
stipend to
curates not
exceeding
50*l.* per an-
num, nor less
than 20*l.*

Penalty of
taking for any
sum of money,
&c. the next
avoidance, &c.
31 Eliz. c. 6.
1 G. & M.
St. I. c. 16.

STAT. 12 ANN.
ST. II. c. 14.

3 Jac. 1, c. 4.

STAT. 12 ANN.
ST. II. c. 14.
1 G. & M.
Sess. 1. c. 26.

may grow by Popish Recusants,' and also one other Act made in the first year of the reign of their late majesties King William and Queen Mary, intituled, 'An Act to vest in the two Universities the *Presentations of Benefices belonging to Papists* (1),' the presentation, nomination, collation, and donation, of and to benefices, prebends, or ecclesiastical livings, schools, hospitals, and donatives, belonging to popish recusants, and other persons thereby disabled to present, collate, or nominate, are given to the two universities; but they are so given only where such persons are and stand convicted by such ways and means as in the said recited acts are mentioned and provided; which acts do nevertheless prove ineffectual for such purposes, by reason such patrons are not convicted, or not in such manner as the said acts do direct and appoint; therefore, for making the said laws more effectual, and for the speedier and easier vesting the presentations to such benefices in the two universities, according to the intention of the said laws, be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that every papist or person making profession of the popish religion, and every child not being a protestant, under the age of one and twenty years, of every such papist or person professing the popish religion, and every mortgagee, trustee, or person any ways intrusted, directly or indirectly, mediately or immediately, by or for any such papist or person making profession of the popish religion, or such child, as aforesaid, whether such trust be declared by writing or not, shall, from and after the tenth day of July, which shall be in the year of our Lord one thousand seven hundred and fourteen, be disabled, and is hereby made incapable to present, collate, or nominate to any benefice, prebend, or ecclesiastical living, school, hospital, or donative, or to grant any avoidance of any benefice, prebend, or ecclesiastical living; and that every such presentation, collation, nomination, and grant, and every admission, institution, and induction, to be made thereupon, shall be utterly void and of no effect, to all intents, constructions, and purposes whatsoever; and that in every such case the chancellor and scholars of the University of Oxford, and the chancellor and scholars of the University of Cambridge, by what name or names soever they or either of them are incorporated, shall respectively have the presentation, nomination, collation, and donation, of and to every such benefice, prebend, or ecclesiastical living, school, hospital, and donative, set, lying, and being, in the respective counties, cities, and other places and limits in the said act of the third year of King James mentioned, as in and by the said act is directed and appointed in the case of a popish recusant convict.

Papists, &c.
disabled to
present to any
benefice, &c.
7 Jac. 1, c. 6.
25 Car. 2, c. 2.

And the two
universities
shall have the
presentation,
&c. in the
respective
counties, &c.
mentioned in
3 Jac. 1, c. 5.

When any
presentation is
brought to any
archbishop,
&c. he may
tender to the
person, if pre-
sent, the de-
claration in
25 Car. 2, c. 2.

If absent,
summon him
to appear.

"II. And be it further enacted by the authority aforesaid, that from and after the said tenth day of July, when and as often as any presentation to any benefice or ecclesiastical living shall be brought to any archbishop, bishop, or other ordinary, from any person who shall be reputed to be, or whom such archbishop, bishop, or other ordinary, shall have cause to suspect to be a papist, or trustee of any person making profession of the popish religion, or suspected to be such, it shall and may be lawful to and for such archbishop, bishop, or other ordinary, and he is hereby required to tender or administer to every such person, if present, the declaration against transubstantiation, set down and expressed in an act of parliament made in the five and twentieth year of the reign of the late King Charles the Second, intituled, 'An Act for preventing Dangers which may happen from Popish Recusants,' to be by such person made, repeated, and subscribed; and in case such person shall be absent, the said archbishop, bishop, or other ordinary, shall, by notice in writing to be left at the place of habitation of such person, appoint some convenient time and place when and where such person shall appear before such archbishop, bishop, or other ordinary, or some persons to be authorized by such archbishop, bishop, or other ordinary, by commission under his or their seal of office; and upon such appearance the said archbishop, bishop, or other ordinary, or such commissioners, shall tender or administer the said declaration to the per-

(1) *Presentations of Benefices belonging to Papists*:—Where a protestant and a catholic are co-patrons of an advowson, the

right of presentation is in the protestant alone. *Edwards v. Ecceter* (Bishop of), 5 Bing. N. C. 652. *Ante* 529.

son making such presentation; and in case such person shall neglect or refuse to make, repeat, and subscribe such declaration, when the same shall be so tendered, as aforesaid, or shall neglect or refuse to appear before such archbishop, bishop, or other ordinary, or such commissioners, upon such notice as aforesaid, that then such presentation shall be utterly void and of none effect; and in every such case, such archbishop, bishop, or other ordinary, shall, within ten days next after such neglect or refusal, send and give a certificate under his or their seal of office of such neglect or refusal to the vice-chancellor for the time being, of that university to whom such presentation would of right belong, if such person so presenting had been a popish recusant convict; and it shall and may be lawful, to and for the chancellor and scholars of such university to present a person qualified according to the said act, to such benefice or ecclesiastical living; and the presentation to such benefice or ecclesiastical living, for that turn only, is hereby given unto, and vested in them for that purpose; any matter, clause, or thing contained in either of the said former recited acts to the contrary thereof notwithstanding.

“III. And for the better discovery of all secret trusts and fraudulent conveyances made by papists or persons making profession of the popish religion, of their advowsons and right of presentation, nomination and donation, to any benefices or ecclesiastical livings; be it further enacted by the authority aforesaid, that when the presentation of any person presented to any benefice or ecclesiastical living, shall be brought to any archbishop, bishop, or other ordinary, the said archbishop, bishop, or ordinary is hereby required, before he give institution, to examine the person presented, upon oath, whether to the best and utmost of his knowledge and belief, the person or persons who have made such presentation, be the true and real patron or patrons of the said benefice or ecclesiastical living, or made the said presentation in his, or her, or their own right, or whether such person or persons so presenting be not mediately or immediately, directly or indirectly, trustee or trustees, or any way intrusted for some other, and what person or persons by name, who is or are papists, or make profession of the popish religion, or the children of such, or for any other and what person or persons, or what he knows, has heard, or believes, touching or concerning the same; and if such person or persons so presented shall refuse to be so examined, or shall not answer directly thereto, then and in every such case such presentation shall be void.

“IV. And be it further enacted by the authority aforesaid, that it shall and may be lawful for the chancellor and scholars of the respective universities, to whom the presentations to such benefices and ecclesiastical livings should belong, in case the rightful patrons had been popish recusants convict, and their presentees or clerks, for the better discovery of such secret and fraudulent trusts, had, done, made, and created, by or for such papists or persons professing the popish religion, and their children, as aforesaid, to exhibit their bill in any court of equity against such person or persons presenting, and such person or persons as they have reason to believe to be the *cestui que trust* of the advowson of such benefice or ecclesiastical living, or any other person who they have cause to suspect may be able to make any other or further discovery of such secret trusts and practises; to which bill the defendants therein named, being duly served with the process of the court in which the said bill shall be exhibited, shall forthwith directly answer to the facts charged and inquired in the said bill, at the discretion of the court where such bill shall be exhibited; and in case the defendants, or any of them, shall refuse or neglect to answer the said bill in such reasonable time as shall be for that purpose allowed and appointed, by discretion of the said court where the said cause shall be depending, (the distance of place and the circumstances of the defendant or defendants considered,) that then and in such case the said bill shall be taken *pro confesso*, and be allowed as evidence against such person so neglecting and refusing, and his trustee or trustees, and his and their clerk: provided that every person having fully answered such bill in such court of equity, and not knowing anything of any such trust for a papist or other person disabled

STAT. 12 ANN.
ST. II. c. 14.

Refusing to make the declaration, or to appear, the presentation shall be void; and the archbishop, &c. shall certify such refusal to the university, who shall present, &c.

Bishop, &c. to examine persons presented on oath.

Refusing to be examined, the presentation shall be void.

University may exhibit bills in chancery for the discovery of fraudulent trusts.

STAT. 12 ANN. as aforesaid, shall be entitled to his costs, to be taxed according to the course of
 ST. II. c. 14. the court.

When any
quare impedit
 is depending,
 the court may
 administer an
 oath to discover
 any secret trust.

“V. And be it further enacted by the authority aforesaid, that it shall and may be lawful for the court where any *quare impedit* shall be hereafter depending, at the instance of either of the said chancellors and scholars, or their clerk, being plaintiffs or defendants in such suit, by motion in open court, at their discretion, to make any rule or order requiring satisfaction, upon the oath of such patron and his clerk, who in the said suit shall contest the right of the said university to present such benefice or ecclesiastical living, by examination of them or either of them, in open court, or by commission under the seal of such court for examination of them or either of them, or by affidavit, as the said court shall find most proper, in order to the discovery of any secret trust, frauds, or practices, relating to the said presentation then in question; and in case it appear to the court, upon the examination of such patron and clerk, or either of them, that the said patron is but a trustee for some other person or persons, that then the said patron and his clerk shall discover who such person and persons are, and where he, she, or they live or inhabit; and upon their refusal to make such discovery, or to give such satisfaction, as aforesaid, they shall be punished as persons that are guilty of a contempt to the said court; and in case such patron or his clerk shall discover the person for whom the said patron is a trustee, that then and in such case the said court, upon motion made in open court, shall make a rule or order, that the person or persons, for whom the said patron is a trustee, shall, in the said court, or before commissioners to be appointed for that purpose, under the seal of the said court, make, repeat, and subscribe the declaration against transubstantiation herein before-mentioned, and likewise, on pain of incurring a contempt against the said court, give such further satisfaction upon oath, touching or relating to the said trust, as the said court shall think fit; and such person so required to make, repeat, and subscribe the said declaration, and refusing or neglecting so to do, shall be esteemed as a popish recusant convict, in respect of such presentation.

The answer of
 such patron,
 &c. to be
 allowed as
 evidence.

“VI. And be it further enacted, that the answer of such patron and patrons, and the person for whom he or they are any ways intrusted, and his and their clerk, or any of them, and his and their or any of their examinations and affidavits taken, as aforesaid, by order of any court where such *quare impedit* shall be depending, or by any archbishop, bishop, or other ordinary, or the commissioners, as aforesaid, (which examinations shall therefore be reduced into writing, and signed by the party examined,) shall be allowed as evidence against such patron so presenting, and his clerk.

Persons making
 such discovery,
 liable
 only to the
 loss of the
 presentation.

“VII. Provided always, that no such bill, nor any discovery to be made by any answer thereunto, or to any such examination, as aforesaid, shall be made use of to subject any person making any such discovery, or not answering such bill, to any penalty or forfeiture, other than the loss of the presentation then in question.

If such bill be
 exhibited by
 the university,
 no lapse shall
 incur, &c. till
 three months
 after the answer
 put in, &c.

“VIII. And it is hereby further enacted, that in case of any such bill or bills of discovery, as aforesaid, exhibited in any court of equity by the chancellor and scholars of either of the said universities, or their presentee, no lapse shall incur, nor plenarty be a bar, against such chancellor and scholars in respect of the benefice or ecclesiastical living, touching which such bill shall be so exhibited, till after three months from the time that the answer to such bill shall be put in, or the same be taken *pro confesso*, or the prosecution thereof deserted; provided that such bill or bills be exhibited before any lapse incurred.

The university
 may sue any
 writ of *quare
 impedit*, &c.

“IX. And whereas it hath been doubted whether any writ of *quare impedit* brought by the respective universities, for any presentation, nomination, collation or donation, pursuant to the said recited acts, or either of them, may be brought by them, in or by the name of chancellor and scholars, or ought to be by their true name of incorporation respectively; it is hereby declared, that the said respective chancellor and scholars of the said universities are by this act, and were by the said former acts, entitled to sue any writ of *quare impedit* by the name of

chancellor and scholars of the university of Oxford, and chancellor and scholars of the university of Cambridge respectively, or by their respective proper names of incorporation, at their election. STAT. 12 ANN.
ST. II. c. 14.

“X. And be it further enacted, that in case of any trust for any papist, or person professing the popish religion, confessed or discovered in and by any answer to such bill, as aforesaid, or such examination, as aforesaid, it shall and may be lawful for the court where such discovery shall be made, and such court is hereby enabled, to enforce the producing of the deeds creating and relating to the said trusts, by such methods as they shall find proper. The court may enforce the producing of deeds relating to trusts.

“XI. Provided always, that nothing herein before contained shall extend to that part of Great Britain called Scotland. Not to extend to Scotland.

“XII. And whereas by the determination of the late privy council of Scotland, the punishments contained in an act of the parliament of Scotland, passed in the eighth session of the first parliament of King William, intituled, ‘An Act for preventing the Growth of Popery,’ cannot be fully put in execution against jesuits, priests, and other trafficking papists, who disguise and shelter themselves under borrowed names, to avoid the penalty of the law; it is therefore hereby enacted, and be it enacted by the authority aforesaid, that the lords of her majesty’s justiciary in Scotland be hereby empowered to inflict the same punishments against jesuits, priests, and other trafficking papists, which the privy council of Scotland was empowered to do by the aforesaid act of parliament.” The lords of justiciary may inflict the same punishment on jesuits, &c. which the privy council of Scotland was empowered to do by an act passed in that kingdom. Farther pro-

visions relating hereto, 1 Geo. 1, St. II. c. 55; 3 Geo. 1, c. 18; 11 Geo. 2, c. 17; 33 Geo. 2, c. 13.

LXI. STAT. 12 ANNÆ, ST. II. c. 18. A.D. 1713.

STAT. 12 ANN.
ST. II. c. 18.

“*An Act for the preserving all such Ships and Goods thereof, which shall happen to be forced on Shore, or stranded upon the Coasts of this Kingdom, or any other Her Majesty’s Dominions.*”

“Whereas by an act made in the third year of the reign of King Edward the First, concerning wrecks at sea, it is enacted, that where a man, a dog, or a cat, escape quick out of the ship, that such ship, nor barge, nor anything in them, shall be adjudged a wreck, but the goods shall be saved, and kept by view of the sheriff, coroner, or the king’s bailiff, and delivered into the hands of such as are of the town where the goods were found; so that if any sue for those goods, and after prove that they were his, or perished within his keeping, within a year and a day, they shall be restored to him without delay, and if not, they shall remain to the king, or to such others to whom wreck belongeth; and he that otherwise doth, and thereof be attainted, shall be awarded to prison, and make fine at the king’s will: and whereas by another act made in the fourth year of the reign of the said King Edward the First, intituled, *De officio Coronatoris*, concerning the wreck of the sea, it is enacted, that whosoever it be found, if any lay hands of it, he shall be attached by sufficient pledges, and the price of the wreck shall be valued, and delivered to the town: and whereas great complaints have been made by several merchants, as well her majesty’s subjects as foreigners, trading to and from this kingdom, that many ships of trade, after all their dangers at sea escaped, have unfortunately near home run on shore, or been stranded on the coast thereof; and that such ships have been barbarously plundered by her majesty’s subjects, and their cargoes embezzled, and when any part thereof has been saved, it has been swallowed up by exorbitant demands for salvage, to the great loss of her majesty’s revenue, and to the much greater damage of her majesty’s trading subjects: for remedy whereof be it enacted by the queen’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that the sheriffs, justices of the peace of every county, or county of a city or town, and also all mayors, bailiffs, and other head officers of corporations and port-towns near adjoining to the sea, and all constables, headboroughs, tithingmen, and officers of the customs in all and every such places, shall, upon application made to them, or any of them, by or on the behalf of any commander or chief officer of any ship or vessel of any of her majesty’s subjects, or others being in danger of being stranded or run 3 Edw. 1, c. 4.

4 Edw. 1.
St. II.

Sheriffs, mayors, &c. and custom-house officers, to summon men to assist ships in distress.

STAT. 12 ANN.
Sr. II. c. 18.

All ships to
assist ;

on forfeiture
of 100*l*.

Reasonable
salvage to be
made.
By 5 Geo. 1.
c. 11, s. 13,
goods saved
from stranded
ships are to
pay custom.

Three justices
to adjust the
quantum.

Goods not
claimed in
twelve months
to be sold,

and the monies
transmitted
into the Ex-
chequer, &c.

on shore, or being stranded or run on shore, are hereby empowered and required to command the constables of the several ports within her majesty's dominions, nearest to the sea coasts where any such ship or vessel shall be in danger, as aforesaid, to summon and call together as many men as shall be thought necessary to the assistance and for the preservation of such ship or vessel so in distress, as aforesaid, and their cargoes ; and that if there shall be any ship or vessel, either man of war or merchant's ship, belonging to her majesty, or any of her subjects, riding at anchor near the place where such ship or vessel is in distress or danger, as aforesaid, the officers of the customs, and constables above-mentioned, or any of them, are hereby empowered and required to demand of the superior officers of such ship or vessel so riding at anchor, as aforesaid, assistance by their boats, and such hands as they can conveniently spare, for the said service and preservation of the said ship or vessel so in distress, as aforesaid ; and that in case such superior officer of such ship or vessel riding at anchor, as aforesaid, shall refuse or neglect to give such assistance, he shall forfeit for the same the sum of one hundred pounds, to be recovered by the superior officer of the said ship or vessel so in distress, as aforesaid, together with their costs of suit, in any of her majesty's courts of record, by action, debt, bill, plaint, or information, wherein no essoin, wager of law, or protection shall be allowed.

“II. And for the encouragement of such persons as shall give their assistance to such ships or vessels so in distress as aforesaid, be it further enacted, that the said collectors of the customs, and the master or commanding officer of any ships or vessels, and all others who shall act or be employed in the preserving of any such ship or vessel in distress, as aforesaid, or their cargoes, shall within thirty days after the service performed be paid a reasonable reward for the same, by the commander, master, or other superior officer, mariners or owners of the ship or vessel so in distress, as aforesaid, or by the merchant, whose ship, vessel, or goods shall be so saved, as aforesaid ; and in default thereof, the said ship, vessel, or goods so saved, as aforesaid, shall remain in the custody of such officer of the customs, or his deputy, until such time that all charges shall be paid, and until the said officer of the customs, or his deputy, and the said master or other officer of the ship or vessel, and all others so employed, as aforesaid, shall be reasonably gratified for their said assistance and trouble, or good security given for that purpose, to the satisfaction of the several parties that are to receive the same : and that in case after such salvage, the commander or other superior officer, mariners or owners of such ship or vessel so saved, as aforesaid, or merchant whose goods shall be so saved as aforesaid, shall disagree with the said officer of the customs, or his deputy, touching the monies deserved by any of the persons so employed, as aforesaid, it shall be lawful for the commander of such ship or vessel so saved, or the owner of the goods, or the merchant interested therein, and also for the said officer of the customs, or his deputy, to nominate three of the neighbouring justices of the peace, who shall thereupon adjust the quantum of the monies or gratuities to be paid to the several persons acting or being employed in the salvage of the said ship, vessel, or goods ; and such adjustments shall be binding to all parties, and shall be recoverable in an action at law to be brought in any of her majesty's courts of record, by the respective persons to whom the same shall be allotted by the said justices of peace ; and in case it shall happen, that no person shall appear to make his claim to all or any the goods that shall be saved, that then and in such case, the chief officer of the customs of the nearest port to the place where the said ship or vessel was so in distress, as aforesaid, shall apply to three of the nearest justices of the peace, who shall put him or some other responsible person in possession of the said goods, such justices of peace taking an account in writing of the said goods, to be signed by such officer of the customs ; and if the said goods shall not be legally claimed within the space of twelve months next ensuing, by the rightful owner thereof, then public sale shall be made thereof, and if perishable goods, forthwith to be sold, and after all charges deducted, the residue of the monies arising by such sale, with a fair and just account of the whole, shall be transmitted to her majesty's Exchequer, there to remain for the benefit of the rightful owner, when appearing,

who upon affidavit or other proof made of his or their right or property thereto, to the satisfaction of one of the barons of the coife of the Exchequer, shall upon his order receive the same out of the Exchequer.

STAT. 12 ANN.
ST. II. c. 18.

“III. And it is hereby also enacted, that if any person or persons whatsoever, besides those empowered by the said officer of the customs, or his deputy, and the constables, as aforesaid, shall enter or endeavour to enter on board any such ship or vessel so in distress, as aforesaid, without the leave or consent of the commander, or other superior officer of the said ship, or of the said officer of the customs, or his deputy, or of the said constable, or some or one of them employed for the service and preservation of the said ship or vessel, as aforesaid; or in case any person shall molest him, them, or any of them, in the saving of the said ship, vessel, or goods, or shall endeavour to impede or hinder the saving of any such ship, vessel, or goods, or when any such goods are saved, shall take out or deface the marks of any such goods, before the same shall be taken down in a book or books for that purpose provided by the commander or ruling officer, and the first officer of the customs, as aforesaid, such person or persons shall, within the space of twenty days, make double satisfaction to the party grieved, at the discretion of the two next justices of peace, or in default thereof, shall by such justices of peace be sent to the next house of correction, where he shall continue and be employed in hard labour by the space of twelve months then next ensuing; and that it shall be lawful for any commander or superior officer of the said ship or vessel so in distress, as aforesaid, or for the said officer of the customs, or constables on board the same ship or vessel, to repel by force any such person or persons as shall, without such leave or consent from the said commander or superior officer, or the said officer of the customs, or his deputy, or such constables, as aforesaid, press on board the said ship or vessel so in distress, as aforesaid, and thereby molest them in the preservation of the said ship or vessel so in distress, as aforesaid.

Persons entering ships without leave,

or hindering the saving the ship, to make double satisfaction.

Masters may repel pressers into the ship.

“IV. And it is hereby likewise enacted, that in case any goods shall be found upon any person or persons, that were stolen or carried off from any such ship or vessel so in distress, as aforesaid, he, she, or they, on whom such goods shall be found, shall immediately, upon demand, deliver the same to the owner thereof, or to such person by such owner authorized to receive the same, or in default thereof, shall be liable to pay treble the value of such goods, to be recovered by such owner in an action at law to be brought for the same.

Goods carried off, to be immediately delivered up.

Penalty treble the value.

“V. And it is hereby moreover enacted, that if any person or persons shall make, or be assisting in the making any hole in the bottom, side, or any other part of any ship or vessel so in distress, as aforesaid, or shall steal any pump belonging to any ship or vessel so in distress, as aforesaid, or shall be aiding or abetting in the stealing of such pump, as aforesaid, or shall wilfully do anything tending to the immediate loss or destruction of such ship or vessel, such person or persons shall be and are hereby made guilty of *felony* (1), without any benefit of his, her, or their clergy.

Making holes in the ship, &c. felony.

“VI. And be it further enacted by the authority aforesaid, that if any action, suit, or information, shall be commenced or prosecuted against any person or persons, for anything that he or they shall do, or cause to be done, in pursuance of this act, and executing any of the powers and authorities, or any of the orders or directions therein mentioned, all and every person and persons so sued in any court whatsoever, shall and may plead the general issue, and give this act and the special matter in evidence; and if in any such suit the plaintiff or prosecutor shall become nonsuit, or forbear prosecution, or discontinue the suit, or if a verdict shall pass against him, or judgment be given against him upon a demurrer, then in any of the said cases, the defendant or defendants shall recover full costs, for which he and they shall have the like remedy as where costs by law are awarded; and this act shall be taken and allowed in all courts within this kingdom as a public act,

General issue

Public act.

(1) *Felony*.—Such enactments of Stat. 12 Ann. St. II. c. 18, ss. 4 & 5, as relate to any person upon whom any goods stolen or carried off from any vessel in distress shall

be found, and to the several offences touching vessels in distress which are thereby made capital felonies, have been repealed by Stat. 7 & 8 Geo. 4, c. 27.

STAT. 12 ANN.
ST. II. c. 18.

Custom-house
officer abusing
his trust, to
forfeit treble
damages, and
disabled.

Act to com-
mence 1st
August, 1714,
and to be read
four times in
the year on
Sundays in
sea-port towns.

Claims to
wreck saved.

Continuati on.

and all judges and justices are hereby required to take notice thereof as such without special pleading of the same.

“VII. Provided nevertheless, if any officer of the customs, or his deputy so empowered, as above, shall, by fraud or wilful neglect, abuse the trust so hereby reposed in him, as aforesaid, and shall be convicted thereof in due form of law, such officer, or his deputy, shall respectively forfeit treble damages to the party grieved, to be recovered in any action or suit to be brought in any court of record, and shall from thenceforth be fully disabled and rendered incapable of the same, or any other employment relating to the said *customs* (1).

“VIII. And it is hereby further enacted, that this act, and the several clauses herein contained, shall take effect from and after the first day of August, in the year of our Lord one thousand seven hundred and fourteen; and that for the better observing the same, *this act shall be read four times in the year in all the parish churches and chapels of every sea-port town, and upon the sea-coast in this kingdom upon the Sundays* (2) next before Michaelmas-day, Christmas-day, Lady-day, and Midsummer-day in the morning, immediately after the prayers, and before the sermon.

“IX. Provided always, and it is hereby enacted, that neither this act, nor anything herein contained, shall any ways extend to deprive, or any ways prejudice her royal majesty, her heirs or successors, or any claiming under them, or any of them, or any patentee or grantee of the crown, or any lord or lords of any manor or manors, or other person whatsoever, of or in relation to any right which they, or any of them respectively have, or shall have, or lawfully may claim to any wreck or wrecks, or any goods that are or shall be flatsam, jetsam, or lagan, but that such respective rights shall be enjoyed in as full, ample, and beneficial a manner, in every respect, as if this act had never been made.

“X. Provided that this act shall continue in force for the space of three years, and from thence to the end of the next session of parliament, and no longer. [Made perpetual by Stat. 4 Geo. 1, c. 12.]”

(1) *Customs*:—So much of Stat. 12 Ann. St. II. c. 18, as relates to the revenue of customs, was repealed by Stat. 6 Geo. 4, c. 105, s. 61.

(2) *This act shall be read four times in the year, in all the parish churches and*

chapels of every sea-port town, and upon the sea-coast in this kingdom, upon the Sundays:—Whether Stat. 7 Gul. 4 & 1 Vict. c. 45, has affected the provisions of Stat. 12 Ann. St. II. c. 18, s. 8, is very questionable.

STATUTA GEORGII I.

A.D. 1714—1727.

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I. STAT. 1 GEORGII 1, ST. II. c. 5 (1). A.D. 1714.

STAT. 1 GEO.
1, ST. II. c. 5

“An Act for preventing Tumults and riotous Assemblies [pulling down churches], and for the more speedy and effectual punishing the Rioters.”

II. STAT. 1 GEORGII 1, ST. II. c. 6 (2). A.D. 1714.

STAT. 1 GEO.
1, ST. II. c. 6.

“An Act for making perpetual an Act of the Seventh and Eighth Years of the Reign of His late Majesty King William the Third, intituled, ‘An Act that the solemn Affirmation and Declaration of the People called Quakers, shall be accepted instead of an Oath in the usual Form;’ and for explaining and enforcing the said Act in relation to the Payment of Tithes and Church Rates; and for appointing the Form of an Affirmation to be taken by the said People called Quakers, instead of the Oath of Abjuration.”

“Whereas an act made in the seventh and eighth years of his late majesty’s reign, intituled, ‘An Act that the Solemn Affirmation and Declaration of the People called Quakers, shall be accepted instead of an Oath in the usual Form,’ was made to continue for seven years, and from thence to the end of the next session of parliament, which act would have expired at the end of the next session of parliament after the two and twentieth day of November, in the year of our Lord one thousand seven hundred and two; which session began the ninth day of November, in the year of our Lord one thousand seven hundred and three, and ended the third day of April, in the year of our Lord one thousand seven hundred and four; but by another act of parliament made in the thirteenth year of his said late majesty’s reign, intituled, ‘An Act for continuing an Act, intituled, An Act that the Solemn Affirmation and Declaration of the People called Quakers, shall be accepted instead of an Oath in the usual Form,’ was continued for the term of eleven years after the determination of the said act, and from thence to the end of the next session of parliament: and whereas the said several acts will expire at

7 & 8 Gul. 3,
c. 34.13 & 14 Gul.
3, c. 4.

(1) Repealed by Stat. 7 & 8 Geo. 4, c. 27. Geo. 3, c. 53. Stat. 53 Geo. 3, c. 127, s. Stat. 7 & 8 Geo. 4, c. 30, s. 8. 6. Stat. 3 & 4 Gul. 4, c. 49. Stat. 1 & 2

(2) *Vide* Stat. 8 Geo. 1, c. 6. Stat. 6 Vict. c. 77.

STAT. 1 GEO.
1, ST. II. c. 6.

The act 7 & 8
Gul. 3, made
perpetual.
8 Geo. 1, c. 6.

Clause for the
recovery of
tithes, &c.
from quakers,
7 & 8 Gul. 3,
c. 34.
See 1 Bur.
485.

the end of the next session of parliament after the third day of April, one thousand seven hundred and fifteen: now for the further avoiding of the inconveniences in the said first recited act mentioned, to the people called Quakers, and their families, be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by authority of the same, that the said first recited act, and all the clauses and powers therein contained, shall continue and be in force for ever, as to all oaths by law required, or hereafter to be required, other than and except as in the said first recited act is excepted.

“II. And whereas by the said act made in the seventh year of the reign of King William the Third, a remedy is provided for the recovery of tithes and church rates, where any quaker should refuse to pay the same: be it enacted by the authority aforesaid, that such remedy shall be and is hereby extended, and the like remedy shall and may be had and used against any quaker or quakers for the recovering of any tithes or rates, or any customary or other rights, dues, or payments belonging to any church or chapel, which of right by law and custom ought to be paid for the stipend or maintenance of any minister, or curate officiating in any church or chapel; and any two or more justices of the peace of the same county or place, other than such justice of the peace as is patron of any such church or chapel, or any ways interested in the said tithes, upon complaint of any parson, vicar, curate, farmer, or proprietor of such tithes, or any churchwarden or chapelwarden, or other person who ought to have, receive, or collect any such tithes, rates, dues, or payments as aforesaid, are hereby authorized and required to summon in writing, under their hands and seals, by reasonable warning, such quaker or quakers, against whom such complaint shall be made, and after his or their appearance, or upon default of appearance, the said warning or summons being proved before them upon oath, to proceed to hear and determine the said complaint, and to make such order therein, as in the said act is limited or directed; and also to order such costs and charges, as they shall think reasonable, not exceeding ten shillings, as upon the merits of the cause shall appear just; which order shall and may be so executed, and on such appeal may be reversed or affirmed by the general quarter sessions of the county or place, with such costs and remedy for the same, and shall not be removed into any other court, unless the titles of such tithes, dues or payments, shall be in question, in like manner as in and by the same act is limited and provided.

Concerning the
solemn affirmation
to be taken
by quakers in-
stead of the
abjuration oath.
6 Ann. c. 23.

“III. And whereas several disputes have arisen concerning the effect of the abjuration to be taken by the people called quakers, upon their solemn affirmation, as directed by an act of parliament made in the sixth year of her late majesty's reign: now for preventing the like inconveniences for the future, be it enacted by the authority aforesaid, that in all cases wherever the effect of the said abjuration oath may be legally tendered, or required of the said people called quakers, or any of them, he or they shall take the effect thereof in the following words, (that is to say,)

The affirma-
tion.

“‘I, A. B., do truly and sincerely acknowledge, profess, testify, and declare, in the presence of Almighty God, the witness of the truth of what I say, that King George is lawful and rightful king of this realm, and of all other his dominions and countries thereunto belonging. And I do solemnly and sincerely declare, that I do believe the person pretended to be the Prince of Wales, during the life of the late King James, and since his decease, pretending to be, and taking upon himself the style and title of the King of England, by the name of James the Third, or of Scotland, by the name of James the Eighth, or the style and title of King of Great Britain, hath not any right or title whatsoever to the crown of this realm, nor any other the dominions thereunto belonging; and I do renounce and refuse any allegiance or obedience to him. And I do solemnly promise, that I will be true and faithful, and bear true allegiance to King George, and to him will be faithful against all traitorous conspiracies and attempts whatsoever, which shall be made against his person, crown, or dignity. And I will do my best endeavour to disclose and make known to King George, and his successors, all treasons and trai-

torous conspiracies which I shall know to be made against him, or any of them. And I will be true and faithful to the succession of the crown against him the said James, and all other persons whatsoever, as the same is and stands settled by an act, intituled, "An Act declaring the Rights and Liberties of the Subject, and settling the Succession of the Crown," to the late Queen Anne, and the heirs of her body, being protestants; and as the same, by one other act, intituled, "An Act for the further Limitation of the Crown, and better securing the Rights and Liberties of the Subject," is and stands settled and entailed, after the decease of the said late queen, and for default of issue of the said late queen, to the late Princess Sophia, electress and duchess dowager of Hanover, and the heirs of her body, being protestants. And all these things I do plainly and sincerely acknowledge, promise, and declare, according to these express words by me spoken, and according to the plain and common sense and understanding of the same words, without any equivocation, mental evasion, or secret reservation whatsoever. And I do make this recognition, acknowledgment, renunciation, and promise, heartily, willingly, and truly.'

"IV. Provided always, that so much of this act as relates to the affirmations to be made by the people called quakers, shall be extended to that part of Great Britain called Scotland for ever, and to the plantations belonging to the crown of Great Britain for five years, and to the end of the next session of parliament after the said five years, and no longer."

III. STAT. 1 GEORGH 1, ST. II. c. 10(1). A.D. 1714.

"An Act for making more effectual Her late Majesty's gracious Intentions for augmenting the Maintenance of the Poor Clergy."

"Whereas it is necessary for the governors of the bounty of Queen Anne, for the augmentation of the maintenance of the poor clergy, in order to the more regular making proper augmentations, to be informed, as exactly as may be, of the clear improved yearly value of the maintenance of all such parsons, vicars, curates, and ministers, officiating in any church or chapel within that part of Great Britain called England, the dominion of Wales, or town of Berwick upon Tweed, where the liturgy, and rites of the church of England, as now by law established, are or shall be used and observed, whose maintenance is intended to be augmented: be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that the respective bishops of every diocese, and the guardians of the spiritualities *sede vacante*, shall be and are hereby empowered and required, from time to time, as they shall see occasion, and as may best serve the purposes of the said bounty to the poor clergy, as well by the oath of two or more credible witnesses, (which they, or others commissioned by them under their hands and seals, are hereby empowered to administer,) as by all other lawful ways and means, to inform themselves of the clear improved yearly value of every benefice with cure of souls, living, and curacy, and of the clear improved yearly value of the maintenance of every parson, vicar, curate, and minister, officiating in any such churches or chapels, as aforesaid, within their several dioceses, or within any peculiars or places of exempt jurisdiction within the bounds and limits of their respective dioceses, or adjoining and contiguous thereunto, although the same be exempt from the jurisdiction of any bishop in other cases, and how such yearly values arise, with the other circumstances thereof, and the same, or such of them whereof they shall have fully informed themselves, from time to time, with all convenient speed, to certify under their respective hands and seals,

STAT. 1 GEO.
1, ST. II. c. 6.
1 G. & M.
Sess. II. c. 2.

12 & 13 Gul.
3, c. 2.

This act, as to the affirmation, to extend to Scotland for ever, and to the plantations for five years, and thence to the end of the next session of parliament.

STAT. 1 GEO.
1, ST. II. c. 10.

2 Ann. c. 11.
5 Ann. c. 24.
7 Ann. c. 27.
The bishops shall inform themselves of the yearly value of every benefice, &c.

and certify the same to the governors.

(1) *Vide* Stat. 36 Geo. 3, c. 83, s. 3. Stat. 43 Geo. 3, c. 107. Stat. 45 Geo. 3, c. 84. Stat. 7 Geo. 4, c. 66. Stat. 11 Geo. 4 & 1 Gul. 4, c. 65, s. 25. Stat. 1 & 2 Gul. 4, c. 45. Stat. 1 & 2 Vict. c. 31. Stat. 1 & 2 Vict. c. 107, s. 14. Stat. 2 & 3 Vict. c. 49. Stat. 3 & 4 Vict. c. 20, ss. 1 & 3. Stat. 3 & 4 Vict. c. 113, s. 76. Stat. 4 & 5 Vict. c. 39. Provisions of a similar nature to those which are embodied in Stat. 1 Geo. 1, St. II. c. 10, have been enacted for Ireland by Stat. 10 Geo. 1, c. 7. (1.)

STAT. 1 GEO.
I, ST. II. c. 10.

Certificates
returned into
the Exchequer,
by 5 Ann.
c. 24, and 6
Ann. c. 27,
shall ascertain
the value of
livings not
exceeding 50*l*.
per annum.

All rules, me-
thods, &c.
agreed on by
the governors,
and proposed
to his majesty,
and approved
under his sign
manual, shall
be valid.

or seals of their respective offices, to the said governors of the bounty of Queen Anne, for the augmentation of the maintenance of the poor clergy, for their better information in the premises.

“II. (1) Provided always, and be it enacted by the authority aforesaid, that where by certificates duly returned into her majesty's court of Exchequer at Westminster, pursuant to an act made in the parliament held in the fifth year of the reign of her said late majesty, intituled, ‘An Act for discharging Small Livings from their First-fruits and Tenths, and all Arrears thereof,’ and one other act made in the sixth year of the reign of her said late majesty, intituled, ‘An Act to enlarge the time for returning the Certificates of all Ecclesiastical Livings, not exceeding the yearly value of Fifty Pounds: as also for discharging all Livings of that value from the Payment of First-fruits; and for allowing time to Archbishops and Bishops, and other Dignitaries, for Payment of their First-fruits,’ or either of them, or made good by this act, the yearly value of any livings, not exceeding the clear yearly value of fifty pounds, are particularly and duly expressed and specified, such certificates shall ascertain the yearly values of such livings, in order to their being augmented by the said governors, and no new or different valuation thereof shall be returned to the said governors by virtue of this present act.

“III. (2) And whereas by her late majesty's letters patents under her great seal, bearing date the third day of November in the third year of her reign, incorporating the governors of the bounty of Queen Anne, for the augmentation of the maintenance of the poor clergy, the said governors were authorized to consider, consult, advise, agree upon, draw up, prepare, and propose in writing to her said majesty, her heirs and successors, such proper and necessary rules, methods, directions, orders and constitutions, as the said governors, or any seven or more of them, with such quorum as is therein directed, should in their discretions judge most convenient to be observed, for and towards the better rule and government of the said corporation and the members thereof, and the receiving, accounting for, and managing all and every the revenues thereby granted, or mentioned to be granted, and all arrears thereof, and also for and concerning the distributing, paying and disposing of the same, and all other gifts and benevolences that should or might be given or bequeathed to the said corporation for the charitable ends in the said letters patent mentioned, for the augmentation of the maintenance of the poor clergy aforesaid; and such rules, methods, orders, directions, and constitutions, as should be so proposed, and should be approved, altered, or amended by her said late majesty, her heirs or successors, and such as should be made by her said majesty, her heirs and successors, and so signified and declared by her, her heirs or successors, under her or their great seal, her said late majesty thereby willed should be the rules, methods, directions, orders, and constitutions, by which the governors of the bounty of Queen Anne, for the augmentation of the maintenance of the poor clergy and their successors, should receive, manage, govern, apply, and dispose her said late majesty's royal bounty, and other gifts and benevolences which should or might after that time be given or bequeathed to the said corporation (where the donors thereof should not particularly direct the application thereof) to and for the increase of the maintenance of such parsons, vicars, curates, and ministers officiating in any church or chapel within the kingdom of England, dominion of Wales, or town of Berwick upon Tweed, where the liturgy and rites of the church of England, as then by law established, were and should be used and observed, for whom a maintenance was not then sufficiently provided: and whereas pursuant to the said letters patent of incorporation, the said governors did agree upon, prepare, and propose to her said late majesty, certain rules and constitutions for the better rule and government of the said corporation, and her said late majesty, by letters patent under her great seal, bearing date the fifth day of March, in the twelfth year of her reign, did establish the said rules and constitutions, reserving to herself, her heirs and successors, power, from time to time, under her

(1) This section was partly superseded by
Stat. 45 Geo. 3, c. 84, s. 1.

(2) This section was confirmed by Stat.
3 & 4 Vict. c. 20, s. 1.

or their great seal, to alter the same, and to give and make in like manner such other rules and constitutions, according to the true intention of the said letters patent of incorporation, as to her said majesty, her heirs or successors, should seem meet: and whereas a more expeditious and easy method of making and altering the rules and constitutions, for the better rule and government of the said corporation, may tend to the advancement of the said charity; be it enacted and declared by the authority aforesaid, that all such rules, methods, orders, directions, and constitutions, as shall, from time to time, be by the said governors agreed upon, prepared and proposed to his majesty, his heirs and successors, according to the true intention of the said letters patent of incorporation, and by his majesty, his heirs and successors, approved under his or their sign manual, shall be as good, valid, and effectual rules, methods, directions, orders, and constitutions, for the purposes aforesaid, as if the same were made or established under the great seal of his majesty, his heirs or successors.

“IV.(1) And whereas her said late majesty’s royal bounty to the poor clergy was intended to extend, not only to parsons and vicars who come in by presentation or collation, institution, and induction, but likewise to such ministers who come in by donation, or are only stipendiary preachers or curates, officiating in any church or chapel where the liturgy and rites of the church of England, are now by law established, are and shall be used and observed, most of which are not corporations, nor have a legal succession, and therefore are incapable of taking a grant or conveyance of such perpetual augmentation as is agreeable to her said late majesty’s gracious intentions, and in many places it would be in the power of the impropiator, donor, parson, or vicar, to withdraw the allowance now or heretofore paid to the curate or minister serving the cure, or, in case of a chapelry, the incumbent of the mother church might refuse to employ a curate, or permit a minister duly nominated or licensed to officiate in such augmented chapel, and might officiate there himself, and take the benefit of the augmentation, though his living be above the value of those which are intended to be first augmented; and the maintenance of the curate or minister would thus be sunk instead of being augmented; be it therefore enacted by the authority aforesaid, that all such churches, curacies, or chapels, which shall at any time hereafter be augmented by the governors of the bounty of Queen Anne for the augmentation of the maintenance of the poor clergy shall be, and are hereby declared and established to be, from the time of such augmentations, perpetual cures and benefices, and the ministers duly nominated and licensed thereunto, and their successors respectively, shall be, and be esteemed in law, bodies politic and corporate, and shall have perpetual succession by such name and names as in the grant of such augmentation shall be mentioned, and shall have a *legal capacity* (2), and are hereby enabled to take, in perpetuity, to them and their successors, all such lands, tenements, tithes, and hereditaments, as shall be granted unto or purchased for them respectively by the said governors of the bounty of Queen Anne for the augmentation of the maintenance of the poor clergy, or other persons contributing with the said governors as benefactors; any law or statute to the contrary notwithstanding: and that the impropiators or patrons of any augmented churches or donatives, for the time being, and their heirs, and the rectors and vicars of the mother churches whereto any such augmented curacy or chapel doth appertain, and their successors, shall be and are hereby utterly excluded from having or receiving, directly or indirectly, any profit or benefit by such augmentation, and shall from time to time, and at all times, from and after such augmentation, pay and allow to the ministers officiating in any such augmented church and chapel respectively, such annual and other pensions, salaries, and allowances, which by ancient custom, or otherwise, of right, and not of bounty, ought to be by them respectively paid and allowed, and which they

STAT. 1 GEO.
1, ST. II. c.10.

All augmented churches, &c. shall be perpetual benefices,

and the ministers shall be bodies politic,

and shall be enabled to take in perpetuity such lands, &c.

Impropiators, &c. of augmented churches, &c. and the rectors, &c. of the mother churches, are excluded from the benefit of such augmentation, and shall

(1) This section was confirmed by Stat. 2 & 3 Vict. c. 49.

(2) *Legal capacity*:—The perpetual curate of an augmented parochial chapelry, has a sufficient possession to maintain trespass, for breaking and entering the chapel

and destroying the pews. *Jones (Clerk) v. Ellis*, 2 Y. & J. 265. But a chapel-warden of a parochial chapelry, has not, by virtue of his office, any authority to enter the chapel and remove the pews, without the consent of the perpetual curate. *Ibid.*

STAT. 1 GEO.
1, St. II. c. 10.

allow the usual
pensions, &c.
to the ministers
officiating.

No rectors,
&c. of mother
churches to be
discharged
from cure of
souls.

Augmented
cures remain-
ing void six
months, shall
lapse to the
bishop, &c.

might, by due course of law, before the making of this act, have been compelled to pay or allow to the respective ministers officiating there, and such other yearly sum or allowance as shall be agreed upon (if any shall be) between the said governors and such patron or impropiator, upon making the augmentation, and the same are and shall be hereby perfectly vested in the ministers officiating in such augmented church or chapel respectively, and their respective successors.

“V. (1) Provided always, that no such rector or vicar of such mother church, or any other ecclesiastical person or persons, having cure of souls, within the parish or place where such augmented church or chapel shall be situate, or his or their successors, shall hereby be divested or discharged from the same; but the cure of souls, with all other parochial rights and duties, (such augmentation and allowances to the augmented church or chapel as aforesaid, only excepted,) shall hereafter be and remain in the same state, plight, and manner, as before the making of this act, and as if this act had not been made.

“VI. And for continuing the succession in such augmented cures, hereby made perpetual cures and benefices, and that the same may be duly and constantly served; be it enacted by the authority aforesaid, that in case such augmented cures be suffered to remain void by the space of six months, without any nomination within that time of a fit person to serve the same (by the person or persons having the right of nomination thereunto) to the bishop or other ordinary, within that time, to be licensed for that purpose, the same shall lapse to the bishop or other ordinary, and from him to the metropolitan, and from the metropolitan to the crown, according to the course of law used in cases of presentative livings and benefices, and the right of nomination to such augmented cure may be granted or recovered, and the incumbency thereof may and shall cease and be determined, in like manner, and by the like methods, as the presentation to, or incumbency in, any vicarage presentative may be now respectively granted, recovered, or determined.

“VII. Provided always, that in case the person or persons entitled to nominate in such augmented cure shall suffer lapse (2) to incur, but shall nominate before

(1) This section was repealed by Stat. 2 & 3 Vict. c. 49, s. 1.

(2) *Lapse*:—Lapse is a devolution of patronage from the patron to the bishop, from the bishop to the metropolitan, from the metropolitan to the king; i. e. to the bishop, as ordinary; to the metropolitan, as superior; and to the king, as patron paramount. In which course, the law of the land varies somewhat from the canon law, as it is laid down in the council of Lateran, (A.D. 1179,) so far as concerns prebends and offices: “Cum præbendas ecclesiasticas, seu quælibet officia, in aliquâ ecclesiâ vacare contigerit, non diu maneant in suspenso; sed infra sex menses personis quæ dignè administrare valeant, conferantur. Si autem episcopus, ubi ad eum spectat, conferre distulerit, per capitulum ordinetur: quòd si ad capitulum pertinerit, et infra præscriptum terminum hoc non fecerit, episcopus secundum Deum hoc cum religiosorum virorum consilio exequatur: vel, si omnes fortè neglexerint, metropolitanus de ipsis secundum Deum absque illorum contradictione disponat.” Extra. l. 3, t. 8, c. 2, can. 8. And in a decretal epistle of Pope Alexander the Third, about the same time, “Illas autem ecclesias, de quarum patronatu controversia fuerit, si infra sex menses, postquam vacaverint, non fuerit controversia terminata; licitum tibi sit de personâ idoneâ ordinare.” Extra. l. 3, t. 8, c. 22.

My Lord Coke, (2 Inst. 361,) makes these

canons (one or both) the first foundation of lapses; and affirms, that before, the bishop was to provide one to serve the cure in the mean time; and the patron might present when he would. *Bracton*, (l. 4,) when alluding to process upon writs of *quare impedit*, and *quare non permittit*, gives this reason why they should be more compendious, since the Lateran council, than before; because, “Ante concilium Lateranense nullum currebat tempus contra præsentantes;” and where mention is made of lapses, in the ancient entries to be met with in our ecclesiastical records, the right of presenting thereupon is frequently said to be “autoritate Lateranensis concilii,” and “secundum Lateranensis concilii statutum.” But the Register of Writs, (a book of great authority,) speaks of the lapse of six months, as the ancient common law of the realm.

“Rex, venerabili in Christo patri R. Episcopo London’ et ejus offic’ ac eorum commissar’ salutem. Quia secundum legem et cons. regni nostri Angl’ episcopi seu alii diocesani ecclesias seu alia beneficia, de quorumcunq’ patronatu existunt, infra diocesim suam vacantia, per lapsum temporis ante sex menses à tempore vacationum eorundem transactas, conferre non debent, nec conferre consueverunt aliquibus temporibus retroactis: vobis præmissa significamus, ut ulterius in causa quæ est coram vobis inter I. præsentatum ad ecclesiam de M. per B. et dilectum clericum nostrum R. de W.

any advantage taken thereof by the ordinary, metropolitan, or crown, respectively, that such nomination shall be as effectual as if made within six months, STAT. 1 GEO. 1, ST. II. c. 10.

archidiaconum, et Rich. et S. de B. cui prædictus archiepiscopus dictam ecclesiam per lapsum temporis contulit, ut dicitur, securius procedere valeatis. T. &c." Reg. f. 42(b).

As to the mention made of lapse to the chapter, in the foregoing constitution of the council of Lateran, *i. e.*, where the bishop was patron of a prebend, &c. though it is now disused, yet traces of the practice are to be found in England, in the times of Archbishop Winchelsea and Archbishop Reynolds, A.D. 1312, the former of whom, when alluding to a lapse from the Bishop of Bath and Wells, states, (Reg. f. 55 (a).) "fuêratque ob hoc collatio ad suum capitulum devoluta;" and, they neglecting to present, "infra limitata sibi à jure tempora,—est ad nos hac vice collatio canonicè devoluta." And the Register of Archbishop Reynolds, (254(b).) contains the following entry: "Ad suam collationem [*i. e.* of the archbishop] propter culpam et negligentiam venerabilis patris Domini Henrici Dei gratiâ Lincoln' episcopi, ac decani et capituli ecclesiæ Cathedralis Lincoln' devolutam."

The term or space, in which title by lapse accrues successively to the forementioned superiors, is, six months. The canon law made a distinction between lay-patrons and clergy-patrons; appointing four months in the case of the first, and six in the case of the second. "Verùm licet patronus laicus ad presentandum tempus habeat quadrimestre duntaxat: ecclesia tamen, vel monasterium, cui facta est à laico jurispatronatus collatio, tempus habet semestre. Et omnino quantum ad præsentationem pertinet, non ut patronus laicus, sed ut patronus debet ecclesiasticus reputari." 6 Decret. l. 3, t. 19, c. 1. And from the body of the canon law, Lyndwood, (de Jur. Patron. c. Cum. sec. v. *Devolvatur*;) delivers the same doctrine, upon the word *Devolvatur*: "Per lapsum sex mensium in patronatu clerici; aliàs quatuor mensium, ubi laicus est patronus." But as the council of Lateran made no such distinction, so the common law of England knows it not, but gives ecclesiastical and temporal patrons an equal title to present at any time within the six months.

"And," saith my Lord Coke, (2 Inst. 361.) "because this computation doth concern the church, it is great reason, that it shall be made according to the computation of the church, which churchmen do best know. And therefore the computation shall be made according to the kalendar, for one half year, and not accounting twenty-eight days to the month; and so was it resolved in the court of Common Pleas, in the time of Edward 2 and Henry 8, as in the said case it appeareth." It has also been resolved by divers later judgments; that the day the church becomes void, is not to be taken into the account. *Catesby v. Peterborough (Bishop of) & Baker*, Cro. Jac. 141. Yelv. 100. *Catesby's case*, 6 Co. 62 (a).

Respecting the time from which the six

months are to commence, (not to mention what the statute law hath determined in Stat. 13 Eliz. c. 12 (*antè* 428), Stat. 31 Eliz. c. 6 (*antè* 447), Stat. 13 & 14 Car. 2, c. 4 (*antè* 569), in the case of deprivations *ipso facto*;) the rule of the canon law, in all cases, was, "Semestre tempus non à tempore vacationis, sed notitiæ ipsius, volumus computari," (Extra. l. 3, t. 8, c. 5; Ibid. l. 1, t. 10, c. 3. 5; 2 Rol. Abr. *Presentment* (Q), 363;) and so it is held in some of the old books. But, because that was attended with great uncertainty, the common law hath made this distinction: that where the avoidance is occasioned by an act between the ordinary and incumbent, (as in case of deprivation and resignation,) lapse shall incur from the notice given by the bishop, or (if he die) by his successor; but where it is occasioned by the hand of God, (as in case of death,) or by the act of the incumbent, (as in case of cession,) no notice need be given, but the patron is bound to take notice of it; and so lapse shall incur from the time of death or cession.

But where a clerk is refused for want of abilities, or morals; though the patron ought to have notice, that he may present another in due time, yet if he neglect, the lapse shall incur from death or cession. And in this case, where a spiritual person presents an illiterate clerk, it hath been adjudged, that lapse incurs without any notice, because the law supposes such to be a judge of the abilities of the clerk, and that therefore an insufficient clerk ought not to have been presented. 2 Rol. Abr. *Presentment* (Q), 364. *Hele v. Exeter (Bishop of)*, 4 Mod. 140. Keil. 49(b).

It hath also been held, in *Servien v. Lincoln (Bishop of)*, (Noy, 65,) that though no lapse shall incur, if no notice be given, yet, if in such case a stranger present, and his clerk be instituted and inducted, and the patron give no disturbance within the six months, he has no remedy for that turn; because induction is a notorious act, of which he was bound to take notice.

The canon law supposes a case, in which the six months may expire, and yet no lapse incur, and that is, where the patron is under an incapacity to present; as in the case of a bishop who is suspended from collating; and, generally, the rule of the canon law is, "Non currit legitime impedito;" and, "Si impeditus fuerit, non currit ei tempus, quia impeditus non differt." 6 Decret. l. 1, t. 6, c. 6, v. *Distulerit*. The law referred to, is as follows: "Quia diversitatem corporum, diversitas sæpe sequitur animorum: et infra conquerebatur inter cætera Eboracensis Archiepiscopus, quod cum ad eum in ecclesia Eboracensi, et aliis suis ecclesiis collatio pertineat præbendarum, tempore suspensionis ipsius, et postmodum etiam, quidam præter ejus auctoritatem se intruserunt in ipsas:

"Mandamus, quatenus eos, qui præbendas, vel dignitates ecclesiæ Eboracen. vel aliarum

STAT. 1 GEO. although so much time be before elapsed, as that the title of lapse be vested in the crown.
1, ST. II. c. 10.

ad donationem ejus spectantes, præter auctoritatem acceperunt ipsius, ad eas resignandas monitione præmissâ per excommunicationis sententiam, et subtractionem aliorum beneficiorum, non obstante confirmatione à sede Apostolica obtentâ sub forma communi, quæ confirmat beneficia, et præbendas, sicut justè, et pacificè possidentur, appellatione remotâ compellas: nisi forte aliqui ea vel ex speciali mandato Apostolicæ sedis, vel auctoritate Lateranensis concilii ab Eboracensi capitulo sint adepti: sic tamen, ut tempus suspensionis in sex mensibus nullatenus computetur: cùm illa Lateranen. concilii constitutio, contra negligentes tantùm fuerit promulgata: et tunc si voluerit, non tamen valuerit archiepiscopus ipse in conferendis præbendis uti propriâ potestate, à qua etsi fuerit sua culpa suspensus, non tamen ad ipsum capitulum ex illa culpa præbendarum erat donatio devoluta: sed ad illum tempore suspensionis illius præbendarum donatio pertinebat, qui præter ejus desidiam, et negligentiam, poterat præbendas donare. Tempus etiam, quo ad apostolicam sedem accessit, et apud illam permansit, vel recessit ab illa, intra sex menses nullatenus computetur. Semestre autem tempus, non à tempore vacationis præbendarum, sed notitiæ ipsius potiùs volumus computari." Extra. l. 3, t. 8, c. 5.

Lapse will incur, or not incur, according as it doth or doth not happen through default of the bishop; and according as he is named or not named, in the *quare impedit*. 2 Rol. Abr. *Presentment* (U), 365. So, if he will not award a *jure patronatûs*, when required; or will not examine the clerk, or refuse him without cause; and the church become litigious: in such cases lapse will not incur; but if he do what is his duty, upon a presentation made to him, and refuse with good cause, and be not named in the *quare impedit*; or if no presentation be made, and yet a *quare impedit* be brought against patron and ordinary; the lapse will incur, and his collation thereupon will be good. Nor will it avail the plaintiff in the *quare impedit*, that he recovers within the six months, unless within such term, the bishop receives the writ; nor that he brings a writ of error, unless, within the six months he also bring a writ of *quare incumbavit* against the bishop. *Lancaster v. Lowe*, Cro. Jac. 93. *Brickhead v. York* (Archbishop of), Hob. 200.

Title by lapse can never accrue to the metropolitan, or to the king, unless it hath first accrued to the immediate ordinary. Ibid. 2 Rol. Abr. *Presentment* (R), 365. This is agreed on all hands, even though the lapse be lost by default of the ordinary; as, for want of giving notice, or the like. And for the same reason, if a clerk be instituted, and remain eighteen months without induction; though institution is no plenarty against the king, yet being so against the bishop, no title by lapse will accrue to the king. Ibid. (Z), 367.

Although the bishop is patron and ordi-

nary, he has not a double time to present in, but only six months, before title by lapse accrues to the metropolitan. This is plain, as well from the rule laid down in the council of Lateran, as from the known practice of this nation. And though such council did not suppose any lapse to the crown, yet since, with us, it goes from the metropolitan to the crown, there is a parity of reason for its passing to the king from the metropolitan in six months, though he be also patron and ordinary, (as in the dioceses of Canterbury and York it often occurs,) namely, that the title by lapse is in the nature of a trust, and not of an interest; and the selfsame patron who hath neglected that trust, and kept the church destitute of a pastor for one six months, ought not, in equity, to have it in his power to keep it vacant for six months more. To this purpose there is a remarkable case in the body of the canon law. The archdeaconry of Richmond was vacant; and the archbishop not collating to it, the devolution was to the chapter, according to the rule of the Lateran council; and, they also neglecting, a question arose, whether the right was devolved to the Pope? In this case, the determination was, "Si vobis constiterit archidiaconatum Richmundiæ vacasse per annum (tempore semestri, quo vel ad archiepiscopum, vel ad capitulum, donatio pertinebat, non à vacatione, sed à notitiâ computato) cùm pro eo quodd Eboracensis Archiepiscopus alium superiorem non habet, extunc fuerat ad nos donatio devoluta, utriusque super eo silentium imponatis." Extra. l. 1, t. 10, c. 3. Which supposes, that the Archbishop of York, though patron, and ordinary, and metropolitan, was understood to be entitled only to six months.

If title by lapse have accrued to the bishop, and he die, or if he be translated or deprived, before he take the benefit of it, the devolution is to the metropolitan,—because he is guardian of the spiritualities, and this being a mere spiritual trust. For although it is laid down in an ancient writ, as a thing notorious, that churches which belonged to the collation of bishops while they lived, "pertinere debent ad nos, ratione custodiæ tempore vacationis;" (Bract. l. 5, f. 404, s. 10; 2 Rol. Abr. *Presentment* (Z), 367;) yet this relates only to such voidances as belong to the bishops in their own rights; and, as to lapses, *Noy* (69) is clear and express, that in such cases, the lapses belong to the guardian or guardians of the spiritualities, whoever they be.

If lapse accrue to the bishop in a metropolitanical visitation, he will not lose the benefit of it. This was adjudged, and said to be agreed to by the civilians, in the reign of King Charles the First. And the reason of it is plain; because, though he is under inhibition during that time, yet such inhibition reaches not his right of patronage, but only suspends his right of institution and collation; and therefore, the only difference is,

“VIII.(1) And inasmuch as by the said rules established by her said late majesty, under her great seal, for the management of the aforesaid royal bounty, her said late majesty was pleased to manifest her gracious intentions to invite

STAT. I GEO.
I, St. II. c. 10.

that, instead of collating by his own authority, he is to present his clerk to the archbishop for institution. 2 Rol. Abr. *Presentment* (Z), 367.

After lapse to the ordinary, or to the metropolitan; if patron present to the ordinary before the church be filled by institution, he is bound to receive his clerk. In which doctrine, all the books agree, upon this reason, that the end of the lapse being only to prevent a long voidance of the church, this end is answered by the patron's presenting his clerk to the immediate ordinary. But this point is otherwise solved by the canon law, in the case of *election*, and the same reason holds in the case of presentation. “Quia nobis constitit à salamantano decano et ejus sequacibus, post elapsum sex mensium spatium, infra quod episcopus et capitulum (prout communiter spectabat ed eos) procedere ad electionem cantoris neglexerant, electionem supradicti P. minus canonicè celebratam; eandem decernimus irritam et inanem: et appellationem à decano et suis fautoribus interpositam, factum archiepiscopi, (ad quem jam erat eligendi auctoritas devoluta,) nequuisseali quatenus impedire:”

“Mandamus, quatenus nisi dicto G. aliquod canonicum obviet: electionem de, ipso factam, sublato appellationis obstaculo confirmetis.” Extra. l. 1, t. 10, c. 5. And the point is solved the same way by our English canon law, where we find a question put by *Lyndwood*, (de Jur. Patr. c. 2, v. *Injuria*), “Quid si ordinatio ecclesiæ sit devoluta ad episcopum per lapsum temporis, cum tamen episcopus nondum ordinavit de personâ ibidem instituendâ, si patronus post lapsum evineat jus patronatûs, ut præsentet ad ecclesiam adhuc vacantem, nunquid episcopus teneatur talem præsentatum admittere, vel alias poterit libere uti jure sibi devolutò?” And the answer is: “Puto quòd in hoc casu episcopus non tenetur admittere præsentatum talis, in exclusionem juris sibi acquisiti per lapsum. Ratio est, quia jus episcopo quæsitum, sine facto suo non debet ab eo auferri: potest tamen episcopus collatarium suum etiam ad præsentationem talem patroni admittere.” Of the same tendency, with regard to the titles being fixed in the bishop, so as to be under no obligation to receive the patron's clerk, is, what we read in *Fitzherbert*, (N. B. f. 83,) that a *ne admittas* shall not go after the six months, because then the bishop may present for lapse; and therefore it is in vain then to sue this writ, because the title to present is then devolved unto the bishop. But if the patron might present, and the bishop (not having collated) were obliged to receive his clerk after the six months; then the *ne admittas* after the six months was not in vain.

However, as previously stated, all the law books agree in the patron's right to have his clerk admitted. In *Colt and Glover v. Coventry & Lichfield* (Bishop of), (Hob. 157;

Moore (Sir F.), 900,) it was held, that such right was devolved to the king; but the later opinions, (2 Rol. Abr. *Presentment* (B), 368; *Booton v. Rochester* (Bishop of), Hutt. 24,) are, that after the lapse comes to the king, the crown cannot be divested of it, but that the patron is wholly disabled from presenting; and if he do present, and his clerk be instituted and inducted, the king may remove him by *quare impedit*. And this power is (in effect) the same that the Pope claimed and exercised; as appears by the direction given to his legate in this very case, which became part of the body of the canon law: “Si beneficia vel dignitates, [speaking of such as were lapsed to him, and filled by the patrons notwithstanding such lapse,] noveritis personis idoneis assignatas, eas de patientiâ permissatis ab ipsis pacificè possideri: alioquin personas amoventes prorsus ab ipsis, eas de personis idoneis, auctoritate nostrâ suffulti, non differatis quantociùs ordinare.” Extra. l. 1, t. 10, c. 4. But if, in such case, the patron's clerk be suffered to die incumbent, or be deprived, the king's turn is served, and he hath lost the advantage of the lapse. Upon which head, all the books are clear in cases of death, and most of them as to deprivation; but many of them will not allow the same reason, in cases of resignation, because there is room to suspect fraud and covin.

There is no lapse from the king, for although (as hath been observed) the words of Stat. 17 Edw. 2, St. I. c. 8 (*antè* 40), do plainly imply a lapse, they are not allowed to be express enough, to destroy or limit that known maxim in favour of the crown, “Nullum tempus occurrit regi.” If the Reformatio Legum had been confirmed by authority of parliament, as was designed, the law in this particular had been otherwise: “Et si nobis etiam, [saith the king,] ex quo id novimus, sex menses effluxerint, sacerdotium vacuum non collocantibus; ad patronum rursus jam suum devolvetur: et sic in eodem semper orbe circumferatur, illis quas nominavimus personis, [viz. patron, bishop, metropolitan, and king,] mutuò sibi succedentibus, donec tandem aliquis eorum præscripto tempore jus collocationis exequatur.” Ref. Leg. f. 29 (b). But as the law is, there is no remedy against a neglect in the crown to fill vacant churches, but only the ordinary's sequestering the profits of the church, and appointing a clerk to serve the cure.

Where a doubt was, whether the living had not lapsed to the king, and the clerk took out a presentation from the crown *ad corroborandum*; he was obliged by the archbishop, as patron, to declare that he took not that presentation on any other account, but that of the doubtfulness of the lapse. Bancr. 284 (a, b). 2 Whitg. 348 (b). Gibson's Codex, 768, 769, 770.

(1) This section was confirmed by Stat. 3 & 4 Vict. c. 20, s. 1.

STAT. 1 GEO.
I, ST. II. c. 10.

All agreements
with benefac-
tors touching
the patronage
of augmented
cures, shall be
good in law;

and the advow-
son, &c. shall
be vested in
such benefac-
tors.

Agreements of
guardians shall
bind infants,
&c.

Such agree-
ments shall be
effectual for
supplying
vacant cures.

The estate
settled for

private contributions towards augmenting the maintenance of the poor clergy, by ordering, amongst other things, that to encourage benefactions from others, and thereby the sooner to complete the good that was intended by her said late majesty's bounty, the said governors may give the sum of two hundred pounds (which is the stated sum allowed to each cure which shall be augmented) to cures not exceeding thirty-five pounds per annum, where any person or persons will give the same or greater sum or value in lands or tithes: and inasmuch as the right of presentation, or nomination to small livings, is of inconsiderable value, and yet it may be a great inducement to such benefactions, if the benefactors may have some right of presentation or nomination to the cure which himself contributes to augment; be it therefore further enacted, that all agreements with such benefactor or benefactors, with the consent and approbation of the said governors, touching the patronage or right of presentation or nomination to any such augmented cure, made or to be made for the benefit of such benefactor and benefactors, his, her, or their heirs or successors, by the king's most excellent majesty, his heirs and successors, under his and their sign manual, or by any bodies politic or corporate, or by any person or persons being of the full age of twenty-one years, having an estate of inheritance either in fee-simple or fee-tail in their own right, or in the right of their churches, or wives, or jointly with their wives, made before coverture, or after, or having an estate for life, or for years determinable upon his and their own life and lives, with remainder in fee-simple or fee-tail to any issue of his or their own bodies, in such patronage, or right of presentation, or nomination in possession, reversion or remainder, shall be respectively good and effectual in the law against his majesty, his heirs and successors, or against all and every such bodies politic and corporate, or against the persons so agreeing, their wives, heirs and successors respectively, and every of them, and against all and every their issue, and against every other person and persons claiming in remainder and reversion after such estate-tail, as aforesaid, according to the form of such agreement; and the advowson, patronage, and right of presentation and nomination to such augmented churches and chapels shall be vested in such benefactors, their heirs and successors, as against his majesty, his heirs and successors, or the said bodies politic and corporate, and their successors, or the said respective persons as aforesaid, as fully, and in like manner and form, as if the same had been granted by his said majesty, his heirs or successors, under his and their great seal, and as if such bodies politic or corporate had been free from any restraint, and as if such other persons so agreeing had been sole seized in his and their own right of such advowson, patronage, right of presentation and nomination, in fee-simple, and had granted the same to such benefactors, their heirs and successors respectively, according to such agreements.

"IX. (1) And be it further enacted, that the agreements of guardians for and on behalf of infants or idiots under their guardianships, shall be as good and effectual to all intents and purposes, as if the said infants or idiots had been of full age, and of sound mind, and had themselves entered into such agreements.

"X. Provided always, that in case of any such agreement, as aforesaid, by any parson or vicar, the same shall be with the consent and approbation of his patron and ordinary.

"XI. Provided also, that in case of any such agreement, as aforesaid, made by any person seised in right of his wife, the wife shall be a party to the agreement, and shall seal and execute the same.

"XII. And inasmuch as such benefactors are to be considered, in some degree, as founders and patrons of churches; be it further enacted, that such agreements so made, as aforesaid, shall be as effectual for the supplying cures vacant at the time of such augmentation made or proposed, as for the advowson or nomination to future vacancies.

"XIII. (2) And be it further enacted by the authority aforesaid, that it shall and may be lawful, with the concurrence of the said governors of the bounty of

(1) This section was repealed by Stat. 11 Geo. 4 & 1 Gul. 4, c. 65, s. 25.

(2) This section was extended by Stat. 43 Geo. 3, c. 107, s. 2.

Queen Anne for the augmentation of the maintenance of the poor clergy, and the incumbent, patron, and ordinary of any augmented living or cure, to exchange all, or any part of the estate settled for the augmentation thereof, for any other estate in lands or tithes, of equal or greater value, to be conveyed to the same uses.

STAT. 1 GEO. I, St. II. c. 10.
augmentation may be exchanged.

“XIV. And be it further enacted by the authority aforesaid, that all such donatives which are now exempt from all ecclesiastical jurisdiction, and shall be augmented by virtue of the powers given by this act, shall be subjected to the visitation and jurisdiction of the bishop of the diocese wherein such donative is, to all intents and purposes of law whatsoever.

Augmented donatives to be visited by the bishop.

“XV. Provided always, that no donative shall be augmented without the consent of the patron or patrons in writing, under his or their hands and seals first had and obtained.

“XVI. Provided also, that where it shall fall to the lot of any donative, curacy, or chapelry, to receive an augmentation from the said bounty, according to the rules already established, or hereafter to be established, it shall and may be lawful to and for the governors of the bounty of Queen Anne for the augmentation of the maintenance of the poor clergy, and they are hereby empowered, before they make the same augmentation, to treat and agree with the patron of any donative, impropiator of any rectory impropriated without endowment of any vicarage, or parson or vicar of any mother church (as the case shall happen to be) for a perpetual yearly, or other payment or allowance to the minister or curate of such augmented donative, curacy, or chapelry, and his successors, to be made in all succeeding times by such patron, impropiator, parson, or vicar, and his and their heirs and successors, and for charging and subjecting the impropriate rectory, or the mother church, or vicarage therewith, and thereunto, in such manner, and with such remedies as shall be thought fit; and such agreements made with the king's most excellent majesty, his heirs and successors, under his or their sign manual, or with any bodies politic or corporate, or any other person or persons having any estate or interest, in possession, reversion, or remainder, in any such impropriate rectory in his or their own right, or in right of his or their churches or wives, or with the guardian or guardians of any person or persons having such estate or interest, or with any parson or vicar of any mother church, shall be as effectual to all intents and purposes with respect to such charges, as agreements made with his majesty, his heirs and successors, or with the same person or persons, bodies politic or corporate respectively, touching the patronage or right of presentation or nomination to the same cures, touching which such agreements shall be respectively made; and in case such impropiator, other than the king's majesty, his heirs and successors, and such parson or vicar, will not or shall not make such agreement with the said governors of the bounty of Queen Anne for the augmentation of the maintenance of the poor clergy; it shall and may be lawful to and for the said governors to refuse such augmentation, and to apply the money arising from the late queen's said bounty, which ought to have been employed therein, for augmenting some other cure, according to the rules then in force.

The governors may agree with the patron, &c. of any donative, &c. for an allowance to the minister of such augmented donative, &c.

And if such impropiator (other than the king) will not agree, the governors may refuse such augmentation.

“XVII. And whereas the before-mentioned acts of parliament, of the fifth and sixth years of the reign of her said late majesty, were, for the diocese of Chichester, not executed in due time, and in many dioceses not with that exact certainty of the yearly values and distinction of mediocrities in the certificates, as regularly ought to have been; and some small prebends in cathedral churches were, by reason of their being dignities, omitted in some certificates, although they have the cure of souls thereto annexed, and are therefore livings with cure of souls within the words and meaning of the said acts: for supplying the defects in the execution of the said former acts of parliament; be it enacted by the authority aforesaid, that the certificate for the diocese of Chichester, dated the twenty-fourth day of December, one thousand seven hundred and eight, which was received in the court of Exchequer at Westminster, and is now remaining there, shall be as effectual, to all intents and purposes, as if the same had been sealed and returned into the said court of Exchequer, within the times limited by the said respective acts of parlia-

The certificate for the diocese of Chichester, remaining in the Exchequer, shall be as effectual as if it had been returned in due time.

STAT. 1 GEO.
1, ST. II. c. 10.

And the governors may certify into the Exchequer the prebends under the yearly value of 50*l*. though not named in any former certificate.

Living not certified, which the bishops may certify before March 25, 1716;

and they shall have the benefit of the acts of 5 Ann. c. 24, and 6 Ann. c. 27.

ment in that behalf made; and also that all and every the churches, vicarages, and livings, in and by the said certificate, or in and by the certificates made and returned in due time, or any of them, certified to be under fifty pounds per annum, and each mediety therein, shall be entitled to, and have the benefit of the said respective discharges by the said several acts of parliament, as fully, to all intents and purposes, as if the precise yearly value had been expressed, and the medieties distinguished in such certificate and certificates: and further, that it shall and may be lawful to and for the said governors of the bounty of Queen Anne for the augmentation of the maintenance of the poor clergy, under their common seal, to be affixed at a court of the said governors, and under the hands of the governors then present, to certify into the court of Exchequer the names of such prebends in cathedral churches, under the yearly value of fifty pounds, the prebends whereof have the immediate cure of souls of the respective parishes whereof such prebends are denominated, although the same were not named in any former certificate; and such certificate and certificates of the said governors, being returned into the said court of Exchequer, shall be as effectual to all intents and purposes of the said two before-mentioned acts of parliament, as if the prebends therein named had been duly certified within the times in the said acts limited, and by the persons and in the manner therein directed.

“XVIII. And whereas notwithstanding the utmost diligence of the bishops to inform themselves of, and certify into his majesty’s court of Exchequer, all the livings in their respective dioceses under the clear improved yearly value of fifty pounds, in pursuance of the said acts, the several livings within the respective dioceses hereafter named, though supposed to be under the value of fifty pounds per annum, have either not been certified, or, if certified, the certificates of them have been lost, or not duly entered, or by some other mistakes it has so happened that the said livings have not yet had the benefit designed them by the said acts: be it further enacted by the authority aforesaid, that it shall and may be lawful for the bishops of the said dioceses, at any time before the twenty-fifth day of March, one thousand seven hundred and sixteen, to certify into the court of Exchequer the livings following, or such of them as shall appear to the respective bishops to be under the value of fifty pounds per annum, (*viz.*) in the diocese of York, the rectory of Saint Michael apud Pontem de Ouse in the city of York, the vicarage of Skipwith, the vicarage of Kilham, the vicarage of North Leverton, the vicarage of Norwell Overhall: in the diocese of Bangor, the vicarage of Lanunda, the vicarage of Llanfair Isgaer, the vicarage of Llanor, the vicarage of Nevin, the vicarage of Abererch, the vicarage of Conway, the vicarage of Dwygyfylche: in the diocese of Carlisle, the rectory of Kirkbride, the rectory of Dufton, the vicarage of Edenhall: in the diocese of Chichester, the vicarage of Sela, the rectory of Beatae Mariae in Westout Lewis, the rectory of Chalton, the rectory of Winchelsea, the vicarage of Bernehill: in the diocese of Saint David’s, the vicarage of Merchir, *alias* Mathre, the vicarage of Saint Winnock, *alias* Saint Twinnells: in the diocese of Lichfield and Coventry, the vicarage of Hartington, the vicarage of Saint Mary’s in Lichfield, the south mediety of Darleigh, the vicarage of Glossop: in the diocese of Lincoln, the rectory of Bellew, *alias* Hellow, the vicarage of Elsham, the rectory of Normanby, the rectory of Snarford, the vicarage of Buckingham, the rectory of Okeney, the vicarage of Mentmore, the vicarage of Missenden Magna, the vicarage of Swanburn: in the diocese of Norwich, the vicarage of South Walsam, the rectory of Framlinghams, the vicarage of Burnham-Overy, the vicarage of Scarning, the vicarage of Nectons, the vicarage of Melton Parva, the rectory of Repham Medietas and Altera Medietas, the vicarage of Thurston, the vicarage of Colkirke, the rectory of Catfields, the vicarage of Henly, the rectory of Newborn, the rectory of Culpho, the rectory of Dunwich Johannis, the rectory of Pakefields, the rectory of Melford Longa, the vicarage of Finborow Parva, the rectory of Willingham, *alias* Ellough, the rectory of Bromeswell in Wilford: in the diocese of Oxford, the vicarage of Stanton Harcourt: in the diocese of Peterborough, the vicarage of Cransley: in the diocese of Winchester, the vicarage of Shalford, and the vicarage of Ellingham: and the said livings so certified, shall have the benefit of the two fore-mentioned

acts of parliament, as effectually, to all intents and purposes, as if they had been duly certified within the time limited by the said acts.

“XIX. And be it further enacted by the authority aforesaid, that the courts and committees of the said governors of the bounty of Queen Anne, for the augmentation of the maintenance of the poor clergy, shall have power and authority, and are hereby authorized and empowered, from time to time, to administer an oath to such person and persons as shall at any time give them information, or be examined of or concerning any matter or thing relating to the execution of this or the said former acts of parliament, or any way concerning the trust in them reposed.

“XX. And be it further enacted by the authority aforesaid, that all the augmentations, certificates, agreements, and exchanges hereafter to be made, by virtue of or in pursuance of this act, shall be carefully examined and entered in a book to be provided and kept by the governors for that purpose, the said entries being approved at a court of the said governors, and attested by the governors then present, shall be taken to be as records, and the true copies thereof, or of the said entries, being proved by one or more credible witnesses, shall be deemed, taken, and adjudged to be good and sufficient *evidence in law*(1), touching the matters contained therein, or relating thereto.

“XXI. And to the end that churches and chapels may at all times be capable of receiving augmentations for the maintenance of the ministers thereof; be it enacted by the authority aforesaid, that if the governors of the bounty of Queen Anne for the augmentation of the maintenance of the poor clergy, shall by any deed or instrument in writing under their common seal, allot or apply to any church or chapel, any lands, tithes, or hereditaments, arising from the said bounty of her said late majesty, or from private contribution or benefaction, or from all or any the ways aforesaid, and shall declare, that the same shall be for ever *annexed* (2) to

STAT. 1 GEO.
1, Sr. II. c. 10.

The governors empowered to administer oaths.

Augmentations, &c. to be entered, and the entries to be taken as records; and attested copies thereof good evidence.

Lands, &c. allotted to any church, &c. by deed under the governors' seal, shall go in succession, &c.;

(1) *Evidence in law*.—Proof of a curacy *augmented*, is established by showing an order for its augmentation, entered in a book and signed by the governors, according to Stat. 1 Geo. 1, St. II. c. 10, s. 20; and it is not requisite to prove that the money was afterwards laid out in land, and allotted by deed under the corporation seal of the governors of Queen Anne's bounty, to be annexed to the curacy, and that such deed was enrolled within six months after its execution, according to Stat. 1 Geo. 1, St. II. c. 10, s. 21, and Stat. 9 Geo. 2, c. 36.

Where an old mortgage term of 1000 years, created in 1727, was recognised in a marriage settlement of the owner of the inheritance in 1751, by which a sum was appropriated to its discharge; and no further notice was had of it till 1802, when a deed, to which the then owner of the inheritance and the representatives of the termors were parties, reciting that the term was still subsisting, conveyed it to others to secure a mortgage: it was held, that it could not be presumed to have been surrendered against the owner of the inheritance, who was interested in upholding it. *Doe d. Graham (Clerk) v. Scott (Clerk)*, 11 East, 478.

(2) *Annexed*.—Land which has been annexed to a perpetual curacy of a parish by the governors of Queen Anne's bounty, under Stat. 1 Geo. 1, St. II. c. 10, ss. 4, 21, cannot be leased by the curate so as to bind the successor, if the patron only consent, and not the ordinary; although conveyed to the curate and his successors for ever, and allotted and applied by the governors to the

church and annexed thereto, to go in succession with the church; thus, in *Doe d. Richardson v. Thomas*, (9 A. & E. 556,) Lord Denman observed, “I doubt much whether the perpetual curate has any fee simple at all; and, if he has not, he is not within Stat. 32 Hen. 8, c. 28, s. 1 (*ante* 262). Next, even if he has, I doubt whether it be in right of the church, for he gets his fee, if at all, by force of Stat. 1 Geo. 1, St. II. c. 10, ss. 4, 21. But, if he has a fee-simple in right of the church, does he not fall within sect. 4 of Stat. 32 Hen. 8, c. 28? It is said, that the act did not contemplate the case of land given to the perpetual curate in succession: if it had, it would have included the case in sect. 4. But, if the estate can be brought within sect. 1, can we not also bring it within sect. 4? The curate is not the rector; he has not the great tithes: nor can he be called the parson, which implies a peculiar character; but he appears to be a vicar: for he serves the church in that capacity. *Jenkinson g. t. v. Thomas*, (4 T. R. 665,) certainly seems opposed to this view; but the court was there construing a penal statute. The clause in the present case must receive a more liberal construction. I am therefore of opinion that, if a perpetual curate be within sect. 1 of Stat. 32 Hen. 8, c. 28, he is also within sect. 4. His power is, therefore, no more than it would have been before that statute; and the lease is void as against the successor, for want of the ordinary consent.”

In the foregoing case, Mr. Justice Little-dale thought, that the curate was one of the

STAT. 1 GEO.
1, ST. II. c. 10.

such deed being
enrolled in six
months.

such church or chapel, then such lands, tithes, and hereditaments, shall from thenceforth be held and enjoyed, and go in succession with such church and chapel for ever; and such augmentation so made shall be good and effectual, to all intents and purposes whatsoever, whether such church or chapel, for which such augmentation is intended, be then full or vacant of an incumbent or minister; provided such deed or instrument be enrolled in the high court of Chancery within six months after the day of the date thereof. [*Vide* 3 Geo. 1, c. 10.]”

STAT. 1 GEO.
1, ST. II. c. 13.

IV. STAT. 1 GEORGII 1, ST. II. c. 13(1). A.D. 1714.

“An Act for the further Security of His Majesty’s Person and Government, and the Succession of the Crown in the Heirs of the late Princess Sophia, being Protestants; and for extinguishing the Hopes of the pretended Prince of Wales, and his open and secret Abettors.”

STAT. 1 GEO.
1, ST. II. c. 23.

V. STAT. 1 GEORGII 1, ST. II. c. 23. A.D. 1714.

“An Act for making Provision for the Ministers of the Fifty new Churches which are to be built in and about the Cities of London and Westminster, and Suburbs thereof; and for rebuilding and finishing the Parish Church of St. Mary Woolnoth, in the said City of London.”

STAT. 1 GEO.
1, ST. II. c. 29.

VI. STAT. 1 GEORGII 1, ST. II. c. 29(2). A.D. 1714.

“An Act for allowing a Time for Two Hundred and Thirteen Families of Protestant Palatines, now settled in Ireland, to take the Oaths, in order to entitle them to all the Benefits intended them by the Act of the seventh year of Her late Majesty’s Reign, for naturalizing foreign Protestants.”

STAT. 1 GEO.
1, ST. II. c. 47.

VII. STAT. 1 GEORGII 1, ST. II. c. 47. A.D. 1715.

“An Act for the more effectual and exemplary Punishment of such Persons who, being Papists, shall enlist themselves in His Majesty’s Service in Great Britain or Ireland, or in the Islands of Jersey or Guernsey.”

STAT. 1 GEO.
1, ST. II. c. 50.

VIII. STAT. 1 GEORGII 1, ST. II. c. 50(3). A.D. 1715.

“An Act for appointing Commissioners to inquire of the Estates of certain Traitors, and of Popish Recusants, and of Estates given to Superstitious Uses, in order to raise Money out of them severally for the Use of the Public.”

STAT. 1 GEO.
1, ST. II. c. 55.

IX. STAT. 1 GEORGII 1, ST. II. c. 55(4). A.D. 1715.

“An Act to oblige Papists to register their Names and real Estates.”

STAT. 2 GEO.
1, c. 14. [Ir.]

X. STAT. 2 GEORGII 1, c. 14(5). [IRELAND.] A.D. 1715.

“An Act for real Union and Division of Parishes.”

10 Geo. 1, c. 6,
explained and
amended.

“Whereas parishes are in some parts of this kingdom so little, that five or six lie together within a mile or two, whereby the subjects are like to be much bur-

persons whose leases were made valid by Stat. 32 Hen. 8, c. 28, s. 1; but Mr. Justice Coleridge dissented. The whole court, however, agreed, that if he be within sect. 1, he was within the restriction of sect. 4.

(1) *Vide* Stat. 1 Geo. 1, ST. II. c. 55. Stat. 10 Geo. 1, c. 4. Stat. 2 Geo. 2, c. 31. Stat. 9 Geo. 2, c. 26. Stat. 16 Geo. 2, c. 30. Stat. 6 Geo. 3, c. 53. Stat. 31 Geo. 3, c. 32.

(2) Expired.

(3) Expired.

(4) Repealed by Stat. 3 Geo. 1, c. 18. Stat. 10 Geo. 1, c. 4. Stat. 21 Geo. 3, c. 51. Stat. 31 Geo. 3, c. 32. Stat. 43 Geo. 3, c. 30. Stat. 10 Geo. 4, c. 7.

(5) *Vide* Stat. 10 Geo. 1, c. 6. (I.) Stat. 1 Geo. 2, c. 19. (I.) Stat. 7 & 8 Geo. 4, c. 43. Stat. 10 Geo. 4, c. 58. Stat. 2 & 3 Gul. 4, c. 67.

Sect. 1, 2, 5, 6, repealed by Stat. 7 Geo. 4, c. 73, s. 1.

dened with unnecessary charge of building and repairing so many churches, and the means also are so small, that sundry of them will not serve for the sustentation of one incumbent; and in some places parishes are so vast and extended in length, that it is difficult for the parishioners to repair to their parish churches, and return home the same day, and many times so inconveniently divided, that the parishioners of one parish may with more convenience repair to another parochial church than to their own, and all parties by an indifferent exchange may be better accommodated: and whereas churches are often most incommodiously seated at the uttermost bounds and limits of a great parish, or in some small island, and the glebes provided for the habitation of the incumbent are often remote from the parish church, and bishops' lands are in several places contiguous, or near adjoining to the parish church, and cannot by one general law be equally determined: and whereas for remedying the evils aforesaid an act was made in the fourteenth and fifteenth years of the reign of the late King Charles the Second, intituled, 'An Act for real Union and Division of Parishes, and concerning Churches, Free Schools, and Exchanges,' which is since expired; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from the twenty-fourth day of June, in the year of our Lord one thousand seven hundred and seventeen, for and during the term of ten years from thence next ensuing, it shall and may be lawful for the chief governor or governors of this kingdom for the time being, with the assent of the major part of the privy council in council assembled, six at least consenting, and with the advice and approbation of the archbishop of the province and the bishop of the diocese, certified under their hands and archiepiscopal and episcopal seals, with the consent of the respective patrons and incumbents, certified under their hands and seals, attested by two or more credible witnesses subscribing thereunto, to divide old parishes, or separate any parish, or part of a parish of late united, and to unite parishes one to another, or part of a parish to another parish, or part of a parish, in perpetuity, and to erect such divided or united parishes, or part of parishes, into new parishes, with all parochial rights: and also to unite or appropriate any benefice or benefices, having actual cure of souls, to a dignity or prebend without cure, saving to the dean, dignitary, prebend, and incumbent, at the time of such union, during their respective incumbency, and to their respective patrons and ordinaries, all their right, title and interest, in and to the said united or appropriated benefices; and saving, also, all rights to the dean and chapter of each cathedral church, and to the prebendary of the prebend, to which any benefice with cure of souls shall be united or appropriated.

"II. Provided always, that no dignitary or prebendary, to whose dignity or prebend such benefice with cure of souls shall be united, shall be discharged of residence in the church united to such dignity or prebend; but that they shall be obliged to such residence as the incumbent of such church with cure of souls was obliged to before the making of such union, and shall also be and remain subject, as a dignitary or prebendary of the said cathedral church, to all jurisdictions, duties, and penalties, in like manner as the said dignitary or prebendary was subject at the time of making such union; and all and everything, that shall be done in pursuance of this act, shall be good to all intents and purposes, as if the same had been particularly and specially recited and hereby enacted.

10 Geo. 1, c. 7. Incumbent succeeding shall

"III. And be it likewise enacted by the authority aforesaid, that it shall be lawful to and for the lord lieutenant, lord deputy, lords justices, or other chief governor or governors of this kingdom for the time being, with the assent of the major part of the privy council assembled in council, six at least consenting as aforesaid, and with the advice and approbation of the respective archbishop and bishop, in whose respective province and diocese such parishes are lying and being, upon examination of witnesses (whom they and each of them are hereby empowered to examine upon oath) or any other lawful means, to direct and order new churches to be built in more convenient places, with the consent of the patron

STAT. 2 GEO. 1, c. 14. [Ir.]

13 Geo. 2, c. 4, made perpetual.

21 Geo. 2, c. 8.

31 Geo. 2, c. 5.

Inconvenient division of parishes, and situation of churches.

Recital of 14 & 15 Car. 2, c. 10, expired.

Chief governors and six of the council, with approbation of the bishop and consent of patrons, may for ten years, from 24th June, 1717, divide or unite parishes, 7 Geo. 2, c. 7, and glebes. 9 Geo. 2, c. 12.

And appropriate benefices with cure to dignities without cure; and by 10 Geo. 1, c. 6, to dignities with cure, benefices without cure. 21 Geo. 2, c. 8.

Saving all right and interest to the dean, &c.

Dignitary obliged to residence, as incumbent before such union, and subject to all jurisdictions, &c. as dignitary.

pay first-fruits.

Chief governors, &c. may direct new churches to be built in more convenient places, with consent of parishioners in vestry, &c. 10 Geo. 1, c. 6.

STAT. 2 GEO.
1, c. 14. [1R.]

Protestant
parishioners.
1 Geo. 2, c. 19.
19 Geo. 2, c. 16.
Persons em-
powered to
grant one acre
for the site.
Expense as-
sessed at vestry.
Notice of
vestry.

10 Geo. 1, c. 6.
Chancel re-
paired by such
persons as
before liable.

Right of pa-
tronage not
altered by
removal.

On union, the
patronage
divided by
turns, accord-
ing to value of
the parishes.
Consent of
each patron
first had, and
entered.

Such settle-
ment final.
Reserving dues
payable.

But the king,
where entitled,
shall have the
first presenta-
tion.

Owner of rec-
tory improp-
riate shall not, by
only presenting
in turn to any
union, be
judged to dis-
appropriate his
rectory, unless
expressly so
signified in the
presentation.

Such unions,
divisions, and
appropriations,
to be enrolled
in six months.
Fee, 13s. 4d.

Clause to that
purpose in the
instrument.

Bishops, digni-
taries, &c., by
consent, may

or patrons, proprietor or proprietors, upon whose lands such new church is to be erected; and also of the incumbent, and churchwardens, and parishioners of the parish or parishes to be assembled in vestry, or the major part of them, and of the proprietor and proprietors of the lands within such parishes, or the major part of them, testified by their petition or petitions to the chief governor or governors of this kingdom, and the council thereof; the expense of building which said churches shall be assessed and apportioned on the respective parishes by act of vestry, and such church, so newly erected as aforesaid, shall be deemed to be the parish church of the parish, wherein the same shall be built, when so intended and declared by such order as aforesaid; and the chancel thereof shall be repaired by such persons as were liable to repair the chancel of the old parish church.

“IV. And be it further enacted by the authority aforesaid, that upon the removal, and new erecting or change, of any parish church as aforesaid, the patron of the church so removed, his and their heirs and assigns, shall be patron of the new church, and shall have and enjoy all the rights of patronage, as if the church had continued without any alteration or removal: and likewise where two or more churches or parishes are united into one, and where any benefice or benefices shall be united to a dignity or prebend, having formerly had distinct patrons, in such cases the lord lieutenant, lord deputy, or lords justices and council as aforesaid, with the advice and approbation of the respective archbishop and bishop, in whose province and diocese the said churches were situated, shall divide the patronage by turns among the patrons, giving to each of them a right to present oftener or seldom, according to the true yearly value of the respective parish or parishes whereof they are patrons, the consent of each patron being first had, and entered in the instrument of erecting the said union; and such settlement or settlements as aforesaid shall be final and binding to all patrons, whether ecclesiastical or lay patrons, and to all parties for ever; reserving always unto every archbishop and bishop, registers, and schoolmasters, their respective dues payable out of every such parish so united: provided, that where the king's majesty, his heirs and successors, is or shall be entitled to the presentation of any of the said parish churches so to be united, he and they shall from and immediately after such union, upon the then first vacancy, have the first presentation of an incumbent unto such united church; and afterwards, upon the then next vacancy, the other respective patrons severally, as the chief governor or governors and council as aforesaid, with the advice and approbation as aforesaid, shall direct and appoint; regard being had to the respective values of the several parishes so to be united as aforesaid, and so in course respectively in manner aforesaid.

“V. And be it further enacted by the authority aforesaid, that no owner or proprietor of any rectory impropriate, having the patronage of the vicarage of the said church, shall, by only presenting in his turn a clerk to any union made by virtue of this act, be judged in law to disappropriate his rectory, unless such person making such presentation shall, by express words contained therein, plainly signify his design and intent to make such disappropriation; and that such presentation be under the hand and seal of the patron so presenting, attested by two or more credible persons; any former law or usage to the contrary notwithstanding.

“VI. And be it enacted by the authority aforesaid, that all and every such unions, divisions, and appropriations, to be made by virtue of this act, shall be enrolled in the Rolls office of the high court of Chancery within six months after the making thereof; for the enrolment whereof respectively the fee of thirteen shillings and four pence, and no more, shall be paid; and every instrument under the hands of the chief governor or governors and council, testifying such union, division, or appropriation, shall contain in it a clause or proviso that the same shall be enrolled in six months after the date thereof, or else to be void and of no effect.

“VII. And whereas the respective archbishops and bishops, deans, dignitaries, and prebendaries in this kingdom, are entitled to and have in right of their respective archbishoprics, bishoprics, deaneries, dignities, or prebends, several

improper parishes, tithes, and glebes, or mensals belonging to their respective archbishoprics, bishoprics, deaneries, dignities, and prebends, in which parishes the said respective archbishops, bishops, deans, dignitaries, or prebendaries, are obliged to find curates to perform divine service, and for the cure of souls in the said several and respective parishes, in which said parishes there are at present no vicarages or curacies endowed: and whereas the third part of the tithes and other profits of such respective parishes is usually allotted or paid for the service of the cure thereof, which often proves insufficient to support persons duly qualified for the service of such cure: be it enacted by the authority aforesaid, that from and after the twenty-fourth day of June in the year of our Lord aforesaid, it shall and may be lawful to and for the several and respective archbishops, bishops, deans, dignitaries, and prebendaries within the realm of Ireland, within their respective archbishoprics, bishoprics, deaneries, dignities, and prebends, by and with the consent and approbation aforesaid, and also with the consent of the respective deans and chapters, in such dioceses where there are deans and chapters, and in such dioceses where there are no deans or chapters, then by and with the consent of the archdeacon and major part of the rest of the clergy at their respective visitations, to endow any such vicarage or curacy with a convenient portion of glebe or tithes, or both, belonging to such archbishopric, or bishopric, deanery, dignity, or prebend respectively, in the said respective parishes; and also, with the consents aforesaid, to augment such endowments as have been already made for the support of a proper vicar or curate, for performance of divine service and cure of souls within the same; saving to the then tenants of such glebes and tithes, all their right and title during their respective leases.

“VIII. And be it also enacted by the authority aforesaid, that it shall and may be lawful to and for every archbishop, bishop, dean, dignitary, or prebendary, with the approbation and consent aforesaid, at any time or times, during the said term of ten years, to exchange any rectory, vicarage, parish, or portion of tithes, to his or their said archbishopric, bishopric, deanery, dignity, or prebend belonging, for any other rectory, vicarage, parish, or portion of tithes within the same diocese, of equal or near the same value.

“IX. Provided always, that every such person, who shall have or enjoy the benefit of any such exchange, and his respective successors, shall be under the same obligation to perform all manner of duties, and subject to the same jurisdiction and burdens, as the former incumbents were, and shall be obliged to serve the cure of such parish or parishes, as by virtue of such exchange he or they shall enjoy, in case the said cure is not otherwise by law provided for.

“X. And whereas in the union of several parishes, that may hereafter be united by virtue of this act, there may be several appropriate or improper rectories, and no vicarages within the same, and the rectorial tithes, and other profits arising within such respective rectories, are to remain, notwithstanding such union, payable to the appropriators or impropriators thereof, and who by reason thereof might by law be obliged to repair the respective chancels belonging to such rectories, and to find a sufficient curate or curates for the performance of divine service, and for the cure of souls within the same, before such union: be it enacted by the authority aforesaid, that wherever it shall happen in any union to be made by virtue of this act, that there shall be an improper or appropriate rectory within the same, the rector, impropriator, or possessor of which, was before the making of such union by law obliged to repair the chancel belonging to the parish church of the said rectory, such rector, impropriator, or possessor respectively, his heirs, successors, and assigns, shall from and after such union, so made by virtue of this act, during the continuance of such union be discharged from repairing of such chancel respectively, and shall, in lieu or instead of repairing the chancel of such rectory, be obliged to contribute a rateable share or proportion, according to the value of the profits arising out of such rectories, to and for the repair of the new chancel of the said united parishes; which rateable share or proportion shall be settled and adjusted by consent of all parties concerned in interest before such union be made, or, in case of any failure therein, by the lord chancellor, lord

STAT. 2 GEO.
1, c. 14. [Ir.]

endow vicarages or curacies with glebe or tithes.

10 Geo. 1, c. 6, altered.

Or augment endowments already made,

saving the right of tenants;

and may exchange rectories, &c. there-to belonging for others in same diocese, of equal or near the value; or for land, by 10 Geo. 1, c. 6.

But the same duties to be performed as by former incumbent.

Persons before union obliged to repair chancel of a parish church, shall after union contribute only rateably to repair of the new chancel,

to be settled by consent before union;

STAT. 2 GEO.
I, c. 14. [IR.]
or, in failure
thereof, by lord
chancellor.

Impropiator
obliged to find
a curate, shall
after union
contribute only
rateably with
the other
parishes.

To be settled
as aforesaid.

No union pur-
suant to 14 &
15 Car. 2, c. 10,
(not lying in
cities, &c.)
shall be dis-
solved, nor any
of the parishes
united to any
other parish by
this act, unless
the church lies
three country
miles distant
from some part
of the parish,
or not large enough for parishioners. Repealed, 1 Geo. 2, c. 19.

The Burgery of
Cloyne for-
feited by Sir
John Fitzgerald
in 1641, and,
pursuant to
Act of Settle-
ment, &c.
granted by
King Charles
the Second to
see of Dublin,
annexed to see
of Cloyne,
paying 26l.
per annum, to
see of Dublin,
out of Bally-
creeen and
Ballycotton.

keeper, or lords commissioners of the great seal, and every other person, who was obliged to repair the chancel of any of the other parish churches, so united, before such union, such person and his successors shall be obliged to pay a rateable share towards the repair of the new chancel.

“XI. And whereas in some impropriate parishes the impropiators or possessors of the tithes of such parishes are obliged by law to find a curate to serve the cure of the said parishes: be it enacted by the authority aforesaid, that in case such parishes, so appropriate or impropriate, shall be united pursuant to this act to any other parish or parishes, the said impropiator or possessor shall be discharged of and from finding a curate for such parishes so united, and shall be only obliged to contribute his proportion rateably with the other parishes, to which the said impropriate or appropriate parish shall be united, for the maintenance and support of the curate or minister of such united parishes; which rateable share or proportion shall be settled and adjusted by all parties concerned, before the said union be made as aforesaid, or in case of failure thereof, by a decree of the high court of Chancery upon proper application thereto.

“XII. Provided always, that no union, formerly made pursuant to the before-mentioned act made in the fourteenth and fifteenth years of the reign of King Charles the Second, of any parishes not lying within cities or towns corporate, shall be capable of being dissolved, nor any of the said united parishes, or any part thereof, shall be liable to be united to or made part of any other united parish by virtue of this act, unless the parish church of such united parish doth lie three country miles distant from some part of such united parish, or that the church of such united parish shall not be large enough to contain the protestant parishioners usually resorting to such parish church; in which case or cases it shall and may be lawful to unite such of the said old united parishes, lying remote from the parish church of the said former united parish, to some other parish lying more near and commodious for the resort of the inhabitants of such remote parish to the church of such other parish, to which it shall be united.

“XIII. And whereas several small parcels of lands, commonly called the Burgery of Cloyne, lying in and near the town of Cloyne in the county of Cork, were formerly the inheritance of Sir John Fitz-Gerald, subject to the payment of a fee-farm rent to the see of Cloyne, and became vested in the crown by virtue of the forfeiture of the said Sir John Fitz-Gerald in the Rebellion in Forty-one, and his late majesty King Charles the Second, by his letters patents granted them to the Archbishops of Dublin in augmentation to the see of Dublin, in pursuance of the Act of Settlement and Explanation: and whereas the present rent of the said lands amounts to the yearly sum of twenty-six pounds, and his Grace William lord Archbishop of Dublin, hath consented to have the said lands re-united to the said see of Cloyne for the conveniency of the Bishops of Cloyne, it being necessary to the present bishop's mansion house and improvements, which he has built and made for the benefit of himself and successors, Bishops of Cloyne, paying always to him William the said Lord Archbishop of Dublin, and his successors, Archbishops of Dublin, the yearly rent charge of twenty-six pounds out of the lands of the two Ballycreeens, and the lands of Ballycotton, farms belonging to the see of Cloyne in the said county of Cork: be it therefore enacted by the authority aforesaid, that the said lands and houses called the Burgery of Cloyne, and their appurtenances and privileges, shall for ever hereafter be annexed to the said see of Cloyne, and be held and enjoyed by Charles the present Bishop of Cloyne, and his successors, Bishops of Cloyne, for ever; any statute, law, or other matter or thing to the contrary notwithstanding.

“XIV. And be it further enacted by the authority aforesaid, that the said Archbishop of Dublin, and his successors, Archbishops of Dublin, shall in lieu thereof have, hold, receive, and take out of the yearly rents and profits of the said lands of Ballycreeen and Ballycotton, the said yearly sum or rent charge of twenty-six pounds per annum, to the only and proper use of the said Archbishop of Dublin, and his successors, Archbishops of Dublin, for ever, payable quarterly,

at the four usual feasts of Michaelmas, Christmas, Lady-day, and Saint John Baptist, by even and equal portions.

“XV. Provided always, and be it further enacted by the authority aforesaid, that if it happen the said yearly rent of twenty-six pounds, or any part thereof, shall be behind and unpaid after any of the said feasts or days of payment, then it shall and may be lawful for him the said Archbishop of Dublin, and his successors, Archbishops of Dublin, and his and their assigns, into the said lands of Ballycroneen and Ballycotton, and into every of them, and any part thereof, to enter and distrain, and the distress and distresses there found to lead, drive, and carry away, and impound and detain, or otherwise dispose of according to law, until he or they shall be of the said annual payment or rent charge, so being behind, and the arrearages thereof (if any be) fully satisfied, contented, and paid; and if it shall happen that there shall not be sufficient distress in and upon the said lands, out of which the said rent is hereby granted, or intended to be granted, to counter-vail the said rent and arrearages thereof, if any shall be, that then and from thenceforth it shall and may be lawful to and for the said William Lord Archbishop of Dublin, and his successors, Archbishops of Dublin, into the said lands of Ballycroneen and Ballycotton, with the appurtenances, or into any part thereof in the name of the whole, to enter, and the same to hold, possess, and enjoy, as in his and their estate, until the said rent, and arrearages thereof, and every part thereof, shall be to the said William Lord Archbishop of Dublin, and his successors, and his or their assigns, fully satisfied, contented, and paid; subject nevertheless to such lease or leases as shall be in being at the time of such entry, and shall be made at half the yearly rent which such lands were worth at the time of the making of such lease or leases.

“XVI. And whereas there may be occasion hereafter for making an act or acts of parliament for the uniting or disuniting of particular parishes, or parts of parishes, or erecting particular churches: be it further enacted, that all such acts of parliament for the aforesaid purposes only, or any of them, shall be deemed as public and general acts, in all courts, and by all persons; and that no fees shall be paid or taken by any person or persons, for passing any such act of parliament.”

STAT. 2 GEO.
1, c. 14. [Ir.]
With clause of
distress,

and re-entry;

but subject to
leases in being,
at half the
yearly rent
which the lands
were worth.
All acts for
union or dis-
union of pa-
rishes, or erect-
ing churches,
public acts,
and no fees.

XI. STAT. 2 GEORGHII 1, c. 15 (1). [IRELAND.] A.D. 1715.

“An Act for confirming the several Grants made by Her late Majesty of the First-fruits and Twentieth Parts, payable out of the Ecclesiastical Benefices in this Kingdom, and also for giving the Archbishops, Bishops, and other Ecclesiastical Persons, four Years’ Time for the Payment of First-fruits.”

STAT. 2 GEO.
1, c. 15. [Ir.]

XII. STAT. 2 GEORGHII 1, c. 24. [IRELAND.] A.D. 1715.

“An Act for changing the Site and new building of the Parish Church of St. Werburgh’s, in the City of Dublin.”

STAT. 2 GEO.
1, c. 24. [Ir.]

XIII. STAT. 3 GEORGHII 1, c. 3 (2). A.D. 1716.

“An Act for granting an Aid to His Majesty by a Land Tax in Great Britain. . . .”

STAT. 3 GEO.
1, c. 3.

[The dividends of residentiaries of cathedral churches; the sites of the Universities of Oxford and Cambridge; the colleges and the stipends of the members of Windsor, Eton, Winton, Westminster, and Bromley; the stipends of masters or ushers of free schools; eleemosynary institutions; and the corporation of clergymen’s widows: not to be taxed.]

(1) Repealed by Stat. 3 & 4 Gul. 4, c. 37.

(2) Expired.

STAT. 3 GEO.
1. c. 10.

XIV. STAT. 3 GEORGII I, c. 10 (1). A.D. 1716.

"An Act for the better collecting and levying the Revenue of the Tenths of the Clergy."

2 & 3 Ann.
c. 11.
5 Ann. c. 24.
6 Ann. c. 27.
1 Geo. 1, c. 10.

"Whereas her late most gracious majesty Queen Anne, in her royal bounty to the poor clergy of the church of England, and pursuant to and by virtue of an act of parliament made in the second year of her majesty's reign, intituled, 'An Act for making more Effectual Her Majesty's gracious Intentions for the Augmentation of the Maintenance of the Poor Clergy, by enabling her Majesty to grant in Perpetuity the Revenues of the First-fruits and Tenths, and also for enabling other Persons to make Grants for the same purpose,' did in and by her letters patents under the great seal of England, bearing date the third day of November, in the third year of her majesty's reign, make, nominate, constitute, and appoint, the persons therein named, to be one body politic and corporate, by the name of the governors of the bounty of Queen Anne for the augmentation of the maintenance of the poor clergy, with such powers and authorities as are therein mentioned and expressed; and did in and by the said letters patents give and grant unto the said governors of the bounty of Queen Anne for the augmentation of the maintenance of the poor clergy, and their successors, all the revenues of the first-fruits and yearly perpetual tenths of all dignities, offices, benefices, and promotions spiritual whatsoever, payable to her majesty, her heirs and successors, by virtue of any act or acts of parliament whatsoever, and all arrears of the said first-fruits and tenths (except as therein is excepted) to be applied and disposed of by the said governors thereby constituted to and for such ends, intents, and purposes, as in and by the said letters patents are contained and directed; and whereas the laws now in force relating to the collection and payment of that part of the said revenue, called the perpetual yearly tenths, are in some cases defective, and in many instances are found to be inconvenient and improper to be put in execution, by reason whereof her late majesty's said gracious intentions cannot so well and effectually be answered as they might be, if some new provisions and regulations were made and established for the more easy and expeditious levying and paying the said perpetual yearly tenths; for remedy, therefore, of such defects and inconveniences, and to the end that the said governors may be the better enabled to execute the trust in them reposed, and the poor clergy may, with greater ease and advantage, receive the benefit of the said royal bounty; be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by authority of the same, that the most reverend the archbishops, and the right reverend the bishops of England, who by the statute made in the twenty-sixth year of the reign of King Henry the Eighth, intituled, 'The Bill for the First-fruits, with the yearly Pensions to the King,' and by other subsequent statutes, are constituted and appointed collectors of the said revenue of the perpetual yearly tenths within their several dioceses respectively, and charged with the receipt and payment of such collection, and made accountable for the same, from and after the twenty-sixth day of December last past, be, and each and every of them hereby is clearly exempted, acquitted, and discharged of and from the levying, collecting, and receiving within their and each of their proper and respective dioceses, the said perpetual yearly tenths from thenceforth accruing, of all dignities, offices, benefices, and promotions spiritual, and of and from being chargeable with, and accountable for the receipt and collection of the same, by force or reason of any of the said statutes; the said statute of King Henry the Eighth, or any other statute to the contrary thereof in any wise notwithstanding.

The arch-
bishops and
bishops dis-
charged from
receiving the
perpetual
yearly tenths.
26 Hen. 8, c. 10.

There shall be
one collector
appointed,

"II. And be it further enacted by the authority aforesaid, that from and after the said twenty-sixth day of December there shall be one collector or receiver of the said perpetual yearly tenths of all dignities, offices, benefices and promotions spiritual whatsoever, granted to the said corporation of the governors of the bounty

(1) *Vide* Stat. 1 Eliz. c. 4 (*antè* 371); Stat. 2 & 3 Ann. c. 11 (*antè* 683); Stat. 1 & 2 Vict. c. 20 (*post*.).

of Queen Anne for the augmentation of the maintenance of the poor clergy, by the said first recited act and letters patents, (which have not been legally discharged by any or acts of parliament since made, or otherwise,) from time to time to be nominated and appointed, which said collector or receiver shall be and is hereby charged and chargeable to levy, collect, and receive, all such sums of money, wherewith all and every such dignities, offices, benefices, and promotions spiritual are charged and chargeable for and towards the payment of the said perpetual yearly tenths, and shall pay and content the said sums of money yearly unto the receipt of his majesty's Exchequer at Westminster, in such manner and form as is herein after mentioned; and every such collector and receiver, and his lands and tenements, shall be and stand charged and chargeable for the sure and true payment of such sums of money as he shall collect and receive of the said perpetual yearly tenths accordingly; and that such collector or receiver shall, from time to time, be nominated and appointed by his majesty, his heirs and successors, by his or their letters patents under the great seal of Great Britain; and that immediately after such nomination and appointment, and before he takes upon him the execution of his said office, every such collector or receiver shall take his corporal oath for the due and faithful execution of his said office before any seven or more of the governors aforesaid for the time being, in a general court of the said corporation; (who are hereby authorized and required to give and administer the said oath from time to time accordingly;) and that every such collector or receiver shall likewise give security to the said corporation, or to such person or persons as they in their general court shall appoint, for his true and just accounting for, and payment of all and every sum and sums of money which he shall receive by virtue of the said office, and for the due and faithful execution and discharge of his said office, as the governors at a general court of the said corporation at any time before his taking upon him the execution of the said office shall order, direct, and appoint; and also that such collector or receiver of the said perpetual yearly tenths so appointed, as aforesaid, shall and may lawfully, and is hereby authorized and empowered to collect and receive the said revenue, and to give acquittances under his hand to the several and respective person or persons paying the same; whose acquittance or acquittances shall be a full and sufficient discharge to all persons paying the said perpetual yearly tenths, or any part thereof, for so much as they shall respectively pay unto such collector or receiver, (for every of which acquittances the sum of sixpence, and no more, shall be paid,) which said collector or receiver shall keep his office in some convenient place within the cities of London or Westminster, and shall give attendance for receipt of the said perpetual yearly tenths at such time or times as the said governors of the bounty of Queen Anne for the augmentation of the maintenance of the poor clergy, in their court shall order, direct, and appoint, between the feast of the birth of our Lord Christ and the last day of April yearly; of which said times and place due notice shall be given by the said governors in the London Gazette yearly, by the space of one week at least before the said feast-day, whereof every archbishop, bishop, and incumbent, of any dignity, office, benefice, or promotion spiritual, is and shall be obliged to take notice, and to observe the same accordingly in the payment of his and their respective rates, shares, and proportions of the said perpetual yearly tenths, wherewith they or any of them shall be charged or chargeable, without any further notice to be given them by way of summons, demand, or otherwise; and in default thereof to forfeit to the king's majesty, his heirs and successors, such sum or sums of money as shall amount to double the value of the said tenths; and that every such collector or receiver shall make payments of the said tenths, and shall pass his accounts for the same, at such time and times, and in such manner as the said archbishops and bishops were ordered and directed in and by the several acts of parliament made for that purpose in the twenty-sixth and thirty-second years of the reign of King Henry the Eighth, and of the seventh year of the reign of King Edward the Sixth.

STAT. 3 GEO.
1, c. 10.

by the king,

and take an
oath for the
due execution
of his office,

and give secu-
rity.

The collector
empowered to
receive the
said revenues,
and give ac-
quittances.

He shall keep
his office in
London or
Westminster.

Notice of time
and place of
payment to be
given in the
London
Gazette.

Penalty for
failure of
payment.

How collector
shall pass his
accounts.
26 Hen. 8, c. 3.
32 Hen. 8, c. 47.
7 Edw. 6, c. 4.

Archbishops,
&c. not paying,

“III. And it is hereby further enacted by the authority aforesaid, that if any archbishop or bishop, or any incumbent of any dignity, office, benefice, or promo-

STAT. 3 GEO.
1, c. 10.

the collector
shall certify it
into the Ex-
chequer, and
be allowed it
on his accounts.

Process to be
issued against
such as make
default in
payment.

This act shall
not discharge
any arch-
bishop, &c.
for monies un-
accounted for.

The act 26
Hen. 8, c. 3,
shall remain in
force.

This act shall
not avoid any
grant, &c.

STAT. 3 GEO.
1, c. 18.

STAT. 3 GEO.
1, c. 19.

tion spiritual, or any other person or persons, bodies politic or corporate, charged or chargeable with the payment of the said perpetual yearly tenth or tenths respectively, shall not pay or duly tender the same yearly, before the last day of April succeeding the feast of the Nativity of our Lord Christ, whereon the same shall become due, that upon certificate thereof made by the collector or receiver on or before the first day of June following, the said collector or receiver shall be allowed upon his account all such sums of money, as any archbishop, bishop, or incumbent, or other against whom such certificate shall be made, should or ought to have paid; and that then in every such case, the treasurer, chancellor, and barons of the king's Exchequer for the time being, shall devise, direct, and issue upon every such certificate, such process out of the king's Exchequer, as to them shall seem proper and reasonable, against every such archbishop, bishop, or incumbent, or other against whom such certificate shall be made, his and their executors or administrators, whereby such portion and part of the said yearly tenth, wherewith any such archbishop, bishop, or incumbent, or other, is or shall be charged, and which shall be unpaid, as aforesaid, shall be truly levied, answered, satisfied, and paid into the hands of the said collector or receiver; and all and every sum and sums of money so levied, answered, and paid, the said collector or receiver shall bring to account, and charge himself therewith, from time to time, in his next account after he shall have received the same.

"IV. Provided always, and it is hereby declared, that nothing in this act contained shall extend, or be taken or construed to exonerate or discharge any archbishop, bishop, or any other person or persons, before the making of this act liable to the collecting, accounting for, and answering the said perpetual yearly tenths, or any part thereof, for any sum or sums of money wherewith he or they were and are respectively charged or chargeable, and not duly answered and accounted for before the making of this act; and that the said statute made in the said twenty-sixth year of the reign of the said King Henry the Eighth, and all and every other laws, statutes, and provisions, touching or concerning the imposing, charging, assessing, and levying, and the true answering and payment of the first-fruits, and of the said tenths, or touching the charge, discharge, or alteration of them, or any of them, or any matter or thing relating thereunto, which were in force at the time of the making of this present act and not hereby or herein before altered or repealed, shall be, remain, and continue in their full force and effect, and shall hereafter be observed and put in due execution, according to the tenor and purport of the same, and every of them, in all things, excepting such as are in and by this act altered or repealed.

"V. Provided also, that this act, or anything herein contained, shall not extend to avoid, or any way impeach or affect any grant, exchange, alienation, or incumbrance at any time heretofore made of or charged upon the said revenue of the perpetual yearly tenths, or any part thereof, but that the same and every of them during the continuance of such grant, exchange, alienation, or incumbrance respectively, shall be and remain of and in the same force, virtue, and effect, as if this act had never been made."

XV. STAT. 3 GEORGII 1, c. 18(1). A.D. 1716.

"An Act for explaining an Act passed the last Session of Parliament, intituled, 'An Act to oblige Papists to register their Names and real Estates;' and for enlarging the Time of such registering; and for securing Purchases made by Protestants."

XVI. STAT. 3 GEORGII 1, c. 19. A.D. 1716.

"An Act for the King's most gracious, general, and free Pardon."

[Robberies of churches; offences by jesuits and seminary priests; lands given to superstitious uses; convicted recusants: excepted from pardon.]

(1) *Vide* Stat. 10 Geo. 1, c. 4. Stat. 9 Stat. 31 Geo. 3, c. 32. Stat. 43 Geo. 3, c. Geo. 2, c. 26. Stat. 21 Geo. 3, c. 51. 30. Stat. 10 Geo. 4, c. 7.

XVII. STAT. 4 GEORGHII 1, c. 5. A.D. 1717.

STAT. 4 GEO.
1, c. 5.

"An Act for finishing the Towers of the Parish Church of St. Michael, Cornhill, London, out of the Duties arising pursuant to the Act of the ninth year of the late Queen, for building Fifty new Churches in and about the Cities of London and Westminster, and the Suburbs thereof."

XVIII. STAT. 4 GEORGHII 1, c. 14. A.D. 1717.

STAT. 4 GEO.
1, c. 14.

"An Act to empower the Commissioners appointed to put in Execution the Acts of the ninth and tenth years of Her late Majesty's Reign, for building Fifty new Churches in and about the Cities of London and Westminster, and Suburbs thereof, to direct the Parish Church of St. Giles-in-the-Fields, in the County of Middlesex, to be rebuilt, instead of one of the said Fifty new Churches."

XIX. STAT. 4 GEORGHII 1, c. 14. [IRELAND.] A.D. 1717.

STAT. 4 GEO.
1, c. 14. [IR.]

"An Act for settling the Quarter Parts upon the Parochial Clergy of the Diocese of Tuam, and for empowering the Lord Archbishop of Tuam to set Leases of part of his Demesne Lands, as also for confirming a Charitable Foundation in the City of Cork."

XX. STAT. 5 GEORGHII 1, c. 4. A.D. 1718.

STAT. 5 GEO.
1, c. 4.

"An Act for strengthening the Protestant Interest in these Kingdoms."

"Whereas an act of parliament was made in the tenth year of the reign of the late Queen Anne, intituled, 'An Act for preserving the Protestant Religion, by better securing the Church of England, as by Law established; and for confirming the toleration granted to Protestant Dissenters by an Act, intituled, 'An Act for exempting their Majesties' Protestant Subjects, dissenting from the Church of England, from the Penalties of certain Laws,' and for supplying the Defects thereof; and for the further securing the Protestant Succession, by requiring the Practicers of the Law in North Britain to take the Oaths and subscribe the Declaration therein mentioned;' and whereas part of the said act, as also another act hereinafter mentioned, have been found to be inconvenient; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in parliament assembled, and by the authority of the same, that the said recited act passed in the tenth year of the late Queen Anne, from the beginning thereof to these words, 'And it is hereby further enacted and declared by the authority aforesaid, that the toleration granted to protestant dissenters,' and also one act made in the twelfth year of the reign of the late Queen Anne, intituled, 'An Act to prevent the Growth of Schism, and for the further Security of the Churches of England and Ireland, as by Law established,' shall be and are hereby repealed, annulled, and made void.

Part of 10 Ann.
c. 2, and the
Schism Act of
12 Ann. St. II.
c. 7, repealed.

"II. Provided always, and be it enacted by the authority aforesaid, that if any mayor, bailiff, or other magistrate in that part of Great Britain called England, the dominions of Wales or the town of Berwick upon Tweed, or the Isles of Jersey or Guernsey, shall knowingly or wilfully resort to, or be present at any public meeting for religious worship, other than of the church of England as by law established, in the gown or other peculiar habit, or attended with the ensign or ensigns of or belonging to such his office, that every such mayor, bailiff, or other magistrate, being thereof convicted by due course of law, shall be disabled to hold such office or offices, employment or employments, and shall be adjudged incapable to bear any public office or employment whatsoever within that part of Great Britain called England, the dominion of Wales, and town of Berwick upon Tweed, or Isles of Jersey and Guernsey."

Mayor, &c.
resorting to
any conventicle
with the en-
signs of his
office, disabled
to hold any
public office.

STAT. 5 GEO.
1, c. 6.

XXI. STAT. 5 GEORGII 1, c. 6(1). A.D. 1718.

"An Act for quieting and establishing Corporations."

[Every official member of a corporation to take a certain oath, and subscribe to a certain declaration, to maintain the then existing laws in church and state.]

STAT. 5 GEO.
1, c. 9.

XXII. STAT. 5 GEORGII 1, c. 9. A.D. 1718.

"An Act . . . for establishing certain Funds to raise Money, to proceed in the building of new Churches. . . ."

STAT. 5 GEO.
1, c. 29.

XXIII. STAT. 5 GEORGII 1, c. 29(2). A.D. 1718.

"An Act for making more effectual the Laws appointing the Oaths for Security of the Government to be taken by Ministers and Preachers in Churches and Meeting Houses in Scotland."

STAT. 6 GEO.
1, c. 5. [Ir.]

XXIV. STAT. 6 GEORGII 1, c. 5(3). [IRELAND.] A.D. 1719.

"An Act for exempting the Protestant Dissenters of this Kingdom from certain Penalties to which they are now subject."

STAT. 6 GEO.
1, c. 11. [Ir.]

XXV. STAT. 6 GEORGII 1, c. 11(4). [IRELAND.] A.D. 1719.

"An Act for better securing the Rights of Adcowson, and Presentation to Ecclesiastical Benefices."

STAT. 6 GEO.
1, c. 13. [Ir.]

XXVI. STAT. 6 GEORGII 1, c. 13(5). [IRELAND.] A.D. 1719.

"An Act for the better Maintenance of Curates within the Church of Ireland."

Eng. 12 Ann.
St. II. c. 12.
1 Geo. 2, c. 22,
explained and
amended.

Ordinary,
according to
greatness of
the cure and
value of bene-
fice, shall ap-
point yearly
stipend, not
above 50*l.* nor
less than 20*l.*
payable to cu-
rate by rector
or vicar;

and summarily
determine

"Whereas the absence of beneficed clergymen ought to be supplied by curates, that are sufficient and licensed preachers, and no curates or ministers ought to serve in any place without the examination and admission of the bishop of the diocese, or ordinary of the place having episcopal jurisdiction: but nevertheless, for want of sufficient maintenance and encouragement for such curates, the cures within this kingdom of Ireland have been in several places meanly supplied: for remedy whereof, be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that if any beneficed clergyman, being a rector or vicar, having cure of souls, shall from and after the twenty-fifth day of March, in the year of our Lord one thousand seven hundred and twenty, nominate and present any curate to the bishop or ordinary to be licensed or admitted to serve the cure of such rector or vicar in his absence; the said bishop or ordinary, having regard to the greatness of the cure, and the value of the ecclesiastical benefices of such rector or vicar, shall on or before the granting of such licence appoint by writing under his hand and seal a sufficient certain stipend or allowance, not exceeding fifty pounds per annum, nor less than twenty pounds per annum, to be paid or answered at such times as he shall think fit by such rector or vicar to such curate for his support and maintenance, where there is a church already, or where a church hereafter shall be built: and if it shall appear to the bishop or ordinary, upon complaint or otherwise, that any curate of such rector or vicar, licensed or admitted before the said twenty-fifth day of March, in the year of our Lord one thousand seven hundred and twenty, hath

(1) Partly repealed by Stat. 9 Geo. 4, c. 17. Stat. 1 Gul. 4, c. 26. Stat. 5 & 6 Gul. 4, c. 28. Vide *Rex v. Stacey*, 1 T. R. 1. *Rex v. Smith*, 3 T. R. 573. *Rex v. Whitwell*, 5 T. R. 85.

(2) Vide Stat. 6 Geo. 3, c. 53. Stat. 1 Gul. 4, c. 26. Stat. 3 & 4 Gul. 4, c. 49. Stat. 3 & 4 Vict. c. 52.

(3) So much of this statute, as concerns the office of churchwarden or deputy churchwarden, was repealed by Stat. 7 Geo. 4, c. 72.

(4) Expired. *Sed vide* Stat. 1 Geo. 2, c. 23 (1.) and Stat. 13 Geo. 2, c. 4. (1.)

(5) So much as relates to maintenance of curates, was repealed by Stat. 5 Geo. 4, c. 91.

not a sufficient maintenance, it shall be lawful to and for the said bishop and ordinary to appoint him a certain stipend or allowance in like manner as before mentioned; and in case any difference shall arise between any rector or vicar and his curate touching such stipend or allowance, or the payment thereof, the bishop or ordinary on complaint to him made, shall summarily hear and determine the same; and, in case of neglect or refusal to pay such stipend or allowance, may sequester the profits of such benefice for and until payment thereof.

“II. Provided, that where any incumbent shall be entitled to and possessed of more benefices with cure, than are by virtue of any episcopal union, which shall be made after the twenty-fifth day of March, one thousand seven hundred and twenty, which lie contiguous, and the extent of them doth not exceed the number of three miles from the church, where the said union is served; it shall and may be lawful for the archbishop or bishop of the respective diocese, where such benefices shall lie, to appoint one curate and no more for such benefices.

“III. And whereas there are several parishes in this kingdom of such great extent, that it is impossible for the inhabitants thereof to repair for divine worship to their parish church, being in some places ten or twelve miles distant from them; be it enacted by the authority aforesaid, that it may and shall be lawful to and for the archbishop or bishop of any diocese, wherein such parishes are situated, or for the inhabitants of such parishes, with the consent of the archbishop or bishop of the said diocese, to erect or cause to be erected one chapel of ease or two chapels of ease, if any great number of inhabitants must otherwise be more than six miles from their place of public worship; and that after such chapel or chapels of ease shall be so erected and set apart for divine worship, the incumbent of the parish, where such chapel or chapels are, shall find from time to time a sufficient curate or curates, to be admitted and approved of as other curates are by the bishop of the diocese, who shall from thenceforward constantly perform divine service in the said chapel or chapels, whereunto he or they shall be nominated and appointed as before; and that the incumbent of the parish where such chapel or chapels shall be settled as before, shall support the said curate or curates either by endowing the said chapel or chapels with such a portion of the tithes belonging to the said parish, as shall be agreed upon by the archbishop or bishop, the patron and incumbent, and the dean and chapter of the said diocese, or the major part of the clergy beneficed in the diocese, when convened in the said archbishop's or bishop's ordinary visitation, or else by paying annually by quarterly payments to such curate or curates such sum or sums as the said archbishop or bishop of the diocese shall allocate and appoint, provided the sum or sums so allocated and appointed does not exceed one sixth part of the yearly profits arising to such incumbent out of the said parish.

“IV. And for the constant support of such chapel and chapels, be it further enacted by the authority aforesaid, that the said chapel or chapels shall be kept in good repair at the charges of the whole parish where such chapel or chapels are, in the same way and manner as the parish church has been, is, or ought to be kept in repair; or else by certain annual rents, to be placed on the said account of the said chapel or chapels, by the bishop, incumbent, and the major part of the parishioners assembled at the vestry to be duly appointed.”

XXVII. STAT. 6 GEORGII 1, c. 14 [IRELAND.] A.D. 1719.

“An Act for amending and enforcing a Clause contained in an Act to enable Restitution of Improvements and Tithes, and other Rights Ecclesiastical to the Clergy with a Restraint of Alienating the same, and Direction for Presentation to the Churches.”

“Whereas by an act made in the tenth and eleventh years of King Charles the First, intituled, ‘An Act to enable Restitution of Improvements and Tithes, and other Rights Ecclesiastical, to the Clergy, with a Restraint of Alienating the same, and Direction for Presentation to the Churches,’ it is amongst other things enacted, ‘that all and every gifts, grants, alienations, leases, forfeitures, charges,

STAT. 6 GEO. 1, c. 13. [IR.]

differences; and, on non-payment, sequester the benefice,

and appoint one curate for benefices possessed by episcopal union, lying contiguous, and the extent not above three miles from the church.

Parishes too extensive.

If any great number of inhabitants more than six miles from place of worship, one or two chapels of ease may be erected.

1 Geo. 2, c. 22, altered.

Incumbent to find and support sufficient curates, by endowment of tithes, as agreed on,

or by annual sum, allocated by bishop, not exceeding one-sixth of profits.

Said chapels repaired at charge of the whole parish, or by annual rents at vestry.

STAT. 6 GEO. 1, c. 14. [IR.]

10 & 11 Car. 1, c. 2, s. 7.

STAT. 6 GEO.
1, c. 14. [IR.]

Doubt there-
upon.

Deanery, arch-
deaconry, dig-
nity, and pre-
bend, of a cat-
hedral where
no vicarage
endowed, so
far deemed
benefice with
cure within
said act, as
that no lease or
grant of tithes
shall be good
longer than
during incum-
bency of dean,
&c.

Not to avoid
lease or grant
before 1st July,
1719.

Lease by digni-
tary, prebend-
ary, or rector,
where vicarage
endowed, of
tithes longer
than incum-
bency, (except
set in lease for
greatest part of
thirty years,) void as to
successor.

incumbrances, imposed, laid, or suffered by any parson, vicar, or beneficer of any benefice, of what nature soever it be, having cure of souls within this kingdom of Ireland, of or upon his said benefice, or of or upon any part thereof, shall be effectual and stand in force for such time only as such parson, vicar, or other beneficer shall be resident upon his said benefice: as by the said act may more at large appear: and whereas a doubt in some cases hath arisen whether a deanery, archdeaconry, dignity, or prebend of a cathedral church, is or are to be reckoned as a benefice or benefices having cure of souls within the said act: for the remedying and preventing of all suits and controversies which otherwise may hereupon arise, be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in parliament assembled, and by the authority of the same, that from and after the first day of July, in the year one thousand seven hundred and nineteen, every deanery, archdeaconry, dignity, and prebend of a cathedral church, the corps whereof consists of one or more parish or parishes, or part or parts of parish or parishes, where no vicarage at present is endowed or established, shall be so far, and no farther, deemed and reputed as a benefice having cure of souls within the above-mentioned act, as that no lease or grant of any part or proportion of the tithes to any such deanery, archdeaconry, dignity, or prebend belonging, hereafter made or to be made by any dean, archdeacon, dignitary, or prebendary of any cathedral church, to whom the same does or shall belong, shall be good or valid in law for or during any longer term or time, than only for and during the incumbency of such dean, archdeacon, dignitary, or prebendary.

"II. Provided always, that nothing in this act contained shall extend, or be construed, to avoid any lease or grant made by any dean, archdeacon, or prebendary, having cure of souls as above mentioned, before the first day of July aforesaid; but that the same shall be and remain of the same and no other force, as the same was or would have been if this act had never been made.

"III. And the better to prevent alienations of tithes, be it further enacted by the authority aforesaid, that if any dignitary or prebendary of any cathedral church, or any other ecclesiastical person, being rector of any parish within this kingdom where there is a vicarage endowed, shall, after the sixth day of August, one thousand seven hundred and nineteen, set the tithes belonging to his respective dignity, prebend, or rectory, for any longer time than during his incumbency, (except where such tithes have been set in lease for the greatest part of thirty years last passed,) such lease shall be null and void to all intents and purposes as to the successor."

STAT. 7 GEO.
1, c. 29.

XXVIII. STAT. 7 GEORGII 1, c. 29. A.D. 1720.

"An Act for the King's most gracious, general, and free Pardon."

[Robberies of churches; offences by jesuits and seminary priests; lands given to superstitious uses; convicted recusants: excepted from pardon.]

STAT. 8 GEO.
1, c. 11. [IR.]

XXIX. STAT. 8 GEORGII 1, c. 11 (1). [IRELAND.] A.D. 1721.

"An Act for supplying a Defect in an Act passed in the second year of the Reign of Her late Majesty Queen Anne, intituled, 'An Act for the Exchange of Glebes belonging to Churches in this Kingdom.'"

2 Ann. c. 10,
s. 1.

"Whereas by an act passed in the second year of the reign of her late majesty Queen Anne, intituled, 'An Act for the Exchange of Glebes belonging to Churches in this Kingdom;' it is provided, 'that rectors, and vicars, and other persons having

(1) Vide Stat. 8 Geo. 1, c. 12. (I.) Stat. 12 Geo. 1, c. 10. (I.) Stat. 1 Geo. 2, c. 15. (I.) Stat. 3 Geo. 2, c. 12. (I.) Stat. 9 Geo. 2, c. 13. (I.) Stat. 17 Geo. 2, c. 8. (I.) Stat. 31 Geo. 2, c. 11. (I.) Stat. 7 Geo. 3, c. 9. (I.) Stat. 7 Geo. 3, c. 17. (I.) Stat. 11 & 12 Geo. 3, c. 17. (I.) Stat. 13 & 14 Geo. 3, c. 27. (I.) Stat. 15 & 16 Geo. 3, c. 17. (I.) Stat. 23 & 24 Geo. 3, c. 49. (I.) Stat. 25 Geo. 3, c. 21. (I.) Stat. 25 Geo. 3, c. 49. (I.) Stat. 25 Geo. 3, c. 62. (I.) Stat. 29 Geo. 3, c. 27. (I.) Stat. 31 Geo. 3, c. 19. (I.) Stat. 40 Geo. 3, c. 82. (I.) Stat. 54 Geo. 3, c. 117. Stat. 4 Geo. 4, c. 86, s. 28. Stat. 6 Geo. 4, c. 8. Stat. 7 Geo. 4, c. 66. Stat. 7 & 8 Geo. 4, c. 43. Stat. 10 Geo. 4, c. 58. Stat. 2 & 3 Gul. 4, c. 67.

cure of souls, may by such proper deeds, as are thereby directed, exchange such glebes, as lie at a distance from their parish churches, for lands of equal value lying near and convenient to the said churches: which act does not extend to enable archbishops, bishops, deans, archdeacons, dignitaries, or prebendaries of cathedral churches, to exchange their glebes or mensal lands, that lie inconveniently, for other lands of equal value and purchase lying near and convenient to such cathedral churches: and whereas the demesne or mensal lands of some of the archbishops, bishops, deans, archdeacons, dignitaries, and prebendaries of cathedral churches in this kingdom of Ireland, are so inconveniently situated, that the residence of the said archbishops, bishops, deans, archdeacons, dignitaries, and prebendaries of cathedral churches, is become less useful than it ought to be; and the said archbishops, bishops, deans, archdeacons, dignitaries, and prebendaries are discharged from building houses on their respective mensal lands, and thereby rendered incapable of attending the duties and offices of the said cathedral churches in such manner, as the decent service of Almighty God and the canons and constitutions of the church of this kingdom of Ireland command and require: for remedy whereof, and for the furtherance and promotion of the true religion established in this kingdom, the maintenance of hospitality, and the encouraging building, and the settlement of protestants in such cities, towns, or villages, where such cathedrals now are or may be erected hereafter; be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same; that it shall and may be lawful for any archbishop or bishop, dean, archdeacon, dignitary, or prebendary of any cathedral church in this kingdom of Ireland, by deed or deeds, to exchange such their demesne or mensal lands, as are so inconveniently situated, or any part thereof, with any archbishop, bishop, dean, archdeacon, dignitary, or prebendary aforesaid, or with any other person, for lands of equal value, worth, and purchase, that lie more convenient, and are fitter for building and improvement in any such city, town, or village near such cathedral church, in such manner as by the said act made in the second year of her late most excellent majesty Queen Anne, intituled, 'An Act for the Exchange of Glebes belonging to Churches in this Kingdom,' is directed, and that the lands so conveyed in exchange for such demesne, or mensal lands, shall to all intents and purposes of law be deemed and reputed as the demesne or mensal lands of such archbishop, bishop, dean, archdeacon, dignitary, or prebendary of such cathedral church making such exchange, and his and their respective successors for ever.

"II. And be it further enacted by the authority aforesaid, that it shall and may be lawful to and for every archbishop, bishop, dean, archdeacon, dignitary, or prebendary of any cathedral church, with the consent of the chief governor or governors of this kingdom for the time being, and the privy council of the same, (six at least of the said privy council agreeing thereunto,) out of any part of his or their respective lands, being actually out of lease, or whereof any lease unexpired shall be surrendered unto, or purchased by, such archbishop, bishop, dean, archdeacon, dignitary, or prebendary, to set apart so much as shall be convenient for demesne or mensal lands, to him and his successors for ever; which land or lands so set apart shall for ever thereafter to all intents and purposes be reputed and taken for the demesne or mensal lands of such respective archbishop, bishop, dean, archdeacon, dignitary, or prebendary of any cathedral church, and his successors: and where the present demesne lands, or any part thereof, to any archbishop, bishop, dean, archdeacon, dignitary, or prebendary of any cathedral church belonging, are situate at too great a distance from his mansion house, it shall and may be lawful to and for such archbishop, bishop, dean, archdeacon, dignitary, or prebendary of any cathedral church, and his and their successors respectively, with the consent of such chief governor or governors, and privy council, (six of them at the least agreeing thereunto,) to set apart other lands belonging to such archbishop, bishop, dean, archdeacon, dignitary, or prebendary, and being actually out of lease, or whereof any lease unexpired shall be surrendered unto, or purchased by, the said archbishop, bishop, dean, archdeacon, dignitary, or prebendary of any cathe-

STAT. 8 GEO.
1, c. 11. [Ir.]
Bishops, &c.
not included
therein.

Mischief
thereof.

Bishops, digni-
taries, &c.
may by deed
exchange their
demesne lands
inconveniently
situated;
as by 2 Ann.
c. 10.
5 Geo. 2, c. 6.
15 Geo. 2, c. 5.
29 Geo. 2, c. 8.
31 Geo. 2, c. 11.

And, with
consent of chief
governors, &c.
may set apart
for demesne
land out of
lease, sur-
rendered or
purchased;

and where de-
mesne at too
great distance,
may set apart
other lands out
of lease, &c.
more conven-
ient, and de-
mise the de-
mesne of equal
value under the
same terms.

STAT. 8 GEO.
1, c. 11. [Ir.]

dral church, that lie at a more convenient distance from his mansion house, for ever after to be reputed as demesne or mensal lands, to him and his successors, and in lieu thereof to demise such demesne or mensal lands situate at too great a distance from his or their mansion house as aforesaid, being of equal value with the lands so set apart for demesne or mensal lands, for such estate or interest, and under as great a rent, and the same reservations, terms, and conditions, as he or they might by law have demised the lands so set apart as aforesaid.

But if part only of the demesne let in one lease, consent must be obtained.

“III. Provided nevertheless, that if part only of such demesne or mensal lands, so to be demised in lieu of lands so set apart as aforesaid, shall be let in one lease, in every such case the consent of the chief governor or governors and privy council of this kingdom, (six at least of such privy council agreeing thereunto,) shall be first obtained to the rent, reservations, terms, and conditions of such lease; otherwise the same shall be void.

Where consent once obtained, said demesne may be let again on same terms without consent.

“IV. Provided always, and be it further enacted by the authority aforesaid, that when the consent of the chief governor or governors and privy council has once been obtained as aforesaid, for the setting any lease of any part of such demesne or mensal lands to any archbishop, bishop, dean, archdeacon, dignitary, or prebendary of any cathedral church belonging; it shall from thenceforth be lawful to and for svery such archbishop, bishop, dean, archdeacon, dignitary, or prebendary of any cathedral church, and his and their successors, without any such consent ever again to be had or given, to set any lease or leases of the same lands in such manner, and under such yearly rent or rents, as the lease or leases thereof granted with such consent as aforesaid was or were made.

William Archbishop of Dublin may by deed enrolled grant lands whereof seised in his own right, to resident curates,

“V. And whereas William Lord Archbishop of Dublin is desirous to settle resident curates to have the cure of souls in several parishes situate in the diocese of Dublin, and to endow such curacies with proper glebes: be it therefore enacted by the authority aforesaid, that it shall and may be lawful to and for the said William Lord Archbishop of Dublin, by any deed or deeds under his hand and seal, to be enrolled in the high court of Chancery of this kingdom, to give or grant any lands, tithes, tenements, or hereditaments, whereof he the said William Lord Archbishop of Dublin is or shall be seised in his own right, to any such resident curates, as are or shall be by him constituted and appointed for the cure of souls in any such parish or parishes, and their successors; and such grant or grants shall be good, valid, and effectual in law; and such lands, tithes, tenements, and hereditaments, so given and granted as aforesaid, shall be and remain to such curates and their successors respectively for ever.

to them and successors.

Such curate allowed by successor for improvement two thirds.
12 Geo. 1, c. 10.
1 Geo. 2, c. 15.

“VI. And be it further enacted by the authority aforesaid, that in case any such resident curate, or his successors, shall at any time build, erect, make, or add to any house, outhouse, garden, orchard, or any other necessary improvement, on any lands so given and granted as aforesaid, which shall be fit and convenient for the habitation of such resident curate and his successor, such curate for the time being, making any such improvement as aforesaid, shall have and receive from his next and immediate successor, his executors or administrators, two thirds of the sum or sums really and truly expended and laid out by him on such houses or other buildings or improvements, necessary annual reparations only excepted; which sum or sums shall be finally settled and ascertained by certificate under the hand and seal of the Archbishop of Dublin for the time being; and such successor having paid the two thirds of the sum or sums, so certified as aforesaid, shall and may receive one moiety thereof from his next and immediate successors, his executors or administrators; to be paid and recovered at such times, in such manner, and by such ways and methods, as vicars in any other parishes are enabled to receive and recover the like disbursements, by an act made in this kingdom in the tenth year of the reign of his late majesty King William the Third, intituled, ‘An Act to encourage building of Houses and making other Improvements on Church Lands, and to prevent Dilapidations.’”

Ascertained by certificate of said archbishop.
Successor to receive a moiety from his successor, as by
10 Gul. 3, c. 6.

XXX. STAT. 8 GEORGII 1, c. 12 (1). [IRELAND.] A.D. 1721.

STAT. 8 GEO.
1, c. 12. [IR.]

"An Act for the better enabling of the Clergy having Cure of Souls, to reside upon their respective Benefices; and for the Encouragement of Protestant Schools within this Kingdom of Ireland."

"Whereas by an act of parliament made in the fifteenth year of our late sovereign King Charles the First, intituled, 'An Act for endowing of Churches with Glebe Lands,' it is enacted, that any person without licence of mortmain may endow churches having no glebe lands, or not above ten acres of glebe, with new glebe, so as the glebe of any such church so endowed do not exceed forty acres at the most: and whereas very few churches within this kingdom have since the time of making the said act, and in pursuance of the good design thereof, been so endowed: for the more effectual promoting, therefore, of the design and intent of the said act, be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that it shall and may be lawful to and for any person by the above-mentioned act qualified to endow, and so endowing, a church as aforesaid, to reserve unto himself and his heirs for ever such yearly rent out of the lands to be by him granted, and under such clauses and covenants, as shall be agreed upon between such person so granting the same, and the incumbent of the said church, by and with the consent of the archbishop or bishop of the diocese, and archbishop of the province, in which such church shall be situate; such consent being signified by certificate in writing under his and their archiepiscopal and episcopal seals respectively.

"II. Provided always, that such endowment, together with the certificate signifying such consent of the said archbishop and bishop respectively as aforesaid, shall within six calendar months from the making of the same be enrolled in the high court of Chancery; for which enrolment the sum of thirteen shillings and fourpence shall be paid, and ore.

"III. Provided nevertheless, that no person shall be hereby enabled to endow any church with any portion of the demesne lands, usually occupied with and reputed as demesne to appertain unto the mansion or chief dwelling-house to him and his heirs belonging.

"IV. And be it further enacted by the authority aforesaid, that if any incumbent of any such church shall purchase glebe land, and endow his said church with the same, reserving no rent thereout, such incumbent, his executors, or administrators, shall be entitled to two thirds of his purchase money to be paid by his immediate successor, his executors, or administrators; and such immediate successor, his executors, or administrators, shall be entitled to one half of what he shall so pay; which respective sums shall be paid and recovered at such times, in such manner, and by such ways and methods, as vicars of any parishes are enabled to recover any sum or sums of money, laid out in building upon and improving church lands, by an act passed in the tenth year of the reign of our late sovereign King William the Third, intituled, 'An Act to encourage building of Houses, and making other Improvements on Church Lands, and to prevent Dilapidations.'

"V. And whereas by an act made in the second year of our late sovereign Queen Anne, intituled, 'An Act for the Exchange of Glebes belonging to Churches in this Kingdom,' power is given unto every archbishop and bishop under the limitations in the said act mentioned to grant twenty acres of land, plantation measure, belonging to his archbishopric or bishopric near any church, and convenient for a glebe to the said church, to a rector, vicar, or other ecclesiastical person having actual cure of souls, and his successors, for a glebe: and whereas by experience it is found that in many parts of this kingdom, by reason of the barrenness of the land, twenty acres of the same will be no way sufficient for the accommodation and residence of the incumbent: be it therefore enacted by the authority aforesaid,

15 Car. 1, c. 11.

Few churches endowed in pursuance thereof.

Any person endowing a church according thereto, may reserve a yearly rent, as agreed on, with consent of bishop certified. *Vide* 10 Geo.

1, c. 6.

1 Geo. 2, c. 15.

3 Geo. 2, c. 12.

Endowment and certificate in six months to be enrolled in Chancery, paying 13s. 4d.

Demesne to be no part of endowment.

If incumbent purchase glebe, and endow, reserving no rent, entitled to two thirds of purchase money from successor, who is entitled to half; recovered as money laid out by vicars, by 10 Gul. 3, c. 6.

2 Ann. c. 10.

Twenty acres not sufficient in many parts.

Bishops, with

(1) *Vide* Stat. 5 Geo. 4, c. 91. Stat. 7 4, c. 90. Stat. 6 & 7 Gul. 4, c. 99. Stat. & 8 Geo. 4, c. 43. Stat. 10 Geo. 4, c. 58. 6 & 7 Vict. c. 57. Stat. 3 & 4 Gul. 4, c. 37. Stat. 4 & 5 Gul.

STAT. 8 GEO.
1, c. 12. [I.R.]

consent certified and enrolled as by that act, may grant forty acres for glebe.

But the whole glebe not to exceed forty acres.

Where an union, no more than one church shall be endowed with glebe. But ten acres may be granted for resident curate of chapel of ease;

so as the whole glebe exceed not sixty acres.

2 Geo. 1, c. 15.

If incumbent tenders to trustees of first-fruits, certificate of building a house slated, &c. on his glebe, to be paid 100*l.* at their discretion.

Such sum not to be comprised in bishop's certificate of money laid out by incumbent pursuant to 10 Gul. 3, c. 6.

Bishops, dignitaries, and all ecclesiastical persons, with consent certified, may by deed (enrolled with certificate) grant to church-wardens, two

that it shall and may be lawful for every archbishop and bishop, with the consent of his dean and chapter respectively signified by certificate in writing under their hand and common seal, and, where there is no dean and chapter, with the consent of the archdeacon and six beneficed clergymen of his diocese, signified in writing under their hands and seals by deed or deeds under the hands and seals of such archbishop or bishop respectively, (such deed or deeds, together with such certificate of such consent as aforesaid, to be enrolled as aforesaid, and under the rules and limitations of the said last-mentioned act,) to grant any quantity of land belonging to his archbishopric or bishopric respectively, not exceeding forty acres, plantation measure, as a glebe for the incumbent or minister of any parish having actual cure of souls: provided that such quantity of land so granted, together with all other glebe to such incumbent before belonging, shall not exceed forty acres, plantation measure.

“VI. Provided always, that where two or more ecclesiastical benefices are united, either in pursuance of any act of parliament, or by an episcopal union, it shall not be lawful for any person, during the continuance of the said parliamentary or episcopal union, to endow more than one of the churches, to any such union belonging, with any portion of glebe: saving and excepting always, that it shall and may be lawful for any person before mentioned to give or grant to any archbishop or bishop of any diocese, and his successors, any quantity of land not exceeding ten acres for the use of a resident curate of any church or chapel of ease, wherein divine service shall be constantly performed, so as that all the glebe land belonging to any parish church or mother church in any union, and also the chapel or chapels of ease to any such parish church or mother church belonging, shall not in the whole exceed sixty acres, plantation measure.

“VII. And whereas the first-fruits, arising out of all ecclesiastical benefices and promotions within this kingdom, are by letters patents from her late majesty Queen Anne, and by an act of parliament for confirming the same, made in the second year of his present majesty's reign, vested in certain trustees as a fund for purchasing glebes, and for other uses in the said letters patents and act of parliament mentioned: be it further enacted by the authority aforesaid, that in case any incumbent or minister, having actual cure of souls, shall tender a certificate under the hand and seal of the archbishop or bishop of the diocese respectively to the said trustees for the time being, or to such a number of them duly assembled, as have power by law to act, that the said incumbent hath built, or procured to be built, upon the glebe belonging to his benefice, where such cure is, one convenient dwelling-house covered with shingles, slates or tiles, then and in every such case it shall and may be lawful to and for the said trustees, or such number of them assembled as aforesaid, at their discretion out of the said fund to pay any sum not exceeding one hundred pounds sterling to such incumbent, his executors, administrators, or assigns, towards reimbursing the charge such incumbent shall have been at in such building (1).

“VIII. Provided always, and be it hereby enacted by the authority aforesaid, that such sum or sums, as shall be so paid to such incumbent, his executors or administrators, shall not be comprised in, but shall be left out of, any certificate by any archbishop or bishop to him or them to be given for any sum or sums of money by such incumbent laid out or expended in buildings or improvements in pursuance of the said act of the tenth year of the reign of his said late majesty King William the Third, intituled, ‘An Act to encourage building of Houses, and making other Improvements on Church Land, and to prevent Dilapidations.’

“IX. And for the better encouragement of English protestant schools, which are much wanting in this kingdom, be it enacted by the authority aforesaid, that it shall and may lawful for every archbishop and bishop with such consent, and signified as before mentioned, and also for every dean, archdeacon, dignitary, prebendary, rector, vicar, and ecclesiastical person whatsoever, with the consent of his archbishop or bishop, such consent to be signified by certificate in writing under

(1) This section was repealed by Stat. 3 & 4 Gul. 4, c. 37, s. 1.

the hand and seal of such archbishop and bishop respectively, by deed or deeds under their respective hands and seals, (such deed and deeds, together with such certificates of such consent as aforesaid, to be enrolled as aforesaid respectively,) to make an absolute grant unto the churchwardens of each parish, and their successors for ever; who are hereby enabled to take and hold such grant accordingly of any quantity of land to any of them respectively belonging as glebe or otherwise, not exceeding two acres for an archbishop or bishop, and one acre for any other person before mentioned, for the use of a resident protestant schoolmaster, to teach the English tongue, from time to time to be nominated by the person making such a grant, and his successors, and licensed by the archbishop or bishop of the diocese respectively.

“X. Provided that no land granted as aforesaid for the use of any rector, vicar, or other ecclesiastical person, or of any schoolmaster, shall be reputed to make such rector, vicar, ecclesiastical person, or schoolmaster, or any person under any of them deriving, a freeholder to any intent or purpose of law whatsoever.”

STAT. 8 GEO.
1, c. 12. [Ir.]
acres for a
bishop, and one
for others, for
an English
protestant
schoolmaster,
named by
grantor and
successors, and
licensed.
5 GEO. 2, c. 4.
29 GEO. 2, c. 7.
No grant as
aforesaid shall
make any of
said persons
freeholders.

XXXI. STAT. 8 GEORGH II, c. 15. [IRELAND.] A.D. 1721.

“An Act for explaining and amending two several Acts in relation to the public registering of all Deeds, Conveyances, and Wills.”

STAT. 8 GEO.
1, c. 15. [Ir.]

XXXII. STAT. 8 GEORGH II, c. 29. A.D. 1721.

“An Act for preventing Delays in the Execution of the Trust reposed in the Governors of the Hospital of King James, founded in Charter House, at the charges of Thomas Sutton, Esq. for the Benefit of the said Hospital.”

STAT. 8 GEO.
1, c. 29.

XXXIII. STAT. 9 GEORGH II, c. 18. A.D. 1722.

“An Act for granting an Aid to His Majesty by laying a Tax upon Papists, and for making such other Persons, as upon due Summons shall refuse or neglect to take the Oaths therein mentioned, to contribute towards the said Tax, for reimbursing to the Public part of the great Expenses occasioned by the late Conspiracies, and for discharging the Estates of Papists from the two-third parts of the Rents and Profits thereof for One Year, and all Arrears of the same, and from such Forfeitures as are therein more particularly described.”

STAT. 9 GEO.
1, c. 18.

XXXIV. STAT. 9 GEORGH II, c. 24(1). A.D. 1722.

“An Act to oblige all Persons, being Papists, in that part of Great Britain called Scotland, and all Persons in Great Britain refusing or neglecting to take the Oaths appointed for the Security of His Majesty's Person and Government, by several Acts herein mentioned, to register their Names and real Estates.”

STAT. 9 GEO.
1, c. 24.

XXXV. STAT. 10 GEORGH II, c. 4(2). A.D. 1723.

“An Act for explaining and amending an Act of the last Session of Parliament, intituled, ‘An Act to oblige all Persons, being Papists, in that part of Great Britain called Scotland, and all Persons in Great Britain, refusing or neglecting to take the Oaths appointed for the Security of His Majesty's Person and Government, by several Acts herein mentioned, to register their Names and Real Estates,’ and for enlarging the Time for taking the said Oaths, and making such Registers, and for allowing further Time for the Enrolment of Deeds or Wills made by Papists; which have been omitted to be enrolled, pursuant to an Act of the third year of His Majesty's Reign; and also for giving Relief to Protestant Lessees.”

STAT. 10 GEO.
1, c. 4.

(1) Vide Stat. 10 Geo. 1, c. 4.

(2) Vide Stat. 9 Geo. 2, c. 26.

STAT. 10 GEO.
1. c. 6. [IR.]

XXXVI. STAT. 10 GEORGII 1, c. 6(1). [IRELAND.] A.D. 1723.

"An Act for explaining and amending an Act, intituled, 'An Act for real Union and Division of Parishes,' and for confirming an Exchange made of a Piece of Ground, whereon the Parish Church and Vicarage House of the Parish of Saint Anne in the Suburbs of the City of Dublin was by a former Act of Parliament directed to be built, for another Piece of Ground; and for appropriating such other Piece of Ground to the same Uses."

2 Geo. 1, c. 14,
s. 1, recited.

"Whereas by an Act made in the second year of the reign of his present majesty, intituled, 'An Act for real Union and Division of Parishes,' it is amongst other things enacted, that from the twenty-fourth day of June in the year of our Lord one thousand seven hundred and seventeen, for and during the term of ten years from thence next ensuing, it should and might be lawful for the chief governor or governors of this kingdom for the time being, with the assent of the major part of the privy council in council assembled, six at least consenting, and with the advice and approbation of the archbishop of the province, and the bishop of the diocese, certified under their hands and archiepiscopal and episcopal seals, with the consent of the respective patrons and incumbents, certified under their hands and seals, attested by two or more credible witnesses subscribing thereunto, to divide old parishes, or separate any parish, or part of a parish, of late united, and to unite parishes one to another, or part of a parish to another parish, or part of a parish, in perpetuity, and to erect such divided or united parishes, or part of parishes, into new parishes, with all parochial rights; and also to unite and appropriate any benefice or benefices, having actual cure of souls, to a dignity or prebend without cure; saving to the dean, dignitary, prebendary, and incumbent, at the time of such union, during their respective incumbency, and to their respective patrons and ordinaries, all their right, title, and interest in and to the said united or appropriated benefices; and saving also all rights to the dean and chapter of each cathedral church, and to the prebendary of the prebend, to which any benefice with cure of souls shall be united or appropriated: and whereas divers dignities or prebends in this kingdom, having actual cure of souls annexed, are of very small and inconsiderable value, yet by an union with one or more benefice or benefices without cure may be made a competent provision for the support and service of the cures annexed to such dignities or prebends: be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that it shall and may be lawful for the chief governor or governors of this kingdom for the time being, with the assent, advice, approbation, and consent of such persons, in such manner, and under such savings and provisoes, as are in the said recited act mentioned, concerning the uniting or appropriating any benefice or benefices, having actual cure of souls, to a dignity or prebend without cure, to unite or appropriate any benefice or benefices without cure of souls, to a dignity or prebend having actual cure of souls annexed.

Divers dignities with cure, of very small value.

Chief governors, &c. as by 2 Geo. 1, c. 14, may unite thereto benefices without cure.

Consent of parishioners necessary to building new churches by 2 Geo. 1, c. 14, obstructed by refusal of papists.

Consent of major part of protestant parishioners shall be sufficient.

"II. And whereas by the said recited act the consent of the incumbent and churchwardens and parishioners of the parish or parishes to be assembled in vestry, or the major part of them, testified by their petition to the chief governor or governors of this kingdom, and the council thereof, is, among other things therein mentioned, made necessary to the directing and ordering new churches to be built in more convenient places in such parish or parishes: and whereas in divers parishes in this kingdom great numbers of the inhabitants are of the popish religion, who do, by refusing to consent to the building new churches in more convenient places in such parishes, greatly obstruct the execution of the said act: be it enacted by the authority aforesaid, that the consent of the incumbent and churchwardens, and protestant parishioners of such parish or parishes to be assembled in vestry, or the major part of them, testified by their petition to the chief governor or governors of this kingdom, and the council thereof, shall be to all intents and

purposes a sufficient consent of the parishioners of such parish or parishes to the directing and ordering new churches to be built in more convenient places within such parishes, anything in the said recited act contained to the contrary notwithstanding: provided always, that due notice be given in the church of such vestry to be held, and of the design of calling the said vestry, two Sundays successively immediately preceding the time appointed for the meeting of the said vestry; and, where there is no church used for the celebration of divine service, the like notice shall be posted up in the next market-town fourteen days before the meeting of the said vestry.

given in church the two preceding Sundays: and where no church, in next market town, fourteen days before.

“III. And be it enacted by the authority aforesaid, that in all unions to be made by virtue of the said recited act, or of this present act, of any dignities or benefices, the patronage whereof is or shall be in the king’s majesty, his heirs, or successors, the consent of the king’s majesty, his heirs, or successors, signified by letter under his, her, or their royal sign manual, to the chief governor or governors of this kingdom for the time being, to the making such union, shall be to all intents and purposes as good and valid, as if such consent were signified and declared under the great seal of this kingdom: provided the said sign manual be enrolled in his majesty’s high court of Chancery within six calendar months after the date thereof; for which a fee of three shillings and four-pence shall be paid, and no more.

“IV. And be it further enacted by the authority aforesaid, that it shall and may be lawful to and for the several and respective deans and chapters within this realm of Ireland, by and with the consent of the archbishop of the province, and the bishop of the diocese, certified under their hands and archiepiscopal and episcopal seals, to endow any vicarage or curacy in any parish, the church whereof is appropriate to them belonging, with a convenient portion of glebe or tithes, or both, belonging to such dean and chapter in such parish or parishes; and also with the consent aforesaid to augment such endowments, as have been already made for the support of a proper vicar or curate for performance of divine service and cure of souls within the same; saving to the then tenants of such glebes and tithes, all their right and title during their respective leases.

“V. And whereas by the said recited act the consent of the respective deans and chapters in such diocese, where there are deans and chapters, is, among other things therein mentioned, made necessary to the endowments, and augmentation of endowments, of vicarages or curacies, with a convenient portion of glebe or tithes, or both, in parishes the churches whereof are appropriated belonging to the respective dignitaries and prebendaries in such diocese, to be made by such respective dignitaries and prebendaries; and whereas in some dioceses in this kingdom there are several and distinct deans and chapters, whose joint consent in such cases is of no real use or advantage, and hath been found difficult to be obtained, and the good intent of the said recited act obstructed thereby: be it enacted by the authority aforesaid, that the consent of such dean and chapter, of which the respective dignitaries or prebendaries, so endowing or augmenting the endowments of such vicarage or curacy as aforesaid, are members, to the making such endowments or augmentation of endowments, shall be to all intents and purposes as valid and effectual in law, as if the several and distinct deans and chapters of such diocese had consented thereunto; anything in the said recited act contained to the contrary notwithstanding.

“VI. And whereas by the said recited act it is enacted, ‘that it shall and may be lawful to and for every archbishop, bishop, dean, dignity or prebendary, with the approbation and consent therein mentioned, to exchange any rectory, vicarage, parish, or portion of tithes to his or their said archbishopric, bishopric, deanery, dignity, or prebend belonging, for any other rectory, vicarage, parish, or portion of tithes within the same diocese of equal or near the same value:’ be it enacted by the authority aforesaid, that it shall and may be lawful to and for every archbishop and bishop, with the consent of the chief governor or governors of this kingdom for the time being, and privy council, six at least consenting, and for every dean

STAT. 10 GEO. 1, c. 6. [IR.]
19 GEO. 2, c. 16.
Persons empowered to grant one acre for a site for new church.
Notice of vestry, and of the design, shall be

Where patronage in the king, his consent to union under sign manual, as valid as if under great seal; if enrolled in Chancery in six months.
1 GEO. 2, c. 19.
Consent of chief governors valid.
21 GEO. 2, c. 8.
Deans and chapters, with consent of bishops certified, may endow vicarage or curacy with glebe and tithes; or augment endowments: saving right of tenants thereof.

By said act, consent of deans and chapters necessary to endowments by dignitaries: in some dioceses several deans and chapters, whereby said act obstructed: consent of dean and chapter, whereof the dignitaries endowing are members, sufficient.

By 2 GEO. 1, c. 14, s. 8, bishops, &c. with consent, may exchange rectories, vicarages, or tithes.
By this act, exchange may be made for

STAT. 10 GEO.
1, c. 6. [1R.]

land of same
value.

2 Ann. c. 10.

5 Geo. 2, c. 6.

7 Geo. 2, c. 7.

29 Geo. 2, c. 8.

Rectory, &c.
so exchanged
shall be settled
on person
having actual
cure; saving to
tenants all right
during leases.

Continuation
of this act, and
of 2 Geo. 1,
c. 14, (so far as
not altered and
repealed,) for
ten years, &c.
both continued
by 7 Geo. 2,
c. 7, and per-
petual, 13 Geo.
2, c. 4.

Recital of an
act for erecting
St. Anne's pa-
rish in Dublin,

and of exchange
of ground
granted for
building the
church for a
more conve-
nient plot.

with the consent of the archbishop or bishop of the diocese and of the chapter; and also for every archdeacon, dignitary, or prebendary, with like consent of the archbishop or bishop, and the consent of the respective dean and chapter, whereof such dignitary or prebendary is a member, in such dioceses where there are deans and chapters, and in such dioceses where there are no deans and chapters, then by and with the consent of the major part of the clergy at their respective visitations, to exchange any rectory, vicarage, or portion of tithes, to his or their said archbishopric, bishopric, deanery, archdeaconry, dignitary, or prebend belonging, for any portion or parcel of land of the same value; the same to be settled and remain to such archbishop, bishop, dean, archdeacon, dignitary, or prebendary, and his and their respective successors, who are hereby enabled and made capable to take and retain the same.

“VII. Provided always, that such rectory, vicarage, or portion of tithes, so exchanged, shall be settled upon and remain to such person as shall have the actual cure of souls in the parish, whereof the rectory, vicarage, or any portion of tithes, shall be so exchanged; saving to the then tenant and tenants of all such lands, rectories, vicarages, and portions of tithes, all their right, title, and interest during their several and respective leases.

“VIII. Provided always, and be it further enacted by the authority aforesaid, that the said recited act, and every clause, matter, and thing therein contained, and not hereby altered and repealed; and also this present act, shall be and continue in force for ten years, from the second day of February, one thousand seven hundred and twenty-three, and from thence to the end of the then next session of parliament, and no longer.

“IX. And whereas by an act of parliament lately passed in this kingdom, intituled, ‘An Act for dividing of the several Parishes of Saint Andrew’s, Saint Nicholas, Saint Catharine’s, Saint James’s, and Saint John of Kilmainham; and for erecting a new Parish by the name of the Parish of Saint Anne, on the ground lying between Grafton Street and Merion Street, in the suburbs of the City of Dublin,’ reciting, ‘that Joshua Dawson, of the city of Dublin, Esquire, had given a plot or piece of ground, containing two hundred feet in length or depth, and one hundred feet in breadth, mearing and bounding eastward to Dawson’s street, westward to a lane leading from Anne street to Duke street, and northward by Anne street, for a church and church-yard, and vicarage-house and garden for the vicar and inhabitants of the said parish of Saint Anne;’ it was amongst other things enacted, ‘that the said plot or piece of ground so given, appointed, and described, should be thereby vested in Marmaduke Coghill and Samuel Dopping, Esquires, and their heirs for ever, upon trust nevertheless, and to the intent and purpose, that a parish church, vestry, and other rooms and conveniences necessary for a church, might be built thereon for the use of the vicar, minister, and parishioners of the said parish:’ and whereas since the time of passing the said act it was found that the said plot or piece of ground so given and set out was not conveniently situated for building and erecting thereon the parish church for the said parish of Saint Anne: whereupon, at the request of the parishioners the said plot was exchanged for another plot or piece of ground in the said parish, inclosed with a stone wall, of larger extent and more conveniently situated for the aforesaid purposes, lying eastward of Dawson’s street, and opposite to Anne street, and containing in front westward to Dawson’s street one hundred and twenty feet in depth, on the north side two hundred feet, on the south side one hundred eighty-seven feet, and to the east one hundred and twenty feet; and on part whereof a church hath been lately built and erected by the direction of his grace the Lord Archbishop of Dublin, which hath been likewise consecrated: and whereas it is necessary, that the exchange of the said plots of ground be confirmed and made good by the authority of an act of parliament, and that the said plot of ground, on part of which the said church hath been erected, may for the purposes aforesaid be settled and assured by act of parliament for the use of the said parish of Saint Anne; and that the said church so built and erected thereon may be reputed and remain the parish church of the said parish for ever: be it enacted by the authority aforesaid, that

the exchange of the said plots of ground be confirmed, and for ever accounted good and valid; and the said plot or piece of ground so given, appointed, and described, on part whereof the said church hath been erected and built, be and is hereby vested in the present rector, parson, or minister of the said parish, and his successors for ever, in trust for the use of the said parish for the purposes aforesaid; and that the said church so erected and consecrated shall for ever be reputed and remain the parish church of the said parish of Saint Anne, as fully and effectually to all intents and purposes, as if the church had been erected on the plot or piece of ground vested by the said act in Marmaduke Coghill and Samuel Dopping, Esquires; anything in the said recited act of parliament to the contrary notwithstanding."

STAT. 10 GEO.
1, c. 6. [Ir.]
Said exchange confirmed.

XXXVII. STAT. 10 GEORGII 1, c. 7(1). [IRELAND.] A.D. 1723.

"An Act for amending an Act, intituled, *An Act for confirming the several Grants made by Her late Majesty of the First-fruits and Twentieth Parts, payable out of the Ecclesiastical Benefices in this Kingdom; and also for giving the Archbishops and other Ecclesiastical Persons four years' Time for the Payment of First-fruits, and for incorporating the Trustees and Commissioners of the said First-fruits.*"

STAT. 10 GEO.
1, c. 7. [Ir.]

XXXVIII. STAT. 10 GEORGII 1, c. 8. [IRELAND.] A.D. 1723.

"An Act for accepting the Solemn Affirmation or Declaration of the People called Quakers, in certain cases, instead of an Oath in the usual form."

STAT. 10 GEO.
1, c. 8. [Ir.]

XXXIX. STAT. 11 GEORGII 1, c. 12. A.D. 1724.

"An Act for incorporating the Executors of the last Will and Testament of Thomas Guy, late of the City of London, Esq. deceased, and Others, in order to the better Management and Disposition of the Charities given by his said last Will."

STAT. 11 GEO.
1, c. 12.

XL. STAT. 12 GEORGII 1, c. 3(2). [IRELAND.] A.D. 1725.

"An Act to prevent Marriages by Degraded Clergymen and Popish Priests, and for preventing Marriages Consummated from being avoided by Pre-contracts; and for the more effectual Punishment of Bigamy."

STAT. 12 GEO.
1, c. 3. [Ir.]

XLI. STAT. 12 GEORGII 1, c. 9(3). [IRELAND.] A.D. 1725.

"An Act for the more effectual erecting and better regulating of Free Schools, and for rebuilding and repairing of Churches."

STAT. 12 GEO.
1, c. 9. [Ir.]

"Whereas an act of parliament made in the twelfth year of the reign of Queen Elizabeth of glorious memory, intituled, 'An Act for the erecting of Free-schools,' has not answered the pious and good designs thereby intended, by reason of sundry defects that are in the said act: and whereas the places by the said act appointed for the building and erecting of such free-schools, being the principal shire-town of every diocese, where school-houses be not already builded, are left at too great an uncertainty, some dioceses consisting only of part of one or more counties, and having no such shire town, and others more than one within them; and

29 Geo. 2, c. 7.
Defects in
12 Eliz. c. 1.

Uncertainty of
the shire town
of the diocese
for the school
house.

(1) Partly repealed by Stat. 7 Geo. 4, c. 73. Stat. 7 & 8 Geo. 4, c. 43. Stat. 3 & 4 Gul. 4, c. 37.

(2) Repealed by Stat. 3 & 4 Gul. 4, c. 102, as to Roman catholic priests, but not as to degraded clergymen. Vide Stat. 5 & 6 Vict. c. 28. Stat. 5 & 6 Vict. c. 113.

(3) Vide Stat. 1 Geo. 2, c. 15. (I.) Stat. 23 Geo. 2, c. 11. (I.) Stat. 29 Geo. 2, c. 7. (I.) Stat. 13 & 14 Geo. 3, c. 27. (I.) Stat.

21 & 22 Geo. 3, c. 28. (I.) Stat. 23 & 24 Geo. 3, c. 49. (I.) Stat. 31 Geo. 3, c. 19. (I.) Stat. 46 Geo. 3, c. 122. Stat. 50 Geo. 3, c. 33. Stat. 53 Geo. 3, c. 107. Stat. 3 Geo. 4, c. 79. Stat. 7 Geo. 4, c. 72. Stat. 7 & 8 Geo. 4, c. 43. Stat. 10 Geo. 4, c. 58. Stat. 2 & 3 Gul. 4, c. 67. Stat. 3 & 4 Gul. 4, c. 37, s. 65. Stat. 6 & 7 Gul. 4, c. 70. Stat. 6 & 7 Gul. 4, c. 116, s. 96. Stat. 4 & 5 Vict. c. 38.

STAT. 12 GEO.
1, c. 9. [1R.]
Bishops, deans,
&c. by deed
enrolled, may
set apart one
acre, approved
by chief go-
vernors, for
the master of
the free-school
of the diocese.

Unless a piece
of ground
already so
appropriated.

No sufficient
way appointed
for levying
money for
building the
schools.

No money shall
be raised for
building such
school till a
place ap-
pointed:
then by pre-
sentment of
grand jury,
confirmed by
the court;
29 Geo. 2, c. 7,
amended,
levied on the
whole or such
part of the
county as in
each diocese;
paid by trea-
surer to person
in presentment
appointed;
to account on
oath, as by
grand jury
directed.

Clergymen,
who by said
act are to pay
two thirds of
master's salary,
shall account
with him at
yearly visita-
tion;
and if not paid
in three
months, livings
sequestered.

it being not easy in some places to determine which is the principal shire town of the diocese: be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that it shall and may be lawful for every archbishop, bishop, dean, and chapter, dignitary, or prebendary of a cathedral church, out of any land to him, them, or any of them, in any wise belonging, by deed, to be enrolled in the high court of Chancery of this kingdom, to appoint and set apart any piece of ground not exceeding one plantation acre, and lying near the cathedral church, or in some more convenient part of each respective diocese, to be approved of by the chief governor or governors of this kingdom for the time being under his or their hand and seal, for the use of the master of the free-school of the said diocese; and that such piece of ground so set out shall for ever be deemed and reputed to be the place for the free-school of the said diocese; and that in every diocese, until such piece of ground shall be set out and appointed for the place of the free-school, the said free-school shall and may be kept in such convenient place within the said diocese, as the archbishop or bishop of the same can procure either for a yearly rent or otherwise.

"II. Provided, that where in any diocese there already is a piece of ground legally appropriated to the use of a diocese-school, such piece of ground so appropriated shall for ever be and remain in the place of the diocese-school of the said diocese; anything in this present act to the contrary notwithstanding.

"III. And whereas the said act appoints, that the free-school of each diocese shall be builded and erected at the costs and charges of the whole diocese, without respect of freedoms, by the devise and oversight of the ordinaries of the diocese, or of the vicars-general (*sede vacante*) and the sheriff of the shire, but no sufficient way is appointed for the applotting or levying of such money, as upon that occasion may be found necessary; by reason whereof, and of the want of fixed and settled places to be appropriated unto such schools in most dioceses, no money has ever yet been raised for the building of such free-school, and where any such money has been raised, it has hitherto turned to very little account: be it therefore enacted by the authority aforesaid, that no money shall be raised for erecting of such school, until such time as a place for the same shall according to this present act, or in some other sufficient manner, be appointed; and that from and after such appointment of a place for a free-school within any diocese, it shall and may be lawful for the grand jury of each county from time to time to present such sum or sums of money, as they shall find reasonable, to be levied for their respective proportion towards the building or repairing such diocese-school; which sum and sums so presented, the presentment being confirmed by the court, shall be levied upon the whole or such part of the said county as shall be situate in each respective diocese, in such manner as other public money is levied upon presentments made by grand juries.

"IV. And be it further enacted by the authority aforesaid, that when any money shall be levied towards the building of a free-school in the manner herein mentioned, the same shall be paid by the treasurer of the county into the hands of such person, as the grand jury in their presentment shall appoint, who shall account for the same upon oath in such manner, and at such time, as the respective grand juries shall direct, or in their presentment appoint.

"V. And whereas two third parts of the yearly stipend or salary appointed by the said act for the master of a free-school, arising out of all and singular the ecclesiastical livings in the respective dioceses, are divided into such very small parts as to render the collecting of the same both troublesome and expensive: be it enacted by the authority aforesaid, that every person being a beneficed clergyman, who by virtue of the said act does or shall stand obliged to pay any part or proportion of the said two third parts, shall yearly at the visitation, held for the proper diocese, account with the schoolmaster, to whom the same ought to be paid, and accordingly pay whatever shall appear to be due unto him; and if he shall not accordingly pay what shall be so due within three calendar months after the day of such visitation, then it shall and may be lawful to and for the archbishop, bishop, vicar-

general, or chancellor of the diocese, to sequester the profits of the benefice belonging to such clergyman for the payment thereof, until the same shall be levied or paid.

“VI. And whereas most of the lands which were granted by King Charles the First to James, then lord archbishop of Armagh, and his successors in trust for the masters of several free-schools for the time being, do to the great disadvantage of the country continue unimproved, because the tenants holding such lands cannot have a certain interest therein for any term of years: be it enacted by the authority aforesaid, that it shall and may be lawful to and for the Archbishop of Armagh, and his successors, by and with the consent of the respective schoolmasters, testified by their being parties, and signing such lease or leases, to demise, set, and to farm, let, all or any part of the said lands for any term not exceeding twenty-one years, and for no longer term, from the making thereof, at and under the best and most improved rent that can be got for the same, to be reserved to the said archbishop and his successors in trust for the masters of the said respective schools for the time being, so as there be no other lease in being, which shall not expire within one year from the making such lease and leases.

“VII. And whereas several parishes in this kingdom are, and others are likely to become, non-cures, though there are several protestant families inhabiting therein, for want of places of public worship, the parish churches being in so great decay that divine service cannot therein be performed, and the said churches cannot be rebuilt or repaired, the popish inhabitants of such parish obstructing the same by their out-voting the protestant inhabitants at their vestries duly appointed for that purpose: for the preventing therefore of papists having it in their power to obstruct the rebuilding and repairing churches for divine worship, be it enacted by the authority aforesaid, that no inhabitant of any parish in this kingdom, being a papist, shall at any time hereafter be capable of giving his or their vote at any vestry or vestries in this kingdom, to be held for the purposes aforesaid.

“VIII. And for the more speedy and effectual levying such money as shall be agreed upon, assessed, and ordered, at vestries for building and repairing of churches; be it enacted by the authority aforesaid, that the same may and shall be raised and levied by warrant under the hands and seals of two or more justices of the peace of the county where such parish doth lie, by the churchwardens of such parish, by distress and sale of the goods of the person or persons refusing or neglecting to pay the sum or sums of money duly applotted and charged on them pursuant to such act of vestry, together with the charges of such distress and sale, returning the overplus, if any shall be, any law to the contrary notwithstanding; and in case any person or persons shall think him or themselves aggrieved by any such assessment or applotment to be made as aforesaid, or the levying thereof, he or they shall be at liberty to appeal to the next quarter-sessions held for the said county, who are hereby empowered to hear and finally to determine the same.”

XLII. STAT. 12 GEORGH II, c. 10 (1). [IRELAND.] A.D. 1725.

“An Act to amend and explain an Act, intituled, *An Act to encourage building of Houses, and making other Improvements on Church Lands, and to prevent Dilapidations.*”

“Whereas an act passed in the tenth year of King William the Third of glorious memory, intituled, ‘An Act to encourage building of Houses, and making other improvements on Church Lands, and to prevent Dilapidations,’ which hath been found by experience in many instances not to answer the good and pious ends

STAT 12 GEO. 1, c. 9. [IR.]

Archbishop of Armagh may make leases of lands granted by King Charles the First, in trust for schoolmasters, for twenty-one years, at best rent, so as no lease in being, which is not to expire in a year. 1 Geo. 2, c. 15.

To prevent papists from obstructing the building churches, papists shall not vote at vestry.

The money assessed at vestry levied by churchwardens by warrant of two justices by distress on refusal. 3 Geo. 2, c. 11.

Appeal to next quarter sessions.

STAT. 12 GEO. 1, c. 10. [IR.]

Explained and enforced by 9 Geo. 2, c. 13. 15 Geo. 2, c. 5. 31 Geo. 2, c. 11.

(1) *Vide* Stat. 1 Geo. 2, c. 15. (I.) Stat. 3 Geo. 2, c. 12. (I.) Stat. 9 Geo. 2, c. 13. (I.) Stat. 17 Geo. 2, c. 8. (I.) Stat. 31 Geo. 2, c. 11. (I.) Stat. 7 Geo. 3, c. 9. (I.) Stat. 7 Geo. 3, c. 17. (I.) Stat. 11 & 12 Geo. 3, c. 17. (I.) Stat. 13 & 14 Geo. 3, c. 27. (I.) Stat. 15 & 16 Geo. 3, c. 17. (I.) Stat. 23 & 24 Geo. 3, c. 49. (I.) Stat. 25 Geo. 3, c. 21. (I.) Stat. 25 Geo. 3, c. 62. (I.) Stat. 29 Geo. 3, c. 27. (I.) Stat. 31 Geo. 3, c. 19. (I.) Stat. 40 Geo. 3, c. 82. (I.) Stat. 54 Geo. 3, c. 117. (I.) Stat. 4 Geo. 4, c. 86, s. 28. (I.) Stat. 6 Geo. 4, c. 8. (I.) Stat. 7 Geo. 4, c. 66. Stat. 7 & 8 Geo. 4, c. 43. Stat. 10 Geo. 4, c. 58. Stat. 2 & 3 Gul. 4, c. 67.

STAT. 12 GEO.
I, c. 10. [1R.]
10 Gul. 3, c. 6,
not answering
the ends pro-
posed;
livings over-
burthened;
houses thereon
ill built, &c.;
to remove
doubts on said
act;
certificates by
virtue of 10
Gul. 3, c. 6,
for money
charged on
bishops or
livings for im-
provements,
shall contain
account of clear
yearly value
thereof, as then
proved, but of
the particular
living only whereon
the improvements are,
a provision for omissions of such account in certificates.

proposed by the said act; but on the contrary, that several ecclesiastical livings have been overburthened with larger sums payable by the successors in such livings, where houses have been built, and certified pursuant to the said act, than the same have been able to bear; and in many places the houses, built upon the encouragement of the said act, have been of such bad materials, or so ill built, or contrived, as to be of little use to the successor in such ecclesiastical living: for remedy whereof, and for clearing several doubts, which have arisen concerning the execution of the said act; be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the first day of May, which shall be in the year of our Lord one thousand seven hundred and twenty-six, when any certificate shall be given or made out by virtue of the said act for any sum or sums of money to be charged upon any archbishopric, bishopric, or other ecclesiastical living, for any building or improvements, such certificate shall contain a true account of the clear yearly value or income of the said archbishopric, bishopric, or ecclesiastical living, as the same shall be proved to be before such persons respectively, who shall grant such certificate, at or before the time of making out such certificate, whose judgment therein shall be final; and that the said yearly value or income shall be computed of that particular ecclesiastical living only, whereon such building or improvements are made, and no other, unless there be a real union by or pursuant to any act of parliament of the said ecclesiastical living with other livings, from which it is inseparable.

9 Geo. 2, c. 13,

“II. And whereas by the said act it is enacted, that every ecclesiastical person therein mentioned, who shall make any buildings or improvements upon his glebe or demesne lands, the value whereof shall be certified as by the said act is appointed, shall have and receive from his next and immediate successor, his executors or administrators respectively, two thirds of the sum or sums expended and laid out in the same; and that such successor, having paid the two thirds of the sum or sums so certified, shall and may receive one moiety of what he has so paid from his next successor: be it enacted by the authority aforesaid, that, instead of the several payments in and by the aforesaid recited act directed to be paid, every archbishop, bishop, and other ecclesiastical person whatsoever, who shall from and after the first day of May aforesaid, make, build, erect, add to, or repair any house, outhouses, garden, or other necessary improvement on his demesne, glebe, or men-sal lands, in the manner hereinbefore directed, for which a certificate shall be obtained, as by this act is appointed, such archbishop, bishop, or other ecclesiastical person, his executors or administrators respectively, shall from his next and immediate successor have and receive three-fourths of the sum or sums so certified; and such successor, having paid the three-fourths of the sum or sums so certified as aforesaid, his executors or administrators respectively, shall and may receive two thirds thereof, (that is,) one moiety of the sum first certified from his next successor; which successor, having paid the said moiety of the said first sum, his executors or administrators shall and may receive from his next successor one half thereof, that is, one fourth part of the sum or sums in the first certificate mentioned; all which sums so to be paid and received shall and may be paid and recovered within the times, and in the same manner, as the sums to be paid and recovered by the said former act are directed and appointed to be paid and recovered; anything in the said former act to the contrary notwithstanding.

“III. And be it enacted by the authority aforesaid, that no person, who shall hereafter succeed into any archbishopric, bishopric, or other ecclesiastical living, shall be obliged to pay his predecessor, or the executors or administrators of his predecessor, by virtue of any certificate or certificates for building or improving on church lands, any more or greater sum than the clear value of one year and a half's income so limited as aforesaid.

“IV. And be it further enacted by the authority aforesaid, that no certificate shall be hereafter given or made out for any dwelling-house or building upon

Instead of the
payments by
10 Gul. 3, c. 6,
bishops or ec-
clesiastics, on
certificate of
improvements,
shall receive
three fourths
from successor,
who shall have
two thirds
from his suc-
cessor, and he
half from his
successor.

1 Geo. 2, c. 15.
9 Geo. 2, c. 13.

All paid as by
said act.

No successor
obliged to pay
more than one
year and a
half's income.

No certificate
for a building,

church lands by virtue of the above-mentioned act, unless the said dwelling-house or building be made of stone and lime, or brick and lime, and timbered in the roof, and in the floors of such dwelling-house, with oak or fir-timber, bog-oak excepted, and covered with slates, shingles, or tiles, and the building strong, lasting, and durable; except livings under a hundred pounds a year, where such houses or buildings may be covered with thatch; provided the timber be such as is before specified.

slated, &c. but on livings under 100*l.* per annum the houses may be thatched, if the timber as aforesaid.

“V. And whereas in divers bishoprics of this kingdom there are no manse houses or mensal lands convenient for the residence of the bishop: be it enacted by the authority aforesaid, that where in any diocese of this kingdom the bishop of the diocese hath no more than one hundred acres of mensal lands, it shall and may be lawful to and for every such bishop, and his successors in the said diocese, to purchase to the use of such bishop and his successors, by and with the consent of the archbishop of the province under his archiepiscopal seal, any lands in the said diocese, not exceeding in quantity the number of two hundred acres, plantation measure; upon which purchase there may be reserved out of such lands any yearly rent, not exceeding one half of the improved yearly value of such lands at the time of the purchase; which said rent so reserved shall be a charge, and continue chargeable, on such lands so purchased in the hands of every such bishop, and his successors for ever.

“VI. And be it further enacted by the authority aforesaid, that all lands so purchased shall be and continue mensal lands to all intents and purposes whatsoever; and that every bishop, who shall purchase any such lands, or shall build an house, and make any other improvements thereon, convenient and proper for the residence of such bishop and his successors, such bishop or his executors and administrators so purchasing, building, or improving, shall have and recover such proportion of such purchase-money, and of such money, as shall be so laid out in building and other improvements, as a bishop is or shall be entitled to for houses built upon his mensal lands by this act, and to be recovered in manner as is hereinbefore mentioned.

“VII. And be it enacted by the authority aforesaid, that from and after the twenty-fifth day of April, which shall be in the year of our Lord one thousand seven hundred and twenty-six, every archbishop, bishop, or other ecclesiastical person, intending to erect or make any building or improvement upon his respective demesne or glebe lands, shall, at the least three months before he begins the same, give unto the person or persons, who by this or the other above-mentioned act is or are empowered to give them such certificate as is above set forth, a writing subscribed with his hand in the presence of two credible witnesses, setting forth the length, breadth, height, and thickness of the wall of such house or houses, as he intends to build, with the number of stories in them or each of them to be contained, together with the situation of the ground on which the same are to stand; as also the nature and extent of all other improvements, which he so intends to make; a copy of which writing, if approved of, shall be returned unto such archbishop, bishop, or other ecclesiastical person, in like manner subscribed by the person or persons unto whom the same is so given; and if the said house, houses, or improvements, or so much of the same as shall be built, or made before the death or removal of the respective incumbent undertaking the same, shall be found agreeable unto what is contained in such writing, and the value thereof so reported by commissioners for that purpose, to be appointed as hereinafter is mentioned, then, and not otherwise, such a certificate, as is above mentioned, shall be given for the same according to the value of such house or houses, and improvements, so reported, and under the limitations of this present act.

“VIII. Provided, that no wainscot made or to be made in such house as is above mentioned, shall be looked on as an improvement, or certified as such, except the ecclesiastical benefice, whereunto such house belongs, shall appear to be of the clear value of three hundred pounds per annum.

STAT. 12 GEO. 1, c. 10. [1*r.*]

unless of stone or brick and lime, with oak or fir timber, (except bog-oak,) and

Bishop having only 100 acres mensal lands may, with consent of archbishop, purchase 200; out of which rent may be reserved one-half of improved value at time of purchase, and continue a charge in hands of bishop and his successors.

Such purchase shall continue mensal lands; and bishop shall recover such proportion thereof, and for improvements, as aforesaid.

Bishops, &c. three months before building or improvements begun, shall give a writing of the particulars intended, signed and witnessed, to the person who is to give such certificate. Explained and enforced 9 Geo. 2, c. 13, and 17 Geo. 2, c. 8. If approved, a copy returned, subscribed; and if the improvements agree with the writing, and so reported by commissioners, then such certificate shall be given.

Wainscot not deemed improvement,

unless the benefice 300*l.* per annum.

STAT. 12 GEO.
1, c. 10. [IR.]

Chief govern-
ors and bishops
may commis-
sion persons to
examine im-
provements on
church lands,
and swear them
to give just
estimate.
Commissioners
may examine
on oath.

On complaint
by successor of
dilapidations,
such commis-
sion shall be
granted, and
on report
allowance
deducted for
dilapidations;
and vouchers
produced by
the successor in
twelve months,
of laying the
same out in
repairs.

10 Gul. 3, c. 6,
shall continue
in force, except
where altered,
&c.

Not to extend
to certificates
for improve-
ments already
made or begun,
&c.

Bishops or
deacons, with
consent, erect-
ing alms-
houses, may
convey one
acre of mensal
or lands out of
lease for one
almshouse by
deed to church-
wardens
registered.

Archbishops
and bishops,
with consent,
may lease bog

“IX. And be it further enacted by the authority aforesaid, that it shall and may be lawful to and for the chief governor or governors of this kingdom for the time being, and every archbishop and bishop respectively, to grant any commission to two or more persons to view and examine the houses and improvements, made on church lands by virtue of this or the before-mentioned act, and to administer an oath to the said commissioners, so appointed as aforesaid, to return a true, just, and faithful account and estimate of the said buildings and improvements according to the best of their skill and knowledge; and the said commissioners shall likewise have power to examine witnesses upon oath upon any article of account given in, and alleged to be expended in building the said houses, and making the said improvements: and where any archbishop, bishop, or other ecclesiastical person, shall build any house or outhouses, or make other improvements upon their mensal lands or glebes, and shall obtain a certificate for the same in pursuance of this present act, if the said archbishop, bishop, or other ecclesiastical person, his or their executors or administrators, shall demand payment for the said houses and improvements according to the certificate granted; upon complaint of the said successor or successors of dilapidations in the said house, outhouses, or improvements, then and in such case a commission shall be granted in the manner, and with the powers aforesaid, to view and examine the said buildings and improvements; and the commissioners shall return a just report of the same to the chief governor or governors for the time being, archbishop or bishops respectively, who, upon hearing the allegations of each party, shall ascertain such sum or sums, as he or they shall judge reasonable to be allowed for such dilapidations; which said sums shall be deducted out of the sum or sums payable by the successor or successors, and shall by him or them be laid out in repairing such houses, buildings, or improvements; and such successor shall in the space of twelve months produce proper vouchers to the chief governor or governors for the time being, archbishop, or bishop of the diocese respectively, that the same has been justly laid out on such repairs.

“X. Provided always, that the above-mentioned act of the tenth year of King William, shall be and continue in full force in all points (except where the same is altered, amended, explained, and limited by this present act).

“XI. Provided also, that nothing in this present act contained shall extend, or be construed to extend, to any certificates granted, or to be granted, for houses or improvements upon mensal lands or glebes already made or begun, and which have not been certified for according to the said act.

“XII. And be it further enacted by the authority aforesaid, that where any archbishop, bishop, or dean, shall be disposed to erect one or more almshouse or almshouses upon any convenient place of his mensal lands, or other lands out of lease; such archbishop, or bishop, or such dean, with the consent of the bishop of the diocese under his episcopal seal, may set apart so much thereof (not exceeding one acre for any one almshouse) as may be sufficient for that use, and may convey the same by proper deeds to the churchwardens of the parish, and their successors for ever, to be applied to the use of an almshouse, and for no other purpose whatsoever; and that such churchwardens and their successors shall be and are hereby made persons capable to take and to hold to them and their successors any lands so granted as aforesaid, so as such deeds be registered in the respective registries of the said archbishop or bishop; which deeds so registered shall be judged a full and effectual conveyance in the law of such part of the said mensal or other lands, so long as they continue for the use of such almshouses, and no longer.

“XIII. And whereas in the several parts of this kingdom there are large tracts of bog and fenny grounds appertaining to several of the archbishops and bishops of this kingdom, which are, or are reputed to be, part of their demesne lands wholly unimproved, and of little or no advantage to the said archbishops and bishops, by reason that no leases for any certain term of years can be made thereof for the encouragement of such tenants as might undertake or attempt to drain or improve the same, and to the great detriment of the public, as well as of the said archbishops and bishops: for remedy whereof, be it enacted by the authority aforesaid,

that it shall and may be lawful to and for the several archbishops, with the consent of the chief governor or governors of this kingdom for the time being under his and their hands and seals, and to and for the several bishops, with the consent of the archbishop of the province under his hand and archiepiscopal seal, to lease or demise any parcel or parcels of such bog or fenny ground so appertaining, or reputed to appertain, to their demesne lands, for any term not exceeding sixty years, in possession, without fine, reserving the best and most improved rent that can be got for such bog or fenny grounds at the time of making such lease.

“XIV. Provided, that every such archbishop or bishop, over and above such bog and fenny grounds so to be demised, shall be possessed of three hundred acres, plantation measure, of good arable and pasture lands belonging to his dwelling-house as demesne, and shall reserve a turbary, sufficient for the use of such dwelling-house and the tenants of such demesne lands.

“XV. Provided also, that no such lease shall at any time be renewed for any longer term than the term of twenty-one years; and that at every such renewal the said land shall be set at three fourths of the full value of the said lands at the time of such renewal.

“XVI. And whereas several of the archbishops and bishops of this kingdom are seised in right of their respective archbishoprics and bishoprics of large tracts of bog or boggy and fenny grounds, not being parcel of their demesne, which have hitherto lain wholly waste and uncultivated, and have been usually demised for twenty-one years with the lands or farms of such archbishop and bishop, to which they lie contiguous and are next adjoining, as members and appurtenances thereof, without yielding any rent or profit to such archbishop or bishop, or being of any real value to the tenants that hold such lands, by reason of the shortness of the term for which the same are demised: be it enacted by the authority aforesaid, that from and after the first day of May aforesaid, it shall and may be lawful for every archbishop, with the consent of the chief governor or governors of this kingdom, and for every bishop, with the consent of the archbishop of the province, granted in the manner hereinbefore directed, to make separate and distinct leases of all such tracts of bog, or boggy and fenny grounds, which lie contiguous to any of their lands and farms, and of which they are so seised as aforesaid, to the several and respective tenants of such lands or farms, or, if out of lease, to any person or persons whatsoever for any term not exceeding sixty years, in possession, without fine, and at the highest rent that can be had for the same.

“XVII. Provided always, and be it enacted by the authority aforesaid, that if any archbishop or bishop, under colour or pretence of the powers hereby granted to demise for the term of sixty years any tract of bog, or boggy and fenny grounds, so adjacent as aforesaid to any other lands or farms belonging to the respective archbishoprics or bishoprics, shall include in such demises any of the profitable lands belonging to such farms, or shall lessen or diminish the yearly rent, or any part thereof, that now is, or at the time of making such lease of sixty years shall be, reserved upon such farm, for which such tracts of bog, or boggy and fenny grounds are contiguous and next adjoining as aforesaid, or include in any such lease, not exceeding sixty years as aforesaid, any other lands belonging to their respective sees, then and in all such cases every such lease as aforesaid shall be utterly void to all intents, constructions, and purposes whatsoever; anything herein contained to the contrary notwithstanding.

“XVIII. Provided also, and be it further enacted by the authority aforesaid, that from and after the expiration, surrender, or other determination, of such lease to be made by virtue of this present act, not exceeding sixty years as aforesaid, no other or longer lease of such boggy or fenny grounds, nor in any other manner, shall be made, than is prescribed in and by an act made in the tenth and eleventh years of the reign of King Charles the First, intituled, ‘An Act for the Preservation of the Inheritance, Rights, and Profits of Lands belonging to the Church and Persons ecclesiastical.’”

STAT. 12 GEO. 1, c. 10. [I.R.] or fenny parts of their demesnes sixty years in possession, without fine, at the best rent; if the rest of the demesne 300 acres, and sufficient turbary reserved.

Renewals not to be above twenty-one years; at three fourths of full value.

And may lease as aforesaid bog or fenny grounds, not part of demesne, to the tenants of lands contiguous; or if out of lease, to any person.

If profitable lands, &c. included, or yearly rent diminished, such lease void.

After determination of such lease, no other shall be made, except as by 10 & 11 Car. 1, c. 3.

STAT. 13 GEO.
1, c. 29.

XLIII. STAT. 13 GEORGII 1, c. 29 (1). A.D. 1726.

"An Act for allowing further Time to Persons on board the Fleet or beyond the Seas in His Majesty's Service, to qualify themselves for the legal enjoyment of Offices and Employments, and for indemnifying such Persons as have omitted to qualify themselves within the Term limited for that purpose, and for the better ascertaining such Time."

STAT. 13 GEO.
1, c. 35.

XLIV. STAT. 13 GEORGII 1, c. 35. A.D. 1726.

'An Act for establishing a certain Provision for maintaining the Curate of the Parish of St. Catharine Cree Church, alias Christ Church, London, and for repairing and supporting the Chancel of the said Parish Church.'

(1) Vide Stat. 9 Geo. 4, c. 17.

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STAT. 1 GEO.
2, c. 12. [IR.]

I. STAT. 1 GEORGII 2, c. 12(1). [IRELAND.] A.D. 1727.

"An Act for the more easy Recovery of Tithes, and other Ecclesiastical Dues of small Value."

Eng. 7 & 8
Gul. 3, c. 6.

Tithes, compositions, and ecclesiastical dues, not above 40s. yearly from one person, shall be set out and paid according to rates and customs of the parishes.

On non-payment twenty days, and complaint in writing to two justices of the county;
5 Geo. 2, c. 6, one justice where not above 5s. who shall summon the party, giving four days notice, determine, and on proof give reasonable allowance for the same, and costs not above 10s.

Said justices must have freehold of 100l. per annum, except in counties of cities or towns;

must be resident, no ways interested, not in holy orders.

"For the more easy and effectual recovery of tithes and other ecclesiastical dues of small value, where the same shall be unduly subtracted and detained, and where the same do not amount to above the yearly value of forty shillings from any one person; be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that all tithes from henceforth, where the same do not amount to above the yearly value of forty shillings from any one person, and all and singular the compositions and agreements for the same, with all offerings and other ecclesiastical dues of like value, shall be well and truly set out and paid to the several rectors, vicars, and other persons, to whom they are or shall be payable in their several parishes within this kingdom, according to the rates, customs, and prescriptions commonly used within the said parishes respectively.

"II. And be it further enacted by the authority aforesaid, that if any person or persons shall hereafter subtract, or withdraw, or any ways fail in, the payment of such tithes, offerings, ecclesiastical dues, or compositions as aforesaid, by the space of twenty days at most after demand thereof, then it shall and may be lawful for the person or persons to whom the same shall be due, to make his or their complaint in writing unto two or more of his majesty's justices of the peace of that county, county of a city, or county of a town, where the same shall grow due; and where such complaint shall be brought before two or more justices of the peace as aforesaid concerning such tithes, offerings, ecclesiastical dues or compositions as aforesaid, the said justices are hereby authorized and required to summon in writing under their hands and seals by giving four days' notice at the least to every such person or persons, against whom any complaint shall be made as aforesaid; and after his or their appearance, or upon default of such appearance the said warning or summons being proved before them upon oath, the said justices of the peace, or any two or more of them, shall proceed to hear and determine the said complaint; and upon the proof, evidences, and testimonies produced before them, shall in writing under their hands and seals adjudge the case, and give such reasonable allowance and compensation for such tithes, offerings, ecclesiastical dues, or compositions as aforesaid, so subtracted or withheld, as they shall judge to be just and reasonable; and also all such costs not exceeding ten shillings, as upon the merits of the cause shall appear to be fit: provided always that no justice of the peace shall have authority to hear and determine any of the matters aforesaid, who shall not have an estate of freehold in lands, tenements, or hereditaments within this kingdom of the yearly value of one hundred pounds, except the several and respective justices of the peace in counties of cities or counties of towns, who shall and may proceed in the execution of this statute as aforesaid within their respective jurisdictions, notwithstanding such justices of the peace shall not have such estate of freehold: provided also, that no justice of the peace shall be qualified to hear and determine any of the matters aforesaid who shall not be resident in the county, county of a city, or county of a town, where the tithes, ecclesiastical dues, or compositions in question, shall arise, or who shall be patron of the church or chapel, in right of which the said tithes, ecclesiastical dues, or compositions shall

(1) *Vide* Stat. 5 Geo. 2, c. 9. (I.) Stat. 21 & 22 Geo. 3, c. 31. (I.) Stat. 28 Geo. 3, c. 29. (I.) Stat. 33 Geo. 3, c. 25. (I.) Stat. 35 Geo. 3, c. 32. (I.) Stat. 39 Geo. 3, c. 14. (I.) Stat. 40 Geo. 3, c. 23. (I.) Stat. 54 Geo. 3, c. 68. (I.) Stat. 1 Geo. 4, c. 40. Stat. 3 Geo. 4, c. 125. Stat. 5 Geo. 4, c. 63. Stat. 7 & 8 Geo. 4, c. 60. Stat. 2 Gul. 4, c. 41. Stat. 2 & 3 Gul. 4, c. 119. Stat. 3 & 4 Gul. 4, c. 37, s. 163. Stat. 3 & 4 Gul. 4, c. 100. Stat. 5 & 6 Gul. 4, c. 74. Stat. 5 & 6 Gul. 4, c. 75. Stat. 5 & 6 Gul. 4, c. 79. Stat. 6 & 7 Gul. 4, c. 95. Stat. 6 & 7 Gul. 4, c. 99. Stat. 1 & 2 Vict. c. 109. Stat. 2 & 3 Vict. c. 3. Stat. 3 & 4 Vict. c. 13. Stat. 3 & 4 Vict. c. 101. Stat. 4 & 5 Vict. c. 5. Stat. 4 & 5 Vict. c. 37.

be demanded, or who shall be any ways interested in such tithes, ecclesiastical dues, or compositions as aforesaid, or who shall be a clergyman in holy orders.

“III. And be it further enacted by the authority aforesaid, that if any person or persons shall refuse or neglect by the space of ten days after notice given to pay or satisfy any such sum of money, as upon such complaint and proceeding shall by two or more justices of the peace be adjudged as aforesaid; in every such case the constables and churchwardens of the said parish, or one of them, shall, by warrant under the hands and seals of the said justices to them directed, distrain the goods and chattels of the party so refusing or neglecting as aforesaid; and, after detaining them three days in case the said sum so adjudged to be paid, together with reasonable charges for making and detaining the said distress, be not tendered or paid by the said party in the mean time, shall and may make public sale of the same, and pay to the party complaining so much of the money arising by such sale, as may satisfy the said sum so adjudged; retaining to themselves such reasonable charges for making and keeping the said distress, as the said justices shall think fit, and shall render the overplus (if any there be) to the owner.

“IV. Provided always, and be it enacted by authority aforesaid, that it shall and may be lawful for all justices of the peace in the examination of all matters, whereof jurisdiction is given to them by this act, to administer an oath or oaths to any witness or witnesses, where the same shall be necessary for their information, and for the better discovery of the truth.

“V. Provided also, and be it enacted by the authority aforesaid, that no complaint for or concerning any such tithes, offerings, or other ecclesiastical dues or compositions hereafter due, shall be heard and determined by any justices of the peace by virtue of this act, unless the complaint shall be made within the space of two years next after the times that the same tithes or other ecclesiastical dues and compositions did become due or payable; anything in this act contained to the contrary notwithstanding.

“VI. Provided also, and be it enacted by the authority aforesaid, that any person or persons finding him, her, or themselves aggrieved by any judgment to be given by any two justices of the peace, shall and may appeal to the next general quarter sessions to be held for that county, county of a city, or county of a town, and the justices of the peace there present, or the major part of them, shall proceed finally to hear and determine the matter, and to reverse the said judgment, if they shall see cause; and if the justices then present, or the major part of them, shall find cause to confirm the judgment given by the two first justices of the peace, they shall then decree the same by order of sessions, and shall also proceed to give such costs against the appellant, to be levied by distress and sale of the goods and chattels of the said appellant, as to them shall seem just and reasonable; and no proceedings or judgment had or to be had by virtue of this act shall be removed or superseded by any writ of *certiorari*, or other writ, out of his majesty's courts at Dublin, or any other court whatsoever, unless the title of such tithes or other ecclesiastical dues shall be in question; any law, statute, custom, or usage to the contrary notwithstanding.

“VII. Provided always, and be it enacted by the authority aforesaid, that where any person or persons, complained of for subtracting or withholding any such tithes or other dues aforesaid, shall before the justices of the peace, to whom such complaint is made, insist upon any prescription, composition, or *modus decimandi*, agreement, or title, whereby he, she, or they is or ought to be freed from payment of the said tithes or other dues in question, and deliver the same in writing to the said justices of the peace, subscribed by him, her, or them, and shall then give to the party complaining reasonable and sufficient security to the satisfaction of the said justices, to pay all such costs and damages as upon a trial at law, to be had for that purpose in any of his majesty's courts having cognizance of that matter, shall be given against him, her, or them, in case the said prescription, composition, or *modus decimandi*, shall not upon the said trial be allowed, that in that case the said justices of the peace shall forbear to give any judgment in the matter; and that then and in such case the person or persons so complaining

STAT. 1 GEO. 2, c. 12. [IR.]

On non-payment ten days after notice, constables, &c. may distrain, and sell publicly after three days, if no payment or tender; 5 Geo. 2, c. 6, distress nearest the value; and satisfy the sum and charges, restoring overplus.

Justices in the examination may administer oaths.

Complaint must be in two years.

Appeal to sessions.

Costs if judgment affirmed.

No *certiorari*, &c. unless the title in question.

If prescription, *modus*, agreement, or title, to be free from such dues, is insisted on, and delivered in writing to the justices, and subscribed, and security given to pay costs of trial if not allowed, the justices shall forbear, and com-

STAT. 1 GEO.
2, c. 12. [Ir.]

plainant may
sue in any
other court.

Judgment shall
be enrolled
next sessions.

Fee 1s.

Bar to other
remedy.

On removing
to another
county after
judgment, the
justices shall
certify it to
any justice
thereof, who
shall direct to
be levied as
aforesaid.

If complaint
vexatious,
costs not above
10s.

Double costs
to persons sued
for executing
this act, on
non-suit, &c.

If suit began
for such tithes
in Exchequer
or court eccle-
siastical, no
benefit by this
act for same
matter.

Continuance
three years.

Continued, 5 Geo. 2, c. 6, 7 Geo. 2, c. 7, 13 Geo. 2, c. 4, 15 Geo. 2, c. 6, and eleven years, &c. by 25 Geo. 2, c. 6, from 25th March, 1753.

shall and may be at liberty to prosecute such person or persons for the said subtraction in any other court or courts whatsoever, where he, she, or they might have sued before the making of this act; anything in this act to the contrary notwithstanding.

“VIII. And be it further enacted by the authority aforesaid, that every person and persons, who shall by virtue of this act obtain any judgment, or against whom any judgment shall be obtained, before any justices of the peace out of sessions for such tithes or other ecclesiastical dues or compositions, may cause or procure the said judgment to be enrolled at the next general quarter sessions to be holden for the said county, county of a city, or county of a town; and the clerk of the peace for the said counties respectively is hereby required upon tender thereof to enrol the same; and that he shall not ask or receive for the enrolment of any one judgment any fee or reward exceeding one shilling; and that the judgment so enrolled, and satisfaction made by paying the sum so adjudged, shall be a good bar to conclude the said rectors, vicars, and other persons, from any other remedy for the said tithes or other ecclesiastical dues or compositions, for which the said judgment was obtained.

“IX. And be it further enacted by the authority aforesaid, that if any person or persons, against whom any such judgment or judgments shall be had as aforesaid, shall remove out of the county, county of a city, or county of a town, after judgment had as aforesaid, and before the levying of the sum or sums thereby adjudged to be levied, the justices of the peace who made the said judgment, or one of them, shall certify the same under his or their hands and seals to any justice of the peace of such other county, city, or place, wherein the said person or persons shall be inhabitants; which said justice is hereby authorized and required by warrant under his hand and seal to be directed to the constables or churchwardens of the place, or one of them, to levy the sum or sums so adjudged to be levied as aforesaid upon the goods and chattels of such person or persons, as fully as the said other justices might have done, if he, she, or they had not removed as aforesaid; which shall be paid according to the said judgment.

“X. Provided always, and be it enacted by the authority aforesaid, that no vicar or other persons shall have remedy by this act to recover such tithes or other dues as aforesaid, which became or were due before the making of this act, unless complaint be made to the justices of the peace in form aforesaid before the twenty-fourth day of June, which shall be in the year of our Lord one thousand seven hundred and twenty-eight.

“XI. And be it declared and enacted by the authority aforesaid, that the said justices of the peace, who shall hear and determine any matters aforesaid, shall have power to give costs not exceeding ten shillings to the party prosecuted, if they shall find the complaint to be false and vexatious; which costs shall be levied in manner and form aforesaid.

“XII. Provided also, and be it further enacted by the authority aforesaid, that if any person or persons shall be sued for anything done in execution of this act, and the plaintiff in such suit shall discontinue his action, or be nonsuit, or a verdict pass against him, that then in any of the said cases such person or persons shall recover double costs.

“XIII. Provided always, that any clerk or other person or persons, who shall begin any suit for recovery of such tithes or other ecclesiastical dues, not exceeding the value of forty shillings, in his majesty's court of Exchequer, or in any the ecclesiastical courts, shall have no benefit by this act, or any clause in it, for the same matter for which he or they have so sued.

“XIV. Provided always, and be it further enacted by the authority aforesaid, that this act shall continue in force for the space of three years, and from thence to the end of the then next session of parliament, and no longer.”

II. STAT. 1 GEORGII 2, c. 15. [IRELAND.] A.D. 1727.

"An Act for rendering more effectual an Act, intituled, An Act for the better enabling of the Clergy having Cure of Souls to reside (1) upon their respective Benefices; and for the Encouragement of Protestant Schools (2) within this Kingdom of Ireland."

"Whereas by an act of parliament made in the fifteenth year of our late sovereign King Charles the First, intituled, 'An Act for endowing Churches with Glebe Lands,' it is enacted, 'that any person without licence of mortmain may endow churches having no glebe lands, or not above ten acres of glebe, with new glebe, so as the glebe of any such church so endowed do not exceed forty acres at the most:' and whereas very few churches within this kingdom having, since the time of making the said act, and in pursuance of the good design thereof, been so endowed, an act was therefore made in the eighth year of his late majesty King George the First, intituled, 'An Act for the better enabling of the Clergy having Cure of Souls to reside upon their respective Benefices; and for the Encouragement of Protestant Schools within this Kingdom of Ireland:' whereby, amongst other things, it is enacted, 'that for the more effectual promoting of the good design and intent of the said act, it shall and may be lawful to and for any person by the above-mentioned act qualified to endow, and so endowing, a church as aforesaid, to reserve unto himself, and his heirs for ever, such yearly rent out of the lands to be by him granted, and under such clauses and covenants as shall be agreed upon between such person so granting the same and the incumbent of the said church, by and with the consent of the archbishop or bishop of the diocese, and archbishop of the province, in which such church shall be situate; such consent being signified in writing under his and their archiepiscopal and episcopal seals respectively:' and whereas no person can endow any church with lands, whereof he is seised in fee-tail, without first barring such entail in due form of law, which in many cases may be expensive and inconvenient: be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in parliament assembled, and by the authority of the same, that it shall and may be lawful to and for any person and persons being seised of an estate tail in possession in any lands, by his or their deed or deeds under his or their hands and seals to grant such lands as a glebe for the incumbent or minister of any parish having actual cure of souls, in such manner, and under such restrictions, as he or they might have done by virtue of the said recited acts, or either of them, if he or they were seised of an estate in fee-simple in such lands, and all grants so to be made shall be good and effectual in law against all persons claiming under such entail, or by virtue of any remainder or reversion expectant thereupon.

"II. And be it further enacted by the authority aforesaid, that it shall and may be lawful to and for any person and persons, who by virtue of this act or of the said recited acts, or either of them, are enabled to make any grant of lands, as a glebe for the incumbent or minister of any parish having actual cure of souls, to grant lands to any person or persons, and their heirs, in trust for any curate or other ecclesiastical person, having the actual cure of souls in any appropriate or impropriate benefice, and their successors, in such manner, and under such restrictions, as by this act or by the said recited acts, or either of them, are provided concerning grants to be made of land, as a glebe for any such incumbent or minister as aforesaid.

"III. And be it further enacted by the authority aforesaid, that if a year's rent of the said lands granted or hereafter to be granted in pursuance of this act, or

STAT. 1 GEO.
2, c. 15. [IR.]

31 Geo. 2,
c. 11.
Recital of 15
Car. 1, c. 11;

and 8 Geo. 1,
c. 12, s. 1.

Tenants in tail
in possession
may grant
glebes as they
might by said
acts if seised
in fee;
3 Geo. 2, c. 12,
extended to
tenant for life,
&c.; which
shall be good
against claim-
ants under
entail, remain-
der, &c.

Persons who
may grant
glebes to in-
cumbents may
in like manner
grant lands in
trust for curates
and successors.

If a year's
rent of lands

- (1) *Reside*.—Vide Stat. 5 Geo. 4, c. 91. Stat. 31 Geo. 3, c. 19. (I.) Stat. 46 Geo. 3, Stat. 7 & 8 Geo. 4, c. 43. Stat. 10 Geo. 4, c. 122. Stat. 50 Geo. 3, c. 33. Stat. 53 Geo. c. 58. Stat. 2 & 3 Gul. 4, c. 67. Stat. 3 c. 107. Stat. 3 Geo. 4, c. 79. Stat. 7 Geo. 4, c. 72. Stat. 7 & 8 Geo. 4, c. 43. Stat. 10 Geo. 4, c. 58. Stat. 2 & 3 Gul. 4, c. 67. Stat. 3 & 4 Gul. 4, c. 37, s. 65. Stat. 6 & 7 Gul. 4, c. 70. Stat. 6 & 7 Gul. 4, c. 116, s. 96. Stat. 4 & 5 Vict. c. 38.
- (2) *Schools*.—Vide Stat. 23 Geo. 2, c. 11. (I.) Stat. 29 Geo. 2, c. 7. (I.) Stat. 13 & 14 Geo. 3, c. 27. (I.) Stat. 21 & 22 Geo. 3, c. 28. (I.) Stat. 23 & 24 Geo. 3, c. 49. (I.)

STAT. 1 GEO.
2, c. 15. [1R.]

so granted is in arrear twenty-one days, the bishop on application to him shall summon the person, and if he proves not payment, sequester the benefice or curacy, till payment thereof, and costs ascertained by the bishop.

If not paid at his death, &c. his successor shall pay, or a new sequestration. Successor may recover from his predecessor's executors, &c. by action of debt; and that successor may not be charged with more than one year, such ecclesiastical person shall annually at visitation exhibit and prove acquittance in full; or the benefice sequestered.

On neglect to improve, as covenanted in such grant, bishop may sequester so much, and cause it to be done.

If such person has no other benefice, he shall not demise the lands granted for glebe, but occupy himself. If he has another, the curate in his absence shall enjoy

of the said recited acts, or either of them, shall be behind and unpaid by the space of twenty-one days, the person or persons to whom the same shall be due and payable, may apply to the archbishop or bishop of the diocese, who shall summon the party before him; and if such rector, vicar, curate, or other ecclesiastical person, who shall be so in arrear, and so summoned as aforesaid, shall not make it appear by the oath of one or more witness or witnesses, that such rent hath been paid (which oath the said archbishop or bishop is hereby empowered to administer) the archbishop or bishop shall forthwith sequester the profits of such benefice or curacy, where such lands are so granted for a glebe as aforesaid, until the said arrear of rent, and all costs and charges attending such sequestration, to be ascertained by the archbishop or bishop of the diocese, shall be fully paid and discharged; and if such arrear of rent, or any part thereof, and the costs and charges attending such sequestration shall remain unpaid, notwithstanding such sequestration at the death, cession, or removal of such rector, vicar, curate, or other ecclesiastical person, the same shall be paid by the succeeding rector, vicar, curate, or other ecclesiastical person; and if he shall neglect or refuse to pay the same, and every part thereof, for the space of one calendar month next after his admission into such benefice, the archbishop or bishop of the diocese upon complaint and proof thereof on oath, which the said archbishop or bishop is hereby empowered to administer, shall and may grant a new sequestration, till the same and every part thereof be fully paid and discharged: and such succeeding rector, vicar, curate, or other ecclesiastical person, so paying such arrears of rent, costs, and charges, shall and may recover the same from his predecessor, his executors, or administrators, by action of debt, in any of his majesty's courts of record in Dublin, in which no essoin, wager of law, protection, or more than one imparlance shall be allowed: and to the intent that such successor may not be charged with more than one whole year's rent, reserved by such grant, for such arrears, such rector, vicar, curate, or other ecclesiastical person, shall annually at the ordinary visitation, to be held for such diocese, exhibit, or cause to be exhibited, unto the archbishop or bishop of the said diocese, or to his official holding the said visitation, a sufficient acquittance in full for all rents and arrears of rent due out of the premises the last rent-day before the said visitation, and prove the perfection of such acquittance by the oath of one witness, which oath the said archbishop, bishop, or official, is hereby empowered to administer; and in case that such acquittance shall not be so exhibited and proved, then such archbishop, bishop, or official, is hereby empowered and required to sequester the profits of such benefice, where such lands are so granted for a glebe as aforesaid, and the same to keep so sequestered, until out of the issues and profits thereof he shall be enabled to pay all rents and arrears of rent due out of the premises at the rent-day aforesaid, together with the costs and charges of such sequestration; which said rent and arrears of rent he is required forthwith to pay and discharge.

"IV. And be it further enacted by the authority aforesaid, that if such rector, vicar, curate, or other ecclesiastical person, to whom or for whose use such grant shall be made as aforesaid, or his or their successor or successors, shall neglect or refuse to build or make such improvements as shall be covenanted in such deed of grant, within the time limited therein for the doing thereof, the archbishop or bishop of the diocese on information thereof by complaint or otherwise shall and may sequester so much of the profits of such benefice, and for so long time as he shall judge necessary for the making and completing such building and improvements, and therewith shall cause the same to be so made and completed; and if any rector, vicar, curate, or other ecclesiastical person, to whom, or for whose use, such grant shall be made, his or their successor or successors, shall have no other benefice than that to which such lands, so to be granted for a glebe as aforesaid, do belong; such rector, vicar, curate, or other ecclesiastical person, his or their successor or successors, shall not demise or set the said lands so granted, or any part thereof, to any person or persons whatsoever, but shall himself hold and occupy the said lands and every part thereof; and if such rector, vicar, curate, or other ecclesiastical person, shall happen to have another benefice, then and in such case the curate officiating in his absence shall enjoy the full benefit of such lands so

granted for a glebe, and every part thereof, with the improvements thereon, under the rent reserved, and shall hold and occupy the same himself during the absence of such rector, vicar, curate, or other ecclesiastical person, over and above his stipend or allowance appointed, or to be appointed, for such curate by the archbishop or bishop of the diocese.

“V. And be it further enacted by the authority aforesaid, that every rector, vicar, curate, or other ecclesiastical person whatsoever, who shall hereafter be admitted into any ecclesiastical benefice of the yearly value of one hundred and fifty pounds or upwards, having no house fit for the residence of the incumbent thereof, and being endowed with glebe land lying near his parish church, and being fit and convenient for building, shall within a time certain to be limited and appointed by the archbishop or bishop of the diocese, after he has been two years in possession of such benefice, build and improve upon such glebe land by erecting one dwelling-house of stone and lime, or brick and lime, and timbered in the roof and in the floors of such dwelling-house with oak or fir timber, (bog oak excepted,) and covered with slates, shingles, or tiles; and in case any such rector or vicar shall neglect or refuse to make such building and improvement within the time so limited as aforesaid, it shall and may be lawful to and for the bishop of the diocese, where any such benefice is situate, with the consent of the archbishop of the province first had under his archiepiscopal seal, or, if such benefice be within the diocese of an archbishop, then it shall and may be lawful to and for such archbishop, with the consent of the chief governor or governors of this kingdom for the time being first had under his or their respective hands and seals, to sequester a fourth part of the profits of such benefice, till a sum not exceeding a year and a half's income of such benefice be received; which the archbishop or bishop shall cause to be laid out in making such building and improvement upon such glebe land as aforesaid.

quester one fourth till a year and a half received, and lay

“VI. And be it further enacted by the authority aforesaid, that it shall and may be lawful to and for every archbishop, bishop, dean, dean and chapter, archdeacon, dignitary, or prebendary, having land to them as such respectively belonging near any church, and convenient for a glebe for the said church, not already endowed with ten acres of glebe, (that is to say,) every archbishop or bishop, with the consent of his dean and chapter respectively signified by certificate in writing under their common seal, and, where there is no dean and chapter, with the consent of the archdeacon and six beneficed clergymen of his diocese signified in writing under their hands and seals, and every dean, dean and chapter, archdeacon, dignitary, or prebendary, by and with the consent of the archbishop or bishop of the diocese, signified by certificate in writing under their archiepiscopal or episcopal seal respectively, to grant any quantity thereof, not exceeding twenty acres, plantation measure, by any deed or deeds under his or their hands and seals, to be enrolled in the high court of Chancery of this kingdom, to any person or persons, and their heirs, in trust for any such resident curate or curates officiating in any appropriate or inappropriate benefice, as is, are, or shall be nominated, appointed, licensed, or admitted for the cure of souls in any such parish or parishes in this kingdom, and their successors, at the moiety of the present yearly rent, or for any greater sum; which rent shall be paid by such resident curate having cure of souls, and his successors, to such archbishop, bishop, dean, dean and chapter, archdeacon, dignitary, or prebendary, and his and their respective successors for ever, by four quarterly equal portions; and, in case of non-payment, that it shall and may be lawful to and for the said archbishop, bishop, dean, dean and chapter, archdeacon, dignitary, or prebendary, his or their successors, to distrain and sue for the same, and all arrears thereof.

“VII. And whereas by an act passed in the second year of the reign of her late majesty Queen Anne, intituled, ‘An Act for the Exchange of Glebes belonging to Churches in this Kingdom,’ it is amongst other things enacted; that it shall and may be lawful to and for every archbishop, bishop, dean, dignitary, or prebendary, having land belonging to their bishopric, deanery, dignity, or prebend, near

STAT. 1 GEO. 2, c. 15. [I.R.] said glebe, and occupy himself, besides his stipend.

If benefice of 150*l.* yearly, and no house fit for residence, endowed with glebe near the church and fit for building, he shall, after two years' possession, in a limited time build a dwelling house of stone, &c. timbered with oak or fir, and slated, &c. 31 Geo. 2, c. 11.

Or the bishop, with consent of archbishop, or archbishop, with consent of chief governors, may set it out thereon.

Bishops, dignitaries, &c. having land as such, near and convenient for glebe for a church not endowed with ten acres, may, with consent grant twenty acres by deed enrolled in Chancery, in trust for resident curate,

at a moiety of the present rent or above, payable quarterly.

Recital of 2 Ann. c. 10, s. 4.

STAT. 1 GEO.
2, c. 15. [1R.]

any church, and convenient for a glebe for the said church, not already endowed with twenty acres of glebe, by and with the advice and consent of his respective dean and chapter, to grant any quantity thereof, not exceeding twenty acres, plantation measure, to the rector, vicar, or other ecclesiastical person having the actual cure of souls, and their successors, at the moiety of the present yearly rent, or for any greater sum; which rent shall be paid by such rectors or vicars, or other ecclesiastical persons having the actual cure of souls, to the said bishop, dean, dignitary, or prebendary, and their respective successors for ever, by four equal portions: (that is to say,) at the feast of the Annunciation of the blessed Virgin Mary, the feast of Saint John the Baptist, the feast of Saint Michael the Archangel, and of the Nativity of our blessed Lord and Saviour; and in case of non-payment, that it shall be lawful for the said bishop, dean, dignitary, or prebendary, his or their successors, to distrain or sue for the same, and all arrears thereof; and that the said twenty acres or lesser quantity of land, so granted as aforesaid, shall be reputed and taken as the glebe of the church, to whose incumbent and successors it is granted; which act was to be in force for one and twenty years, and by an act made in the tenth year of the reign of his late majesty King George the First, intituled, 'An Act for continuing several temporary Statutes made in this Kingdom, and now near expiring,' is further continued to the twenty-first day of September, which shall be in the year of our Lord one thousand seven hundred and thirty-one, and from thence to the end of the then next session of parliament: and whereas several deans and chapters, as bodies politic, are seised of several lands, which may be convenient for glebe: be it further enacted by the authority aforesaid, that it shall and may be lawful to and for all deans and chapters, having lands belonging to them as a body politic near any church, and convenient for a glebe for the said church, not already endowed with ten acres of glebe, by and with the consent of the archbishop or bishop of the diocese, to which such dean and chapter belong, at any time during the continuance of the said act made in the second year of the reign of her late majesty Queen Anne, and continued as aforesaid, to grant any quantity thereof, not exceeding twenty acres, plantation measure, to the rector or vicar, and their successors, or to any person or persons, and his and their heirs, in trust for any such curate, or other ecclesiastical person having the actual cure of souls, and their successors, at such rent, so payable, and with like power to recover the same, as in and by the said act is provided for bishops, deans, dignitaries, and prebendaries; and that the said twenty acres or lesser quantity of land, so granted by such dean and chapter as aforesaid, shall be reputed and taken as the glebe of the incumbent of the said parish church, and of his successors, to whom it is granted.

Continued by
10 Geo. 1, c. 4.

Deans and chapters having lands as a body politic, near and convenient for glebe for a church not endowed with ten acres, may, with consent of the bishop, (during continuance of 2 Ann. c. 10,) grant twenty acres or less in trust for the person having actual cure, 31 Geo. 2, c. 11, at such rent, &c. as by said act; which shall be the glebe.

9 Geo. 2, c. 13.
15 Geo. 2, c. 5.
17 Geo. 2, c. 8.

On certificate of building and improving on glebes, as by 12 Geo. 1, c. 10, three fourths shall be received from successor, who shall receive two thirds from the next, who shall receive from his successor one half: paid and recovered as by 10 Gul. 3, c. 6.

"VIII. And be it further enacted by the authority aforesaid, that every rector, vicar, curate, or other ecclesiastical person, who shall build or improve on any land granted for a glebe in pursuance of this act, for which a certificate shall be obtained, as is appointed by an act passed in the twelfth year of the reign of his late majesty King George, intituled, 'An Act to amend and explain an Act, intituled, "An Act to encourage building of Houses, and making other Improvements on Church Lands, and to prevent Dilapidations;"' such rector, vicar, curate, or other ecclesiastical person, his executors or administrators, shall have and receive from his next and immediate successor three fourth parts of the sum or sums so certified; and such successor, having paid the three fourth parts of the sum or sums so certified as aforesaid, or his executors or administrators respectively, shall and may receive two thirds thereof; that is, one moiety of the sum first certified from his next successor; which successor, having paid the said moiety of the said first sum, or his executors or administrators, shall and may receive from his next successor one half thereof; that is, one fourth part of the sum or sums in the first certificate mentioned; all which sums so to be paid and received shall and may be paid and recovered within the times, and in the same manner, as the sums to be paid and recovered by an act passed in the tenth year of King William the Third of glorious memory, intituled, 'An Act to encourage building of Houses, and making other Improvements on Church Lands, and to prevent Dilapidations,' are directed

and appointed to be paid and recovered; anything in the said mentioned act contained to the contrary notwithstanding.

“IX. And whereas few buildings or houses convenient for the residence of schoolmasters have been erected on the lands, granted by King Charles the First to James then Lord Archbishop of Armagh, and his successors for ever, in trust for the masters of several free schools for the time being, and all or most of those which have been erected are become ruinous and decayed, and are likely to continue so, for want of due encouragement for the masters of the said several free schools to improve, build, and repair such houses and buildings: be it therefore further enacted by the authority aforesaid, that it shall and may be lawful to and for the Archbishop of Armagh for the time being to appoint by certificate under his hand and archiepiscopal seal what part of the lands belonging to any such free school is fit and convenient for the residence of the master and his successors; which from thenceforth shall be deemed and taken to be part of the demesne of such free school; and that all improvements, buildings, additions, and repairs, on any lands so certified, shall be to all intents and purposes, under the same appointments, restrictions, and limitations, as improvements, buildings, additions, and repairs, made by ecclesiastical persons on their glebes are under, by virtue of the said act made in the tenth year of the reign of King William the Third of glorious memory, intituled, ‘An Act to encourage building of Houses, and making other Improvements on Church Lands, and to prevent Dilapidations;’ and also by virtue of the said act made in the twelfth year of his late majesty King George the First, intituled, ‘An Act to amend and explain An Act, intituled, “An Act to encourage building of Houses, and making other Improvements on Church Lands, and to prevent Dilapidations:”’ and that such master and masters, and his and their successor and successors, and their respective executors and administrators, shall and are hereby empowered and entitled to receive from his and their respective immediate successor and successors, and his and their respective executors and administrators, such proportion and proportions of the sum and sums by him and them respectively expended in and paid for any improvements, buildings, additions, or repairs on the land so certified, and in such manner as ecclesiastical persons and their successors are by virtue of the afore-mentioned acts, or either of them, enabled and entitled to receive from their next immediate successors for improvements made by them on their glebes.

“X. And because it happens, that the lands belonging to several of such free schools are at a great distance from the place, where the free school is erected and kept, and that several of such free schools are erected on so small a quantity of land, that there is no convenient residence for the schoolmasters: be it therefore further enacted by the authority aforesaid, that it shall and may be lawful to and for the several schoolmasters of such free schools by and with the consent and approbation of the Archbishop of Armagh for the time being, certified under his hand and archiepiscopal seal, to exchange with any archbishop, bishop, or other person, lands belonging to the free school, which lie inconvenient and at a distance from it, for such quantity of lands of equal value, worth, and purchase, lying near and convenient to the school, as the Archbishop of Armagh for the time being shall judge fit and proper for a demesne for the master of such free school, in such manner and form as by the said act made in the second year of the reign of Queen Anne, intituled, ‘An Act for the Exchange of Glebes belonging to Churches in this Kingdom,’ is directed.

“XI. Provided, that no rector, vicar, curate, or other ecclesiastical person or schoolmaster, shall be obliged to pay his predecessor, or the executors or administrators of his predecessor, by virtue of any certificate or certificates for building and improving such glebe or demesne, granted in pursuance of this act, any more or greater sums than the clear value of one year and a half’s income so limited as aforesaid.

“XII. And whereas within cities and towns corporate several incumbents of parishes have their manse-houses inconveniently situated for the residence of the incumbents of such respective parishes, and have likewise other lots of ground

STAT. 1 GEO.
2, c. 15. [IR.]

Want of houses on lands granted by King Charles the First for masters of free schools.
5 Geo. 2, c. 4.

Archbishop of Armagh may, by certificate, appoint part of the lands for a master, which shall be deemed the demesne. Improvements thereon under same limitations as by ecclesiastical persons, by 10 Gul. 3, c. 6, and 12 Geo. 1, c. 10;

and successors shall pay the like proportion.

Masters, with consent of archbishop, may exchange lands inconvenient, and at a distance, for lands of equal value, as by archbishop thought fit for demesne, as by 2 Ann. c. 10.

Successors not obliged to pay more for improvements of predecessors than one year and a half’s income.

STAT. 1 GEO.
2, c. 15. [IR.]

Incumbents in cities, &c. may demise for sixty-one years, without fine, at improved rent, not in *futuro*. The rent reserved to them and successors; on certificate of archbishop and bishop of being above what sufficient for residence, and registered. Incumbent may, without certificate, renew forty years, not lessening the rent, and registering it.

belonging to them, which would be more convenient for that purpose: and whereas some such incumbents have belonging to them a greater quantity of ground than is necessary for the sufficient accommodation of the respective incumbents; by means whereof large quantities of ground in many cities and towns corporate remain unimproved, to the great prejudice not only of such incumbents, but of the cities and towns corporate where such grounds do lie: for remedy whereof, be it further enacted by the authority aforesaid, that from and after the first day of May, one thousand seven hundred and twenty-eight, it shall and may be lawful to and for every rector, vicar, or other incumbent of any parish in any city or town corporate, with the consent of the patron of such parish, and ordinary of the diocese, to let or demise any house or ground to him belonging in any city or town corporate for any term of years not exceeding sixty-one years, without taking anything by way of fine, at the full improved rent, so as such lease be not made to commence in *futuro*, and so as in such lease the rent be reserved and made payable to such incumbent and his successors, and so as every such house or lot of ground so let be certified by the archbishop of the province, and the bishop of the diocese, under their archiepiscopal and episcopal seals, to be over and above what is sufficient for the convenient residence of the respective incumbent, and so as such certificate so given, and such lease so made, be entered in the registry of the diocese.

“XIII. And be it further enacted by the authority aforesaid, that where any such lease shall be made and entered as aforesaid, it shall and may be lawful to and for every such incumbent for the time being, to renew such lease for any term of years not exceeding forty years, so as the former rent be not lessened, without any new certificate from the archbishop or the bishop.

“XIV. Provided always, that such renewed lease be entered in the registry of the diocese, where such house or ground shall lie.”

STAT. 1 GEO.
2, c. 18. [IR.]

III. STAT. 1 GEORGII 2, c. 18 (1). [IRELAND.] A.D. 1727.

“An Act to enable Archbishops, Bishops, and other Ecclesiastical Persons and Corporations, to grant their Patronage, or Right of Presentation, or Nomination to Small Livings, to such Persons as shall augment the same; and also to enable Archbishops and Bishops, and other Ecclesiastical Persons therein mentioned, to make Agreements with their Tenants for the inclosing and improving their Woods.”

Many vicarages, &c. of too small value.

Mischiefs thereof.

Bishops, &c. disposed to grant the patronage to such as shall augment, but by law disabled.

Bishops shall inquire of the

“Whereas there are many parsonages, vicarages, and curacies in this kingdom of so small a value, that the income thereof is not sufficient for the support of a resident minister to officiate and serve therein; by reason whereof many papists who might be converted to the church of Ireland as by law established, for want of such fit and able persons to instruct them, not only continue in their errors, and educate their children in the same, but are daily making converts thereto, and there is too often seen in such places a great neglect of all religious worship and true christian piety, to the great dishonour of God and religion: and whereas the archbishops, bishops, and other ecclesiastical persons and corporations in this kingdom, are in right of their archbishoprics, bishoprics, and churches, intitled to the patronage or right of presentation and nomination to many such small benefices and cures, and for preventing the like evil consequences for the future are disposed to grant the same to such good and pious persons, as shall augment such small benefices and cures with a competent provision for the support of the person officiating therein, but are by law disabled to make such grants: and whereas it is necessary, that the clear improved yearly value of such small benefices and curacies, which by this act are intended to be augmented, should be ascertained as exactly as may be: be it enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the

same, that the respective archbishops and bishops of every diocese shall be and are hereby empowered and required from time to time, as they shall see occasion, as well by the oath of two or more credible witnesses, (which they, or others commissioned by them under their hands and seals are hereby empowered to administer,) as by all other lawful ways and means, to inform themselves of the clear improved yearly value of all and every benefice, living with cure of souls, and curacies, which are commonly reputed not to exceed thirty pounds per annum, and of the true improved clear yearly value of the profits accruing to the parson, vicar, curate, or minister officiating therein, within their several dioceses, and how such yearly values arise, with the other circumstances thereof, and the same, or such of them whereof they have lawfully informed themselves, from time to time to certify under their respective hands and episcopal seals to the trustees and commissioners of the first fruits payable out of ecclesiastical benefices, mentioned and incorporated in and by an act made in the tenth year of the reign of his late majesty King George the First, and intituled, 'An Act for amending an Act, intituled, An Act for confirming the several Grants made by her late Majesty of the First-Fruits and Twentieth Parts, payable out of the Ecclesiastical Benefices in this Kingdom; and also for giving the Archbishops and other Ecclesiastical Persons four years' time for the payment of First-Fruits; and for incorporating the Trustees and Commissioners of the said First-Fruits:' which said trustees and commissioners of the first-fruits are hereby required with all convenient speed to enter the said certificates in a book, to be provided and kept by them for that purpose; and the said entries being so made, attested, and subscribed by the quorum of the said commissioners in the said act mentioned and appointed, or more of them, shall be deemed and taken as records, and evidence of the true improved yearly value of such benefice, living, or curacy; and no other or different value shall be admitted or allowed to be proved in any suit at law or in equity, touching any grant or augmentation, which shall be after made thereof by virtue or in pursuance of this present act.

"II. And be it further enacted by the authority aforesaid, that after such certificate shall be returned so approved of, and entered and subscribed by the quorum of the said trustees or commissioners, or more of them as aforesaid, it shall and may be lawful to and for any person or persons, bodies politic or corporate, to endow or augment any living, benefice, or curacy, whereof the advowson's right of patronage, presentation, or nomination, shall belong to any archbishop, bishop, dean, or dean and chapter respectively, which shall in manner aforesaid appear to be under or of the clear yearly value of thirty pounds and not more, with any lands, tithes, tenements, or hereditaments, of the clear yearly value of thirty pounds or more: provided such augmentation shall not exceed the sum of seventy pounds per annum; and from and after such endowment and augmentation, the person or persons who shall so endow and augment the same, in case the same be made by and with the consent and approbation of the archbishop, bishop, dean, or dean and chapter respectively, who shall be at the time of such endowment or augmentation seised of or entitled to the advowson, right of patronage, presentation, or nomination of or to such endowed or augmented benefice, living, or curacy, and not otherwise, by settling and conveying lands, tithes, tenements, or hereditaments, to and upon the rector, vicar, or curate of such benefice, living, or curacy, for the use of him and his successors in the said augmented benefice, living, or curacy, shall for ever after be deemed and taken to be true and only patron or patrons of such augmented benefice, living, or curacy; and from and after such endowment and augmentation shall be made as aforesaid, it shall and may be lawful to and for all and every the archbishops, bishops, deans, and deans and chapters, who are or shall be, at or before such endowment or augmentation shall be made as aforesaid, seised of or intituled unto the advowson, right of patronage, presentation, or nomination of or to such endowed or augmented benefice, living, or curacy, and they are hereby respectively authorized and required, to convey and make over the advowson, right of patronage, presentation, or nomination of and to such endowed or augmented benefice, living, or curacy, to the person or persons endowing or augmenting the

STAT. 1 GEO.
2, c. 18. [I.R.]

clear improved yearly value of benefices, &c. reputed not above 30*l.* per annum; and of the profits accruing to the parson, with the circumstances; and certify to trustees of first-fruits;

10 Geo. 1, c. 7,

to be entered by them, attested, &c.

which shall be evidence of the true improved value;

after which, any person may augment benefices, &c. whereof advowsons belong to bishops, deans, or dean and chapter, so appearing to be under or of 30*l.* per annum. Augmentation not to exceed 70*l.* per annum. Person augmenting by conveying lands, tithes, &c. to use of the incumbent and his successors, if with consent of bishop, &c. entitled to the advowson; and the bishop, &c. shall convey the right to him and his heirs.

STAT. 1 GEO.
2, c. 18. [IR.]

Several joining
in augmenta-
tion shall pre-
sent by turns,
as in the deed
agreed upon.

Any one may
allot one acre,
not less than
two miles from
the mother
church, for a
chapel,
first settling
lands, &c. of
30*l.* per annum,
and not less
than 50*l.* for
the curate and
his successors.
Several persons
joining therein,
shall nominate
by turns, as in
the deed.

Founders of
such chapels
patrons there-
of,

named in deed
of endowment.

Churches,
curacies, or
chapels, so
augmented or
endowed, per-
petual cures
and benefices;
and the mini-
sters, bodies
politic and cor-
porate, with
perpetual suc-
cession, and
legal capacity,
to take in per-
petuity.

Persons having

same in manner aforesaid, his and their heirs and assigns for ever; any law or statute to the contrary notwithstanding.

“III. And be it further enacted by the authority aforesaid, that where two or more persons shall join in or contribute to the endowment or augmentation of any such benefice, living, or curacy in manner aforesaid, such persons, their heirs, and assigns, respectively, shall present or nominate to such benefice, living, or curacy, by them endowed and augmented as aforesaid, by turns, in such manner as in the deed of such augmentation or endowment shall be mentioned.

“IV. And whereas many pious and well-disposed persons might for the honour of God, and for the sake of his holy religion, be induced to erect and build chapels more commodious for themselves and families in large parishes, and to endow the same with a competent provision for a minister or curate to officiate therein, in case they were by law enabled so to do, and were to have the patronage, right of presentation, or nomination of or to such chapel, when built and endowed: be it enacted by the authority aforesaid, that it shall and may be lawful to and for any person or persons to allot and set apart any land not exceeding one plantation acre, and not less than two measured miles distant from the mother church of the said parish; on which said land so set apart it shall and may be lawful to and for any person or persons, bodies politic and corporate, to erect and build a chapel, in which the liturgy and rites of the church of Ireland as by law established are to be used and observed, who shall first settle and assure lands, tenements, tithes, or hereditaments, in fee simple, of the clear yearly value of thirty pounds per annum, or more, and not exceeding fifty pounds per annum, for a provision or maintenance for a curate to officiate in such chapel, and his successors for ever, as a perpetual endowment of such chapel.

“V. And be it further enacted by the authority aforesaid, that where two or more persons shall join in or contribute to the erecting and endowment of any chapel in pursuance of this act, such persons, their heirs, and assigns, respectively, shall nominate to such chapel, erected and endowed as aforesaid, by turns, in such manner and order as in the deed of such endowment shall be settled.

“VI. And be it further enacted by the authority aforesaid, that all and every person and persons, bodies politic and corporate, who shall so erect and endow a chapel as aforesaid, shall from the time of such endowment be, and be esteemed in law, to be, true patron or patrons of such chapel, and the right of presentation or nomination thereto shall be, and is hereby from thenceforth for ever after vested in such person or person, bodies politic or corporate, their heirs, and successors, who shall build and endow the same as aforesaid; and that such endowed chapel shall be for ever after called and known by such name, as the founder of such chapel shall in and by his deed of endowment direct and appoint.

“VII. And whereas not only parsons and vicars, who come in by presentation or collation, institution or induction, but curates officiating in any church or chapel, where the liturgy and rites of the church of Ireland as by law established are or shall be used, will be entitled to have the benefit of such augmentations or endowments, some of which are not corporations, nor have a legal succession, and therefore are incapable of taking a grant or conveyance of such perpetual augmentations or endowments as aforesaid: be it enacted by the authority aforesaid, that all churches, curacies, or chapels, which shall at any time hereafter be augmented, erected, and endowed, by virtue of this act, shall be and are hereby declared and established to be, from the time of such augmentation or endowment, perpetual cures and benefices; and the ministers duly admitted and instituted, or nominated and licensed thereunto, and their successors respectively, shall be, and shall be esteemed in law, bodies politic and corporate, and shall have perpetual succession by such name and names, as in the grant of such augmentation or endowment shall be mentioned, and shall have a legal capacity, and are hereby enabled, to take in perpetuity to them and their successors all such lands, tenements, tithes, and hereditaments, as shall be granted unto them respectively by virtue of this act; any law or statute to the contrary notwithstanding.

“VIII. And be it further enacted by the authority aforesaid, that from and

after the first day of May, one thousand seven hundred and twenty eight, it shall and may be lawful to and for all and every person and persons, bodies politic or corporate, their heirs, or successors, having any estate of inheritance in fee-simple in their own right, or in right of their corporations or churches, of or in any lands, tithes, tenements, or hereditaments, at his, her, or their will and pleasure, by deed indented under seal to give, grant, and convey the same to any parson, vicar, or curate officiating in any such church or chapel, not exceeding the clear yearly value of seventy or fifty pounds per annum respectively as aforesaid, and his successors for ever, as a perpetual augmentation or endowment of such church or chapel, any law or statute to the contrary notwithstanding.

“IX. And to the end that the said archbishops, bishops, and other ecclesiastical persons and corporations aforesaid, may at all times be capable of granting their patronages, and right of presentation, or nomination to such small churches and chapels as aforesaid, and such churches and chapels be always capable of such augmentation and endowment; be it further enacted by the authority aforesaid, that all grants and conveyances, hereafter to be made by virtue of this act of the patronage, or right of presentation, or nomination to any such church or chapel, or of any lands, tenements, tithes, or hereditaments, for the augmentation, erection, or endowment, of any such church or chapel as aforesaid, shall be good and effectual in law to all intents and purposes, whether such church or chapel be vacant, or full of an incumbent, minister, or curate, at the time of such grant or conveyance.

“X. Provided always, that no deeds of grant for any augmentation, erection, or endowment, to be made in pursuance of this act, shall be good and effectual in law without the consent of the said trustees or commissioners of the first-fruits testified under their common seal, and unless such deeds be enrolled within six months from the date thereof, in his majesty’s court of Chancery in this kingdom.

“XI. And whereas in many places it would be in the power of the impropiator, parson, or vicar, to withdraw the allowance now or heretofore paid to the curate or minister serving the cure, or, in case of a chapelry, the incumbent of the mother church might refuse to employ a curate, or permit a minister duly nominated or licensed to officiate in such new erected or endowed chapel, and might officiate there himself, and take the benefit of the augmentation or endowment, though his living be not intended to have the benefit of such augmentation, and the design of such augmentation would thereby be defeated: for the better securing all augmentations and endowments which shall be made or given to any benefice, living, curacy, or chapel, in pursuance of this act; be it further enacted by the authority aforesaid, that the impropiators or patrons of any augmented churches or curacies for the time being, and their heirs and successors respectively, and the rectors and vicars of the mother-church, to which any such augmented or endowed curacy or chapel doth appertain, and their successors, shall be and are hereby utterly excluded from having and receiving, directly or indirectly, any profit or benefit by such augmentation or endowment, and shall from time to time, and at all times from and after such augmentation, allow to the ministers officiating in any such augmented or endowed church or chapel respectively such annual and other pensions, salaries, and allowances, which by ancient custom or otherwise of right, and not of bounty, ought to be by them respectively paid and allowed, and which they might by due course of law, before the making of this act, have been compelled to pay or allow to the respective ministers officiating therein.

“XII. Provided always, that no such rector or vicar of such mother-church, or any other ecclesiastical person or persons having cure of souls within the parish or place where such augmented or endowed church or chapel shall be situate, or his or their successors, shall hereby be divested or discharged from the same; but the cure of souls, with all other parochial rights and duties, (such augmentation or endowment to the augmented or endowed church or chapel as aforesaid only excepted,) shall hereafter be and remain in the same state, plight, and manner, as before the making of this act, and as if this act had not been made.

“XIII. And be it further enacted by the authority aforesaid, that all churches

STAT. 1 GEO.
2, c. 18. [IR.]

fee-simple, may convey to parson or curate, not exceeding 70l. or 50l. per annum respectively, as perpetual augmentation.

Conveyances good, whether the church or chapel vacant or full at the time;

but not good without consent of trustees of first fruits; and the deeds enrolled in Chancery in six months.

That design of such augmentation may not be defeated,

Impropiators or patrons of augmented churches or curacies, and the rectors or vicars of the mother-churches, excluded from any benefit by the augmentation; and shall allow to ministers officiating such annual salaries, as they ought by right, not of bounty.

Cure of souls, with all parochial rights and duties, (augmentation excepted,) shall remain as before.

Churches and

STAT. 1 GEO.
2, c. 18. [I.R.]
chapels aug-
mented subject
to visitation ;

and if void six
months with-
out nomina-
tion, the right
lapses, as in
presentative
livings ;

and in like
manner grant-
ed, recovered,
or determined ;
and void by
absence with-
out licence
sixty-one days
in a year ;

but no lapse
thereby till six
months after
notice in writ-
ing by the or-
dinary.

Nomination by
patron before
advantage
taken of lapse,
as effectual as
if in six
months,
though lapsed
to the crown.

Bishops, eccle-
siastical per-
sons, govern-
ors of colleges
or hospitals,
may contract
with tenants to
allow for in-
closing and pre-
serving woods,
not being
timber ;
not exceeding
a third of the
money by sale ;
such contract
binding on
successors.

If lease runs
out before ten-
ant receives

and chapels augmented and endowed by virtue of the powers given by this act, and all ministers and curates officiating therein, shall be subject to the visitation and jurisdiction of the archbishop or bishop of the diocese wherein such churches or chapels are, to all intents and purposes of law whatsoever.

“XIV. And for continuing the succession in such augmented cures hereby made perpetual cures and benefices, and that the same may be duly and constantly served ; be it enacted by the authority aforesaid, that in case such augmented or endowed cures be suffered to remain void by the space of six months, without any nomination within that time of a fit person to serve the same, by the person or persons having a right of nomination thereunto, to the archbishop, bishop, or other ordinary, within that time to be licensed for that purpose, the same shall lapse to the archbishop, bishop, or other ordinary, and from him to the metropolitan, and from the metropolitan to the crown, according to the course of law used in case of presentative livings and benefices ; and the right of nomination of such augmented or endowed cure may be granted or recovered, and the incumbency thereof may and shall cease and be determined, in like manner, and by the like methods, as the presentation to or incumbency in any vicarage presentative may now be respectively granted, recovered, and determined ; and moreover, in case the incumbent or minister of any such augmented or endowed church or chapel shall be absent from his cure for above the space of sixty-one days in any one year without licence of the archbishop, bishop, or other ordinary first obtained for that purpose, such church or chapel shall from thenceforth be, and be esteemed in law, actually void, and such incumbent or minister be for ever after disabled to hold and enjoy the same.

“XV. Provided always, that no lapse shall incur, in case of such church or chapel becoming void by want of such residence of the incumbent as aforesaid, till six months after notice thereof in writing given by the bishop or other ordinary to the person or persons having right of nomination to the same.

“XVI. Provided also, that in case the person or persons entitled to nominate to such augmented or endowed cures shall suffer a lapse to incur, but shall after present or nominate to the same before any advantage taken thereof by the ordinary, metropolitan or crown respectively, such presentation or nomination shall be as effectual as if made within six months, although so much time be before elapsed, as that the title be vested in the crown.

“XVII. And whereas the archbishops, bishops, deans, deans and chapters, archdeacons, prebendaries, and other dignitaries, ecclesiastical persons, vicars, masters, or governors, and fellows of colleges, and masters, guardians, or other governors of hospitals in this kingdom, are seised of several woods, the profits of which are reserved to themselves in the leases made of the lands, whereon the said woods do grow, which woods are of very little advantage to themselves or the country, by reason they lie unclosed and exposed to the cattle, and must continue so to do, except by agreement made between them and their tenants, which agreement they are not now by law empowered to make, so as to be binding on their successors : be it therefore further enacted by the authority aforesaid, that it shall and may be lawful to and for every archbishop, bishop, dean, dean and chapter, archdeacon, prebendary, and other dignitary, ecclesiastical person, vicar, master, or governor, and fellows of any college, master, guardian, or other governor of any hospital in this kingdom and their successors, to enter into any contract and agreement with any tenant to allow such tenant for his charge and care in inclosing and preserving any wood, not being timber, and being at the time of the said agreement unclosed, any part or proportion of the value thereof, not exceeding a third part of what such wood shall be sold for at the time of cutting it down ; and that all and every such agreement or agreements, contract or contracts, so made and entered into, shall be binding and obligatory on the successor and successors of every such archbishop and bishop, and other bodies corporate before named.

“XVIII. Provided that if the tenant who hath inclosed or preserved the wood shall not be suffered or willing to renew his lease, but it shall by any means run out, before such tenant hath had the benefit of such contract or agreement, that

then the said tenant shall receive of the person or persons to whom the freehold upon the determination of such lease shall belong respectively, the third part of the real value of such wood at the time of his leaving the same.

“XIX. Saving always and reserving to the king’s most excellent majesty, his heirs and successors, and all and every person and persons, bodies politic and corporate, their heirs and successors respectively, other than and except the archbishops, bishops, deans, and deans and chapters, who shall in pursuance of this act convey or make over the advowsons, presentations, or nominations, of or to such endowed or augmented benefices, livings, or curacies, and their successors, or the grantors of any lands, tenements, tithes, or hereditaments for such augmentation or endowment, their heirs, executors, administrators, or assigns, all such right, title, and interest, which they or any of them might or could have, claim, or demand to the advowson or patronage of such endowed or augmented benefice, living, or curacy, if this act had not been made; anything hereinbefore contained to the contrary notwithstanding.”

STAT. 1 GEO.
2, c. 18. [1R.]

the benefit, he shall receive from owner of the freehold a third of the value at the time.

Saving the right of the king and others, except the persons augmenting or endowing.

IV. STAT. 1 GEORGII 2, c. 19 (1). [IRELAND.] A.D. 1727.

“An Act for repealing a Clause in an Act, intituled. An Act for real Union and Division of Parishes, and for settling the Method of obtaining the King’s Majesty’s Consent for removing the Situation of Churches (2), the Patronage whereof is in the Crown.”

STAT. 1 GEO.
2, c. 19. [1R.]

“Whereas in the fourteenth and fifteenth years of the reign of King Charles the Second, an act of parliament was made in this kingdom of Ireland, intituled, ‘An Act for real Union, and Division of Parishes, and concerning Churches, Free-schools, and Exchanges;’ in pursuance of which act divers unions of parishes were made, which by reason of the increase of protestant inhabitants within such parishes, or upon other accounts, are now found to be altogether inconvenient: and whereas in the second year of the reign of King George the First of glorious memory, an act of parliament was also made, intituled, ‘An Act for real Union and Division of Parishes;’ which last-mentioned act, by an act made in the tenth year of the reign of his said late majesty King George the First, intituled, ‘An Act for explaining and amending an Act, intituled, An Act for real Union and Division of Parishes; and for confirming an Exchange made of a piece of Ground, whereon the Parish Church and Vicarage House of the Parish of St. Anne, in the Suburbs of the City of Dublin, was by a former Act of Parliament directed to be built, for another piece of Ground, and for appropriating such other piece of Ground to the same Uses,’ has since been continued with such alterations and additions, as in the said last-mentioned act are expressed, for ten years from the second day of February, one thousand seven hundred and twenty-three, and from thence to the end of the then next session of parliament: and whereas in the said last-mentioned act made in the second year of the reign of his said late majesty, there is a clause inserted in the following words, viz. ‘Provided always, that in no union formerly made pursuant to the before-mentioned act, made in the fourteenth and fifteenth years of the reign of King Charles the Second, of any parishes not lying within cities or towns corporate, shall be capable of being dissolved, nor any of the said united parishes, or any part thereof, shall be liable to be united to or made part of any other united parish by virtue of this act, unless the parish church of such united parish doth lie three country miles distant from some part of such united parish, or that the church of such united parish shall not be large enough to contain the protestant parishioners usually resorting to such parish church:’ by reason of which clause, and of the uncertainty of the measure of three country miles therein mentioned, divers unions and divisions of parishes, which otherwise would be highly convenient for promoting the public worship of God, are totally obstructed: be it therefore enacted by the king’s most excellent majesty, by and

14 & 15 Car.
2, c. 10.

Unions pursuant thereto inconvenient.

2 Geo. 1, c. 14.

10 Geo. 1, c. 6.

Clause in 2
Geo. 1, c. 14,
s. 12, repealed.

(1) *Vide* Stat. 2 Geo. 1, c. 14 (*antè* 732). (2) *Vide* Stat. 7 & 8 Geo. 4, c. 43. Stat. 10 Geo. 1, c. 6 (*antè* 750). 10 Geo. 4, c. 58. Stat. 2 & 3 Gul. 4, c. 67.

STAT. 1 GEO.
2, c. 19. [Ir.]

with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that the said clause, and everything therein contained, shall from henceforth be and is hereby repealed and made void; and that every such united parish shall be liable and subject to the like division and under the same conditions and limitations as any other parish within this kingdom; anything in the said clause to the contrary notwithstanding.

Inconvenient
situation of
churches;

by 2 Geo. 1,
c. 14, s. 3;
consent of pa-
tron necessary
to new build-
ing a church.

"II. And whereas in many parishes within this kingdom the respective parish churches are so incommodiously situated, as that the greater number of the parishioners cannot without manifest inconvenience repair thereto for the public worship of God: and whereas by the aforementioned act passed in the second year of the reign of his late majesty King George the First, it was amongst other things enacted, 'that it should be lawful for the chief governor or governors of this kingdom for the time being, with the assent of the major part of the privy council assembled in council, six at least consenting, under certain limitations in the said act mentioned, to direct and order new churches to be built in more convenient places,' as by the said act may more at large appear: and whereas by the said act it is amongst other things required, that the consent of the patron or patrons shall be first had, before any order can be made for the building or erecting any new church: and whereas the king's most excellent majesty is patron of many parish churches in this kingdom, and the method of obtaining his royal consent for the purposes aforesaid by letters patents under the great seal of this kingdom is found to be very tedious and expensive, so that the parishioners of those parishes, the churches whereof are in the patronage of the crown, are not likely to receive the benefit intended by the forementioned act: be it therefore further enacted by the authority aforesaid, that where any parish church is either the corps or part of the corps of any deanery, or other ecclesiastical dignity or prebend, the patronage whereof belongs to the crown, or where any parish church whatsoever is in the immediate patronage of the king's most excellent majesty, and it shall be found necessary for the ease and benefit of the parishioners of such parish, that a new parish church should according to the aforementioned act, made in the second year of the reign of his said late majesty, be built within the same, the consent of the lord lieutenant or other chief governor or governors of this kingdom for the time being to the building of such church, signified in writing under his or their respective hands and seals, and enrolled in the high court of Chancery within six months after the date thereof, shall to all intents and purposes be as good and valid in law, as if the consent of his majesty, his heirs or successors, thereto were signified by letters patents under the great seal; anything in the said act, or in any other act to the contrary notwithstanding."

Where the
king patron,
chief govern-
or's consent to
building a new
church as by 2
Geo. 1, c. 14,
under hand
and seal, en-
rolled in Chan-
cery in six
months, as
valid as if by
letters patent.
10 Geo. 1, c. 6.

STAT. 1 GEO.
2, c. 22. [Ir.]

V. STAT. 1 GEORGII 2, c. 22(1). [IRELAND.] A.D. 1727.

"An Act for explaining and amending an Act, intituled, An Act for the better Maintenance of Curates within the Church of Ireland."

6 Geo. 1, c. 13.
Doubts whe-
ther provision
thereby made
except for
curates in ab-
sence of in-
cumbent from
their livings:
reasonable to
extend it.

"Whereas some doubts have arisen upon an act made in the sixth year of his late majesty's reign, intituled, 'An Act for the better Maintenance of Curates within the Church of Ireland,' whether provision be thereby made for the appointing and securing a sufficient certain stipend or allowance for any curates to any beneficed clergymen, other than for the curates of such rectors and vicars, who having actual cure of souls shall be absent from their livings: and whereas many parishes in this kingdom, by reason of the largeness of their extent, or the increase of the buildings and inhabitants therein, are severally found to be too great a cure to be discharged by one single minister resident upon his living, whereupon it is usual for the incumbents of such parishes respectively to be assisted by a curate or curates, duly nominated and licensed for that purpose, and it is reasonable that such curates, as well as others, should be provided with and assured of a competent

maintenance: be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that it shall and may be lawful to and for every archbishop and bishop respectively at the time of his licensing any curate, or any person in holy orders by any other title or denomination whatsoever, to assist the incumbent of any such parish, by whom he shall be nominated and presented to such archbishop or bishop for that purpose, by writing under his hand and seal, to appoint a sufficient certain stipend or allowance not exceeding fifty pounds per annum, nor less than ten pounds per annum, to be paid or answered at such times as he shall think fit by such incumbent to every such curate, or other person in holy orders by any other title or denomination whatsoever, respectively so nominated and licensed as aforesaid, for his support and maintenance: and if it shall appear at any time to any archbishop or bishop, or other ordinary of any diocese within this kingdom, upon complaint or otherwise, that any such curate or person heretofore licensed, or hereafter to be licensed, to assist the incumbent of any parish within the diocese, hath not a sufficient maintenance, it shall and may be lawful for the said archbishop or bishop, or ordinary, upon summoning the parties concerned to appear before him, and hearing them in case they shall appear, or in default of appearance of them or either of them, to appoint to every such curate or assistant respectively a sufficient certain stipend or allowance in like manner as before is mentioned; and in case any difference shall arise between any rector, vicar, or other incumbent, and his curate or curates, assistant or assistants, touching such stipend or allowance, or the payment thereof, the archbishop or bishop, or ordinary, upon complaint to him made, shall summarily hear and determine the same, and, in case of neglect or refusal to pay such stipend or allowance, may sequester the profits of the benefice for and until payment thereof.

“II. And whereas by the act before recited it is amongst other things enacted, ‘that in parishes of great extent it shall and may be lawful for the archbishop or bishop of any diocese wherein such parishes are situate, or for the inhabitants of such parishes, with the consent of the archbishop or bishop of the said diocese, to erect or cause to be erected one chapel of ease, or two chapels of ease, if any greater number of inhabitants must otherwise be more than six miles from their place of public worship, for which chapel or chapels, when so erected and set apart for divine worship, the incumbent of the parish is obliged to find from time to time a sufficient curate or curates, and to support him or them by such ways, and in such manner, as by the said act is directed and appointed:’ and whereas the inhabitants of large parishes, who are five miles or more distant from their parish church, cannot without manifest inconvenience resort to the same; by reason whereof great numbers of families in several parts of this kingdom do seldom attend the service of God in any place of public worship: for remedy of which mischief be it enacted by the authority aforesaid, that in any parish within this kingdom, where a great number of inhabitants do reside at the distance of five measured miles or more from their place of public worship, computing each mile at one thousand seven hundred and sixty yards, to be admeasured along the ordinary horse road leading to such place of public worship, it shall and may be lawful to and for the archbishop or bishop of the diocese, wherein such parish is situate, by and with the consent of the majority of the protestant inhabitants of the said parish, who are of the church of Ireland as by law established, and who do not reside within three such miles as aforesaid of the old parish church, or place where divine service is and has been usually performed for the said parish, nor within two such miles of any other church or chapel where divine service is performed according to the usage of the church of Ireland, but who do reside within three such miles as aforesaid of the place where such chapel is to be built, signified under their hands, to erect or cause to be erected one chapel of ease, or two chapels of ease within the said parish; and that such chapels, when erected and set apart for public worship, and also such as are already erected and set apart for public worship, and are conveniently situate for the use of the inhabitants of that parish, shall be supplied

STAT. 1 GEO.
2, c. 22. [I.R.]

Bishops, at time of licensing any curates, &c. to assist incumbents, may appoint allowance, not above 50*l.* nor less than 10*l.* per annum, payable by incumbent; if a curate appears to ordinary not to have sufficient maintenance, may, on summoning and hearing the parties, appoint such certain allowance; and summarily determine differences; Eng. 12 Ann. St. II. c. 12, and sequester benefice for non-payment.

Recital of
6 Geo. 1, c. 13,
s. 3.

Where many parishioners reside five measured miles from church, bishop, with consent of majority of protestants not residing within three miles of the church, or two of any other, but within three of the place where a chapel to be built, may erect one or two chapels of ease; to be supplied

STAT. 1 GEO.
2, c. 22. [I.R.]
with curates,
as by 6 Geo. 1,
c. 13.

from time to time with sufficient curates; which curates shall be appointed, admitted, approved, maintained, and supported by such persons, in such manner, and by such ways and means, as in and by the said recited act are prescribed and directed for the appointment, admission, approbation, maintenance, and support of curates.

In cities and towns corporate, where many parishioners excluded from the church for want of accommodation, the bishop as aforesaid, with consent at vestry, may erect one or two chapels of ease; supplied with curates, as by 6 Geo. 1, c. 13.

“III. And whereas several parishes in the city of Dublin, and in other cities and towns corporate in this kingdom, by the increase of buildings and inhabitants are become respectively too great a cure, and the churches belonging to such parishes respectively cannot afford accommodation for great numbers of the protestant inhabitants to hear divine service and perform religious duties: for remedy whereof be it further enacted by the authority aforesaid, that in any parish within the city of Dublin, or the liberties thereof, or the liberties thereunto adjoining, or within any other city or town corporate in this kingdom, where any great number of protestant inhabitants are or shall be excluded from the parochial church for want of room and accommodation during the celebration of divine service therein, it shall and may be lawful to and for the archbishop or bishop of the diocese, wherein such parish is situate, by and with the consent of the protestant inhabitants of the said parish, who are of the church of Ireland as by law established, or the major part of them, in vestry assembled, to erect or cause to be erected one chapel of ease or two chapels of ease within the said parish; and that each and every such chapel or chapels, when erected and set apart for public worship, shall be supplied from time to time with a sufficient curate or curates; which curate or curates shall be appointed, admitted, approved, maintained, and supported by such persons, in such manner, and by such ways and means, as in and by the said recited act are prescribed and directed for the appointment, admission, approbation, maintenance, and support of curates.

Such chapels repaired, &c. at charge of all the parishioners, by such rates or means as the parish church,

or by annual rents on the pews, by the bishop, with consent at vestry, paid to churchwardens, &c. collected as minister's money or parish cesses, and applied in repair, &c. of such chapels.

“IV. And be it further enacted by the authority aforesaid, that all and every such chapel and chapels, which shall hereafter be erected and set apart for public worship by virtue of this or any former act, or that have already been erected and set apart for public worship, and are conveniently situate for the use of the inhabitants, shall be kept from time to time in good repair, and provided with all things necessary and commodious for the celebration of divine service therein, at the charge of the parishioners of the whole parish, wherein such chapel or chapels have been or shall be erected and set apart as aforesaid, by such rates or other ways or means as the parish church ought to be kept in repair, or else by certain annual rents to be set on the pews or seats of such chapel or chapels by the archbishop or bishop of the diocese, with the consent of the incumbent of such parish, and the major part of such parishioners thereof as aforesaid assembled at a vestry duly appointed for that purpose; which rates or annual rents, being so made and ascertained, shall be paid to the churchwardens of such parish, or either of them, or to any person or persons by them appointed, and approved of by the archbishop or bishop of the diocese for that purpose; and all such churchwardens, and each of them, and every person or persons by them appointed and approved of as aforesaid, shall have full power and authority to ask, demand, receive, distrain for, and recover all such rates or annual rents at such times, by such ways and means, and under such penalties, as ministers' money, church rates, or parish cesses usually are or may be collected and recovered by any law or statute of this realm; and the money arising by such rates or annual rents shall be applied by such churchwardens in repairing such chapel or chapels, and providing all things necessary and commodious for the celebration of divine service therein, and to no other use or purpose whatsoever.”

STAT. 1 GEO.
2, c. 23. [I.R.]

VI. STAT. 1 GEORGII 2, c. 23. [IRELAND.] A.D. 1727.

“An Act for the better securing the Rights of Advowson and Presentation to Ecclesiastical Benefices.”

6 Geo. 1, c. 11.
Delays in

“Whereas proceedings upon writs of *quare impedit* are subject to great delays and vexations by reason of essoins allowed in such writs: and whereas many

persons have not only made usurpations upon rightful patrons, but also have protracted and given unreasonable delays in suits commenced for the recovery of usurped presentations, being encouraged thereto by the receipt of the mesne profits of such benefice pending such suits: for remedy whereof be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the end of this session of parliament no more than one essoin shall be cast or allowed on any writ of *quare impedit*; but the defendant or defendants being duly summoned to appear upon the day mentioned in the writ, and the defendant or defendants not appearing by him or themselves, or by his or their attorney or attorneys, an attachment shall immediately issue, and at the return of the said attachment the grand distress in order to compel the defendant or defendants to appear.

“II. And be it further enacted by the authority aforesaid, that in all cases where the king's majesty, his heirs or successors, or any other patron or patrons, shall recover in any action of *quare impedit*, after such recovery it shall and may be lawful to and for the clerk of the king, his heirs or successors, and for the clerk of such patron and patrons, so recovering, and for the executors and administrators of such clerks, to prefer his or their bill or bills in the high court of Chancery, or in the court of Exchequer, against the clerk defendant in the said *quare impedit*, whether of the king's presentation, or of the presentation or collation, of any other person, his executors and administrators, for an account of the profits of the benefice so recovered from the time the defendants in *quare impedit* shall be returned to have been summoned to appear in the said suit, on which such recovery shall be had; and the said high court of Chancery and court of Exchequer shall decree a reasonable value of the said profits against such clerk defendant, his executors and administrators, unless the clerk defendant, his executors and administrators, shall before such suit voluntarily make oath in writing before the ordinary of the diocese (which oath the ordinary is hereby required to administer) in which such living shall lie, what he set the same for, or made thereof *bonâ fide*, and shall offer to account for the same accordingly and make payment; in which case the clerk of the party recovering shall be concluded by such oath, and receive the mesne profits accordingly, subject to the allowances and deductions in this act contained.

“III. Provided always, that nothing herein contained shall entitle the clerk of any person so recovering to any of the profits of the benefice so recovered, which incurred before the twenty-ninth day of September in the year of our Lord one thousand seven hundred and nineteen.

“IV. Provided always, that where judgment shall be given upon demurrer, and the defendant or defendants in *quare impedit* shall not acquiesce in the said judgment, but shall bring a writ or writs of error to another court, in such case the clerk defendant in the said *quare impedit* shall, upon affirmation of the judgment in that court where such writ of error is brought, be accountable in the manner aforesaid to the clerk of the plaintiff in *quare impedit* for all the profits of such benefice or benefices, so recovered, from the time of the obtaining of the said judgment upon demurrer.

“V. Provided always, that it shall and may be lawful for the bishop or ordinary of the diocese, where such benefice doth lie, or for the guardian or guardians of the spiritualities, to allocate or allow by any writing under his or their hands and seals yearly and every year, during the time that such benefices shall be contested, any sum or sums of money not exceeding sixty pounds per annum, except where there was or were one or more curate or curates ordinarily employed in the parish before the vacancy, in which case the bishop may make a reasonable allowance for every such curate, provided such allowance to every such curate does not exceed the sum of thirty pounds per annum, if such curate shall be licensed, and actually employed in such cure during the suit, unless the third part of the annual profits of such benefice shall exceed that sum; in which case it may be lawful for the ordinary to allocate or allow any sum not exceeding the third part of the annual profits of such benefice, and so proportionably for every less space of time;

STAT. 1 GEO. 2, c. 23. [1R.]
quare impedit
by essoins, &c.

One essoin only allowed on *quare impedit*. On defendants not appearing, attachment; and at the return, grand distress.

Clerk of patron recovering may bring a bill for account of profits from summons in *quare impedit*; and have decree, unless affidavit by clerk defendant before ordinary of what he made *bonâ fide*, and offer to account and payment, which shall conclude plaintiff.

Not to extend to profits incurred before 29th September, 1719.

On affirmation of judgment on demurrer, clerk defendant in *quare impedit* accountable from the judgment.

Ordinary during contest may allow 60*l.* per annum, unless where curates employed before vacancy, and then reasonable allowance; not above 30*l.* per annum each, if licensed and actually serving; or any sum not

STAT. 1 GEO.
2, c. 23. [IR.]

exceeding the third of the annual profits; paid to clerk defendant serving, or to the curate; and on certificate allowed in the account of profits.

Eng. 7 Ann.
c. 18.

Usurpation shall not displace the estate of patron, or turn it to a right; but he may present, or maintain *quare impedit* next avoidance.

Coparceners, joint-tenants, or in common, in advowson, on partition to present by turns, each seised of a separate part, and to present in turn.

Continuance seven years, &c. Continued,
7 Geo. 2, c. 7.
Perpetual, 13 Geo. 2, c. 4.

to be paid to such clerk defendant having actual cure of souls, and serving the said cure by himself, or his curate thereunto lawfully licensed by the bishop or ordinary of the diocese, or to such other curate who shall be duly appointed to serve the cure thereof in case of vacancy and sequestration; which said allocation and service of the cure, being certified under the hand and seal of the said bishop or ordinary, or guardian or guardians of the spiritualities, such sum or sums of money shall be allowed in the aforesaid account of the said profits.

“VI. And forasmuch as the pleading in writs of right of advowson and of *quare impedit* is found very difficult, whereby many patrons are either defeated of the right of presentation, or put to great charge and trouble to recover their right; which is occasioned by the law, as it now is: for remedy whereof be it enacted by the authority aforesaid, that no usurpation upon any avoidance, which may happen from and after the first day of May, one thousand seven hundred and twenty-eight, in any church, vicarage, or other ecclesiastical promotion, shall displace the estate or interest of any person entitled to the advowson or patronage thereof, or turn it to a right; but he or she that would have a right, if no usurpation had been, may present or maintain his or her *quare impedit* upon the next or any other avoidance, if disturbed, notwithstanding such usurpations.

“VII. And if coparceners, or joint tenants, or tenants in common, be seised of any estate of inheritance in the advowson of any church, or vicarage, or other ecclesiastical promotion, and a partition is or shall be made between them to present by turns, that thereupon every one shall be taken and adjudged to be seised of his or her separate part of the advowson, to present in his or her turn; as if there be two, and they make such partition, each shall be said to be seised, the one of the one moiety to present in the first turn, the other of the other moiety to present in the second turn; in like manner, if there be three, four, or more, every one shall be said to be seised of his or her part, and to present in his or her turn.

“VIII. Provided always, that this act shall continue and be of force for seven years, and to the end of the next session of parliament after the expiration of the said term of seven years, and no longer.”

STAT. 1 GEO.
2, St. II. c. 15.

VII. STAT. 1 GEORGH II, St. II. c. 15. A.D. 1728.

“An Act for making Provision for the Rector of the new Church situate near Millbank, in the Parish of Saint Margaret, Westminster, and for other Purposes therein mentioned.”

STAT. 2 GEO.
2, c. 10.

VIII. STAT. 2 GEORGH II, c. 10. A.D. 1729.

“An Act for making the Hamlet of Spittle-fields, in the Parish of Saint Dunstan, Stebunheath, alias Stepney, in the County of Middlesex, a distinct Parish, and for providing a Maintenance for the Minister of such new Parish.”

STAT. 2 GEO.
2, c. 16.

IX. STAT. 2 GEORGH II, c. 16. A.D. 1729.

“An Act to make the Chapel of Ease of the Holy and Undivided Trinity in the Town of Leeds, in the County of York, a perpetual Cure and Benefice; and for defraying some Expenses in finishing the said Chapel, yet remaining unpaid.”

STAT. 2 GEO.
2, c. 29.

X. STAT. 2 GEORGH II, c. 29 A.D. 1729.

“An Act to empower His Majesty to visit the Collegiate Church of Manchester, during such time as the Wardenship of the said Church is or shall be held in Commendam with the Bishoprick of Chester.”

XI. STAT. 2 GEORGII 2, c. 30. A.D. 1729.

STAT. 2 GEO.
2, c. 30.

"An Act for making the Hamlet of Wapping Stepney, in the Parish of Saint Dunstan Stebunheath, alias Stepney, in the County of Middlesex, a distinct Parish, and for providing a Maintenance for the Minister of the new Church there."

XII. STAT. 2 GEORGII 2, c. 31 (1). A.D. 1729.

STAT. 2 GEO.
2, c. 31.

"An Act for indemnifying (2) Persons who have omitted to qualify themselves for Offices or Employments within the Time limited by Law, and for allowing further Time for that Purpose; and for repealing so much of an Act of Parliament passed in the first year of His late Majesty King George the First, as requires Persons to qualify themselves for Offices or Employments within three Months, and for limiting other Times for such Qualifications; as also for the Repeal of so much of an Act passed 30 Car. 2, as relates to the sworn Servants of the King's or Queen's Majesty."

XIII. STAT. 3 GEORGII 2, c. 3. A.D. 1730.

STAT. 3 GEO.
2, c. 3.

"An Act for providing a Maintenance for the Minister of the Parish Church of Saint Mary Stratford Bow, in the County of Middlesex."

XIV. STAT. 3 GEORGII 2, c. 11 (3). [IRELAND.] A.D. 1729.

STAT. 3 GEO.
2, c. 11. [Ir.]

"An Act for the better keeping Churches in Repair."

"Whereas in divers parts of this kingdom of Ireland, and more especially within the provinces of Leinster, Munster, and Connaught, there are many parishes, the income whereof is so small as not to afford a support respectively to a distinct curate or incumbent, and the inhabitants whereof are so few in number and so poor as not to be able to build up or repair their respective parish churches, and the adjoining of such parishes in a perpetual union is in many cases found to be impracticable, so that for the present remedying of this inconvenience divers archbishops and bishops are under a necessity of uniting by an archiepiscopal or episcopal union two or more of such parishes, as are contiguous, under one incumbent or curate, and appointing one church or chapel within such united parishes to be the place of public worship for all the inhabitants dwelling within the same; and whereas no such inhabitant can by law be compelled to contribute to the repair of any parish church, excepting only that of the parish wherein he dwells or occupies land; by reason whereof the churches or chapels so appointed for many such united parishes respectively are suffered to go to ruin, to the great dishonour of God, and discouragement of his public worship: for remedy whereof be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that wherever any such archiepiscopal or episcopal union of contiguous parishes under one incumbent or curate is already made, or shall hereafter be made, by any archbishop or bishop within his own respective diocese, the inhabitants or occupiers of land within each and every of such united parishes respectively shall be obliged to contribute towards the repair of the church or chapel so appointed, or to be appointed, for public worship within the said united parishes, and to the providing all necessary charges belonging to such church or chapel, as if such united parishes were one entire parish, and the church so appointed the parish church of the same; and that two churchwardens may every year be chosen for such united parishes respectively, and

Necessity of episcopal union; the church appointed suffered to go to ruin, as no inhabitant compellable by law to repair, except the parish church where he dwells, &c.

On episcopal union of contiguous parishes, inhabitants or occupiers of land shall contribute to repair of and charges for the church appointed, as if one entire parish, and that the parish church; and two church-wardens, with like powers as others.

(1) *Vide* Stat. 9 Geo. 2, c. 26. Stat. 9 Geo. 2, c. 30, were passed for similar objects of Geo. 4, c. 17. Stat. 1 Gul. 4, c. 26. Stat. 5 & 6 Gul. 4, c. 28. indemnification.

(2) *Indemnifying*:—Stat. 7 Geo. 2, c. 86. Stat. 7 Geo. 4, c. 66. Stat. 7 Geo. 4, c. 72. Stat. 3 & 4 Gul. 4, c. 37. (3) Partly repealed by Stat. 4 Geo. 4, c. 86.

STAT. 3 GEO.
2, c. 11. [1r.]

But if at any
time they re-
pair their
parish church,
not compella-
ble to repair
any other.

Difficulties
in collecting
parish cesses,
for repair of
the church;
remissness of
churchward-
ens;

such cess shall
in ten days be
equally ap-
plotted;

applotment re-
turned to the
minister, who
shall give no-
tice of vestry
in ten days to
examine it;

when finally
settled, two
transcripts
shall be made,
subscribed by
the minister,
churchward-
ens, and three
protestants;
churchward-
ens to pro-
ceed to collect;
on neglect, or
not accounting
in vestry, of
which ten
days' notice, or
not paying the
balance, to be
sued by suc-
ceeding
churchward-
ens;

by civil bill,
where not
above 20l.

have the like office and power within the same, as other churchwardens by law have in their several and respective parishes.

“II. Provided always, that if the parishioners of any such united parish shall at any time build up or sufficiently repair the parish church of their said parish, then and from thenceforth neither they, nor any of them, shall by virtue of this present act be compelled to contribute towards the repairing of any other church or chapel within the said united parishes, excepting that of the particular parish to which they immediately belong; and the church or chapel appointed as is before mentioned for the said united parishes, shall from thenceforth be kept in repair by the rest of the parishioners of the said united parishes, in like manner as is herein before enacted, as if this act had never been made.

“III. And whereas great difficulties have been found in collecting parish-cesses, after they have been made and agreed upon in vestry, for the repair of parish churches, chapels, and other necessary charges belonging to such church or chapel within this kingdom, upon pretence that such cesses have not been duly and equally applotted upon the respective inhabitants of such parishes: and whereas churchwardens are often remiss in collecting such cesses, when duly made and applotted, and many times neglect or refuse to account for the same at the expiration of their office, by means whereof several parish churches have continued several years out of repair: be it enacted by the authority aforesaid, that from and after the twenty-fifth day of March, one thousand seven hundred and thirty, all and every parish cess or tax, that shall be made, raised, or agreed upon at any vestry held for any parish in this kingdom for the repair of the parish church or chapel, or other necessary charges belonging to such church or chapel, shall in ten days after the same is so agreed upon, be equally and fairly applotted upon the respective inhabitants of such parish by the churchwardens, or other persons appointed for that purpose by the major part of the protestant parishioners in vestry assembled; which applotment when made shall be returned to the minister of the parish, who, the first Sunday after he hath received the same, shall after divine service in the morning, give public notice thereof, as also of a vestry to be held in ten days after such notice, in order to have the said applotment examined into; at which vestry so summoned as aforesaid the major part of the protestant inhabitants there assembled shall have full power to hear all parties who shall object to the said applotment, and to make such alterations and amendments as to them shall seem just and reasonable, and then finally to settle and ascertain the same; and, after the same is so settled and ascertained, they shall cause two distinct parts or transcripts thereof to be made, each to be subscribed by the minister, churchwardens, and three of the protestant parishioners then present; one part whereof shall remain with the minister and parishioners, and the other shall be delivered to the churchwardens, who shall with all convenient expedition proceed to collect and levy the same, to be applied to the uses for which it was ordered: and if such churchwardens shall wilfully neglect or refuse to collect, or cause to be collected, any parish tax or cess so applotted and ascertained as aforesaid, or at the expiration of their office shall refuse or neglect to account for the same in any vestry to be held for that purpose, of which ten days' notice shall be given in such church or chapel, immediately after divine service in the morning, that then it shall and may be lawful to and for the succeeding churchwardens to sue for and recover from the said churchwardens so refusing or neglecting to collect or account as aforesaid, all and every the sum and sums in the said applotment contained; or if after an account stated in manner aforesaid any such churchwarden shall after a demand made refuse or neglect to pay the balance of such account remaining in their hands to the succeeding churchwardens, then it shall and may be lawful to and for the succeeding churchwardens to sue for and recover from the said churchwardens so refusing or neglecting to pay the balance that shall on such account appear to be in their hands, all and every such respective sums in cases where the same do not exceed twenty pounds, to be sued for and recovered by civil bill at the general assizes to be held for the county where such parish church or chapel is, or where such parish church or chapel is within the city or county of Dublin,

at the general quarter sessions to be held for the said city or county, and in cases where any such sum exceeds twenty pounds, the same to be sued for and recovered by action of debt, bill, or plaint, in any of his majesty's four courts of Dublin.

STAT. 3 GEO.
2, c. 11. [1R.]

“IV. And be it further enacted by the authority aforesaid, that in such suit or action the aforementioned applotment subscribed by the minister, churchwardens, and three parishioners, shall be sufficient evidence to charge the defendants in the said suits or actions with the several sums contained in the said applotment; and that the account stated as aforesaid shall be admitted as sufficient evidence to charge the defendants in such suit or action with the balance of such account.

Applotment subscribed, and account stated, evidence to charge defendants.

“V. Provided always, and be it enacted by the authority aforesaid, that if any such churchwarden or churchwardens, refusing to account as aforesaid, shall, after judgment obtained against him or them, and payment made as aforesaid, apply to the minister and succeeding churchwardens to be admitted to account, then and in such case the said minister, churchwardens, and parishioners in vestry assembled shall and are hereby obliged to take such account, and such succeeding churchwardens shall and are hereby obliged to pay back all such sums as the churchwarden or churchwardens so accounting shall upon such account prove to have been applied to the use of the parish, and also such sums as he or they can make appear upon oath, could not be collected by reason of the poverty or other circumstances of the parties upon whom they were applotted; which oath any of his majesty's justice of the peace for the city, or county, or county of the city where such parish church or chapel lies, are hereby authorized and required to administer; and if the said churchwarden or churchwardens so accounting shall find him or themselves aggrieved by the determination of the said minister, succeeding churchwardens, and parishioners, upon taking such account, then he or they shall and may complain or appeal to the justices of the peace at the next general quarter sessions to be held for the county where such parish church or chapel is, who are hereby empowered to summon and examine witnesses upon oath, and finally to hear and determine the same, and make such order therein, as to them shall seem just; and, in case they shall adjudge any sum of money to be repaid by the succeeding churchwardens to the churchwardens so accounting, to cause the same to be levied by distress and sale of the goods and chattels of such succeeding churchwardens, or any of them, by warrant under the hands and seals of any two or more of the justices of the peace present at the said sessions; and in case they shall confirm the determination of the said minister, succeeding churchwardens, and parishioners, then they shall award to the said minister, succeeding churchwardens, and parishioners, such costs as they shall think reasonable, not exceeding forty shillings, to be levied by distress and sale of the goods and chattels of the person or persons so appealing by warrant under the hand and seal of two of the justices of the peace present at the said sessions.

After judgment against churchwardens for refusing to account, and payment, they shall be admitted to account in vestry, and their successors shall repay money proved laid out for the parish, or not collected from poverty, &c.

Appeal to sessions from the vestry.

If re-payment adjudged, levied by distress on warrant of two of the justices.

If the determination affirmed, costs not above 40s.

Parishioners of an union by charter from the crown, the churches whereof decayed, shall, till repaired, contribute to repair of the church to which united, as on episcopal union.

“VI. And whereas several parishes in this kingdom are united by charters granted by the crown, in some of which said parishes there are but very few protestants inhabiting, and in others none at all, and the parish churches thereof quite ruined, or in very great decay: be it therefore enacted by the authority aforesaid, that, until such ruined or decayed churches are rebuilt or repaired, the parishioners thereof shall be obliged to contribute to the keeping in repair the church to which such parishes are united, and to the providing all necessary charges belonging thereto in like manner, and subject to such regulations as are herein appointed for repairing of the churches united by archiepiscopal or episcopal union.

Money raised, applied as by the act of vestry only.

“VII. Provided also, and be it enacted by the authority aforesaid, that all and every such sums of money to be raised and levied as aforesaid, shall be applied to the use and uses mentioned in such act of vestry, and no other.”

STAT. 3 GEO.
2, c. 12. [Ir.]

XV. STAT. 3 GEORGII 2, c. 12(1). [IRELAND.] A.D. 1729.

"An Act for supplying a Defect in an Act for rendering more Effectual an Act for the better enabling the Clergy having Cure of Souls to reside upon their respective Benefices; and for the Encouragement of Protestant Schools within this Kingdom of Ireland."

1 Geo. 2, c. 15.
End thereof
not answered,
from family
settlements.

"Whereas an act of parliament made in the first year of the reign of our most gracious sovereign King George the Second, intituled, 'An Act for rendering more Effectual an Act for the better enabling the Clergy, having Cure of Souls, to reside upon their respective Benefices; and for the Encouragement of Protestant Schools within this Kingdom of Ireland,' by reason of the many family settlements throughout this kingdom, cannot answer the good intentions and purposes thereof; be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that it shall and may be lawful for any person or persons, being seised of an estate for life in possession of any lands with immediate remainder over to his, her, or their own issue, by his, her, or their deed or deeds respectively to grant any part of such lands, not exceeding twenty acres plantation measure, and being no part of the demesne lands, usually occupied with, or reputed as demesne to, the mansion or chief dwelling-house belonging to such tenant for life, as a glebe for the incumbent or minister of any parish having actual cure of souls, and his successors, or to any person or persons and their heirs in trust for any curate or ecclesiastical person having the actual cure of souls in any appropriate or inappropriate benefice, and their respective successors, at, and under, and subject to, the payment of the yearly rent, to be ascertained in such manner as hereinafter is directed and appointed, in as full and ample manner as if the person or persons so granting the same had been seised of an estate in fee simple in such lands; and all grants so to be made shall be good and effectual against all persons claiming by virtue of any remainder or reversion expectant upon the said estate for life.

Tenant for life,
immediate
remainder to
issue, may
grant twenty
acres for glebe,
not part of the
demesne;

good against
remainder or
reversion.

Sheriff, at
request of the
bishop, grantor,
and grantee,
shall, on notice
in county court,
inquire of the
full yearly
value;
2 Ann. c. 10,
and return it,
with mears and
bounds, to the
bishop;
to be recorded
in Exchequer.
Sheriff's fee,
10s.
Remembran-
cer's, 6s. 8d.
paid by grantee.
Said yearly va-
lue to be the
rent for ever.
Said inquest,
&c. conclusive.

"II. Provided always, and be it enacted by the authority aforesaid, that where any such tenant for life shall grant any lands for a glebe in pursuance of this act, the sheriff of the county where such lands so to be granted lie, at the request of the archbishop or bishop of the diocese, and also of the grantor and grantee, is hereby required and empowered to inquire by the oaths of twelve good and lawful freeholders of the said county, of the time and place of which inquiry notice shall be given at some preceding county court, and likewise upon the oaths of such credible witnesses as shall be produced by either party, of the best and most improved rent, and full yearly value and quantity of the lands so to be granted; which said oaths the said sheriff is hereby empowered to administer; and the said sheriff is hereby required to return the said yearly value of such lands so found, together with the mears and bounds thereof, to the archbishop or bishop of the diocese, who shall procure the said return, certificate, and deeds of grant to be recorded in the court of Exchequer, in the first remembrancer's office; for which inquest and return the sheriff shall receive by way of fees ten shillings, and no more; and the said remembrancer shall put the same on record, and for recording the said inquest, certificate, and deeds of grant, shall receive six shillings and eight pence, and no more; both sums to be paid by the grantee; which said yearly value shall be for ever after the rent payable out of the said lands so granted; and the said inquest, certificate, and deeds of grant so recorded, shall be binding and conclusive to all intents and purposes against the said grantor, and all others claiming any title or interest in the said lands, or any part thereof, in reversion, remainder, or expectancy, by, from, and under him, her, them, or any of them, or under any settlement or entail of the said lands, or any part thereof.

Said lands shall
be the glebe,

"III. And be it enacted by the authority aforesaid, that the said lands, so granted in manner aforesaid, shall from thenceforth be taken, adjudged, and

deemed to be glebe or demesne lands belonging to the said parish, and subject to and regulated by all and every the clauses, provisoes, conditions, restrictions, and limitations in all former laws made for or concerning the endowing churches with glebe, for the encouraging of the building of houses, and making other improvements on church lands, and to prevent dilapidations, and for the better enabling clergy having cure of souls to reside on their respective benefices, as fully and amply as if the said laws had been herein particularly recited, mentioned, and enacted. preventing dilapidations, and enabling to reside. 15 Car. 1, c. 11. 10 Gul. 3, c. 6. 2 Ann. c. 10. 8 Geo. 1, cc. 11 & 12. 10 Geo. 1, c. 6. 12 Geo. 1, c. 10. 1 Geo. 2, c. 15. 9 Geo. 2, c. 13. 31 Geo. 2, c. 11.

“IV. And be it further enacted by the authority aforesaid, that all and every such incumbent, minister, curate, or ecclesiastical person, to whom or for whose use such grant or grants shall be made in pursuance of this act, and their successors for ever, shall be and are hereby made liable to, and shall be obliged to observe, perform, fulfil, and keep, all and every the covenants, agreements, payments of all rents and arrears of rent, and for building and improving on such lands so to be granted, as are directed or required by all or any of the said laws.”

STAT. 3 GEO.
2, c. 12. [IR.]

and regulated by all former laws for endowing churches, improving, as by said laws.

Grantee and successors liable to all covenants, &c. as by said laws.

XVI. STAT. 3 GEORGII 2, c. 17. A.D. 1730.

“An Act for making the Hamlet of Limehouse, and part of the Hamlet of Ratcliffe, in the Parish of Saint Dunstan Stebonheath, alias Stepney, in the County of Middlesex, a distinct Parish, and for providing a Maintenance for the Minister of the new Church there.”

STAT. 3 GEO.
2, c. 17.

XVII. STAT. 3 GEORGII 2, c. 19. A.D. 1730.

“An Act for providing a Maintenance for the Minister of the new Church near Bloomsbury Market, in the County of Middlesex; and for making more effectual an Act passed in the fourth year of His late Majesty's Reign, for empowering the Commissioners for building the fifty new Churches, to direct the Parish Church of St. Giles-in-the-Fields, in the said County, to be rebuilt, instead of one of the said fifty new Churches.”

STAT. 3 GEO.
2, c. 19.

XVIII. STAT. 3 GEORGII 2, c. 29(1). A.D. 1730.

“ An Act for allowing further time for Enrolment of Deeds and Wills made by Papists, and for Relief(2) of Protestant Purchasers and Lessees. ”

STAT. 3 GEO.
2, c. 29.

XIX. STAT. 3 GEORGII 2, c. 33. A.D. 1730.

“An Act for providing a Maintenance for the Minister of the new Parish Church of Saint Nicholas Deptford, in the Counties of Kent and Surrey, and for making the same a distinct Parish.”

STAT. 3 GEO.
2, c. 33.

XX. STAT. 4 GEORGII 2, c. 20. A.D. 1731.

“An Act for rebuilding the Parish Church of Gravesend in the County of Kent, as one of the fifty new Churches directed to be built by two Acts of Parliament, one made in the ninth, and the other in the tenth year of the Reign of Her late Majesty Queen Anne.”

STAT. 4 GEO.
2, c. 20.

XXI. STAT. 4 GEORGII 2, c. 21. A.D. 1731

“An Act to explain a Clause in an Act made in the seventh year of the Reign of Her late Majesty Queen Anne, for naturalizing Foreign Protestants, which relates to the Children of the natural-born Subjects of the Crown of England, or of Great Britain.”

STAT. 4 GEO.
2, c. 21.

(1) Vide Stat. 9 Geo. 2, c. 26. 21. Stat. 16 Geo. 2, c. 32. Stat. 19 Geo. 2, c. 16. Stat. 33 Geo. 2, c. 13, gave relief, similar to that which was granted by Stat. 9 Geo. 2, c. 26. Stat. 11 Geo. 2, c. 11. Stat. 12 Geo. 2, c. 14. Stat. 14 Geo. 2, c. 3 Geo. 2, c. 29.

STAT. 5 GEO.
2, c. 4.

XXII. STAT. 5 GEORGII 2, c. 4. A.D. 1732.

"An Act for rebuilding the Parish Church of Woolwich in the County of Kent, as one of the fifty new Churches directed to be built by two Acts of Parliament, one made in the ninth, and the other in the tenth year of the Reign of Her late Majesty Queen Anne."

STAT. 6 GEO.
2, c. 8.

XXIII. STAT. 6 GEORGII 2, c. 8. A.D. 1733.

"An Act for rebuilding the Parish Church of Saint George the Martyr in the Borough of Southwark, in the County of Surrey, as one of the fifty new Churches directed to be built by two Acts of Parliament, one made in the ninth, the other in the tenth year of the Reign of Her late Majesty Queen Anne."

STAT. 6 GEO.
2, c. 11.

XXIV. STAT. 6 GEORGII 2, c. 11. A.D. 1733.

"An Act for providing a Maintenance for the Minister of the new Church of Horslydown in the Borough of Southwark, in the County of Surrey, and for making the District assigned to the same a distinct Parish, and for other Purposes therein mentioned."

STAT. 6 GEO.
2, c. 19.

XXV. STAT. 6 GEORGII 2, c. 19. A.D. 1733.

"An Act for making a Chapel in the Town of Tiverton, in the County of Devon, a Perpetual Cure, and for providing a Maintenance for the Ministers who shall officiate therein."

STAT. 6 GEO.
2, c. 21.

XXVI. STAT. 6 GEORGII 2, c. 21. A.D. 1733.

"An Act for providing a Maintenance for the Rector of the new Church near Old Street, in the Parish of Saint Giles Cripplegate, and for making that Part of the said Parish which is called the Lordship Part, a distinct Parish, and for empowering the Commissioners for building of the fifty new Churches, to apply a Sum of Money to wall in the said Church and Churchyard, and to erect a House for the Habitation of the Rector of the said Church, out of the Money appropriated for the Endowment of the said fifty new Churches."

STAT. 6 GEO.
2, c. 25.

XXVII. STAT. 6 GEORGII 2, c. 25. A.D. 1733.

" An Act enabling His Majesty to issue to the Subdean, Treasurer, and Steward of the Collegiate Church of St. Peter, Westminster, out of the Monies reserved for building fifty new Churches within the Cities of London and Westminster, and the Suburbs thereof, and for making Provisions for the Ministers of the same, Four Thousand Pounds for the Repairs of the said Collegiate Church, and Twelve Hundred Pounds for finishing the Dormitory belonging thereunto."

STAT. 7 GEO.
2, c. 13. [IR.]

XXVIII. STAT. 7 GEORGII 2, c. 13(1). [IRELAND.] A.D. 1733.

"An Act to encourage the Home Consumption of Wool, by burying in Woollen only."

Eng. 30 Car.
2, c. 3.

"For the encouraging the home consumption of wool, be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that from and after the first day of August, in the year of our Lord one thousand seven hundred and thirty-four, no corpse of any person or persons shall be buried in any shirt, shift, sheet, or shroud, or anything whatsoever made or mingled with flax, hemp, silk, hair, gold, or silver, or in any stuff

No corpse shall
be buried in,
nor coffin lined
or faced with

(1) The analogous English statutes, (Stat. have been repealed by Stat. 54 Geo. 3, c. 30 Car. 2, c. 3, and Stat. 32 Car. 2, c. 1.) 108.

or thing, other than what is made of sheep or lamb's wool only, or be put into any coffin lined or faced with any sort of cloth or stuff, or any other thing whatsoever that is made of any materials but sheep or lamb's wool only, upon pain of the forfeiture of five pounds of lawful money of Great Britain, to be recovered against the executors or administrators of the party deceased, out of his or her personal assets, in a summary way by civil bill, before the judges of assize at the several assizes that shall be held in and for this kingdom, and in the county of Dublin and county and city of Dublin, before the justices of the peace at their respective quarter sessions, by such process, in such manner, and under such fees and regulations, with the like benefit of appeal as in and by an act made in the second year of his late majesty King George, intituled, 'An Act for reviving and amending an Act, intituled, An Act for Recovery of Small Debts in a summary way before the Judges of Assize,' are directed and appointed.

"II. Provided nevertheless, that such suit be commenced within nine calendar months after the offence shall be committed.

"III. And be it further enacted by the authority aforesaid, that from and after the said first day of August in the year of our Lord one thousand seven hundred and thirty-four, the judges at their respective assizes, and the justices of the peace at their respective quarter-sessions, shall give this act in charge; and moreover, that this act shall be publicly read upon the first Sunday after the first day of May, every year for seven years next following, presently after divine service."

XXIX. STAT. 7 GEORGII 2, c. 27. A.D. 1734.

"An Act for making the Church of Bablack in the City of Coventry a Parish Church, and for appointing a District or Parish thereto, and for enabling the Master and Usher of the Free Grammar School within the said City, to be the Rector and Lecturer of the said Parish Church."

XXX. STAT. 8 GEORGII 2, c. 6. A.D. 1735.

"An Act for the public registering of all Deeds, Conveyances, Wills, and other Incumbrances, that shall be made of, or that may affect any Honours, Manors, Lands, Tenements, or Hereditaments, within the North Riding of the County of York, after the Nine and twentieth day of September, One thousand seven hundred and thirty-six."

"Whereas the lands in the North Riding of the county of York are generally freehold, which may be so secretly transferred or conveyed (1) from one person to another, and incumbered, that such persons as are ill disposed have it in their power to commit frauds, and frequently do so, by means whereof several persons, who through many years' industry in their trades and employments, and by great frugality, have been enabled to purchase lands, or lend money on land security, have been undone in their purchases and mortgages by prior and secret conveyances and fraudulent incumbrances, and not only themselves, but their whole families thereby utterly ruined; for remedy whereof, may it please your most excellent majesty, (at the humble request of the justices of the peace, gentlemen, and freeholders of the said North Riding,) that it may be enacted, and be it enacted by the

STAT. 7 GEO. 2, c. 13. [1r.] any thing not made of sheep or lamb's wool only.

Penalty 5*l.* against executors, out of assets, by civil bill, as by 2 Geo. 1, c. 11.

Commenced in nine months.

This act given in charge at assizes and sessions, and read publicly after service first Sunday after 1st May, for seven years.

STAT. 7 GEO. 2, c. 27.

STAT. 8 GEO. 2, c. 6.

Preamble. For registers in the West and East Ridings, refer to 2 Ann. c. 4. 5 Ann. c. 18. 6 Ann. c. 35.

(1) *Transferred or conveyed*.—A judgment entered upon a warrant of attorney, given by a benefited clergyman in the North Riding of Yorkshire, to secure payment of an annuity, need not be registered under Stat. 8 Geo. 2, c. 6; for though it may be enforced by sequestration, the benefice is not affected by the judgment.

In *Cottle v. Warrington (Clerk)*, (5 B. & Ad. 447,) the judgment was for 1800*l.* The warrant of attorney provided, that on the death of the defendant, and full payment of arrears of the annuity, satisfaction should be entered on the record. A second judgment

having been signed by a different creditor, who sued out a *sequestrari facias* thereupon, it appeared that at that time the former creditor had by sequestrations levied more than 1800*l.* for arrears of his annuity, and there were arrears still due. The court ordered that satisfaction should be entered on the roll of the former judgment, as of the date when judgment was signed by the second creditor; and that the sums levied since should be paid over to him. But they refused to order payment to this creditor of the surplus over 1800*l.* levied before the signing of his judgment.

STAT. 8 GEO.
2. c. 6.

After 29th
September,
1736, a memo-
rial of all deeds,
conveyances,
wills, &c.
affecting lands,
to be regis-
tered,

or shall be
adjudged
fraudulent.

Memorials of
wills.

Wills con-
tested.

Concealment
of wills.

Memorials of
judgments.

king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that a memorial of all deeds and conveyances, which from and after the twenty-ninth day of September, which shall be in the year of our Lord one thousand seven hundred and thirty-six, shall be made and executed, and of all wills and devices in writing made or to be made, and published, where the devisor or testatrix shall die after the said twenty-ninth day of September, one thousand seven hundred and thirty-six, and of all judgments, statutes, and recognizances, (other than such as shall be entered in the name and upon the proper account of his majesty, his heirs and successors,) which shall be obtained or entered into after the said twenty-ninth day of September, one thousand seven hundred and thirty-six, of or concerning, or whereby any honours, manors, lands, tenements, or hereditaments, in the said North Riding, may be any way affected in law or equity, may be registered in such manner as is hereinafter directed; and that every such deed or conveyance, judgment, statute, or recognizance, that shall at any time after the said twenty-ninth day of September, one thousand seven hundred and thirty-six, be made and executed, obtained, or entered into, shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee, plaintiff or cognisee, for or upon valuable consideration, unless such memorial thereof be registered, as by this act is directed, before the registering of the memorial of the deed or conveyance, judgment, statute, or recognizance, under which such subsequent purchaser or mortgagee, plaintiff, or cognisee, shall claim; and that every such devise by will shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee, plaintiff, or cognisee, for or upon valuable consideration, unless a memorial of such will be registered in such manner as is hereinafter directed.

“XV. Provided also, and it is hereby enacted, that all memorials of wills that shall be registered in manner as aforesaid, within the space of six months after the death of every respective devisor or testatrix dying within the kingdom of Great Britain, or within the space of three years after the death of every respective devisor or testatrix, dying upon or in any parts beyond the seas, shall be as valid and effectual against subsequent purchasers, judgments, statutes and recognizances, as if the same had been registered immediately after the death of such respective devisor or testatrix; anything herein contained to the contrary thereof in any wise notwithstanding.

“XVI. Provided always, that in case the devisee or person or persons interested in the honours, manors, lands, tenements, or hereditaments, devised by any such will as aforesaid, by reason of the contesting such will or other inevitable difficulty, without his, her, or their wilful neglect or default, shall be disabled to exhibit a memorial for the registry thereof, within the respective times herein before limited, and that a memorial shall be entered in the said office, of such contest or impediment, within the space of six months after the decease of such devisor or testatrix, who shall die within the kingdom of Great Britain, or within the space of three years next after the decease of such person who shall die upon or beyond the seas; then, and in such case, the registry of the memorial of such will within the space of six months next after his, her, or their attainment of such will, or a probate thereof, or removal of the impediment whereby he, she, or they are disabled or hindered to exhibit such memorial, shall be a sufficient registry within the meaning of this act; anything herein contained to the contrary thereof in anywise notwithstanding.

“XVII. Provided nevertheless, that in case of any concealment or suppression of any will or devise, no purchaser or purchasers, for valuable consideration, shall be defeated or disturbed in his or their purchase, nor any plaintiff in any judgment or cognisee of any statute or recognizance, shall be defeated of his or their debts, by any title made or devised by such will, unless the will be actually registered within three years after the death of the devisor or testatrix.

“XVIII. And be it further enacted by the authority aforesaid, that all and every memorials of judgments, statutes, and recognizances, so to be entered and

registered at the said register office as aforesaid, shall be in writing, and express and contain, in case of such judgment, the names of the plaintiffs, and the names and additions therein of the defendants, the sums thereby recovered, and the time of the signing thereof; and in case of statutes and recognizances, the date of such statute or recognizance, the names and additions of the cognisors and cognisees therein, and for what sums, and before whom the same were acknowledged; and that in order to the making an entry of such memorials of judgments, statutes, and recognizances as aforesaid, the party and parties desiring the same shall produce to, and leave with, the said register or his deputy, to be filed in the said public or register office, a memorial of such judgment, statute, or recognizance, signed by the proper officer or his deputy, who shall sign such judgment, or his successor in the same office, or by the proper officer in whose office such statute or recognizance shall be enrolled, together with an affidavit sworn, or solemn affirmation in writing of a person of the persuasion of the people called quakers, made before one of the judges at Westminster, or a master in Chancery, that such memorial was duly signed by the officer whose name shall appear to be thereunto set; which memorial such respective officer is hereby required to give such plaintiff or plaintiffs, cognisee or cognisees, or his, her, or their executors or administrators, or attorney, or any of them, he, she, or they paying for the same one shilling, and no more."

STAT. 8 GEO.
2, c. 6.Statutes and
recognizances.

Fee.

XXXI. STAT. 8 GEORGH II, c. 25. A.D. 1735.

STAT. 8 GEO.
2, c. 25.

"An Act to indemnify Protestant Purchasers of Estates of Papists, against the Penalties or Forfeitures Papists are liable to, for not having enrolled their Estates, in pursuance of an Act of the third year of King George the First for that Purpose."

XXXII. STAT. 8 GEORGH II, c. 27. A.D. 1735.

STAT. 8 GEO.
2, c. 27.

"An Act for rebuilding the Parish Church of Saint Leonard Shoreditch, in the County of Middlesex."

XXXIII. STAT. 9 GEORGH II, c. 5. A.D. 1736.

STAT. 9 GEO.
2, c. 5.

"An Act to repeal the Statute made in the first year of the Reign of King James the First, intituled, An Act against Conjuraton, Witchcraft, and dealing with Evil and Wicked Spirits, except so much thereof as repeals an Act of the fifth year of the Reign of Queen Elizabeth, against Conjuratons, Enchantments, and Witchcrafts, and to repeal an Act passed in the Parliament of Scotland in the Ninth Parliament of Queen Mary, intituled, Anentis Witchcrafts, and for punishing such Persons as pretend to exercise or use any kind of Witchcraft, Sorcery, Enchantment, or Conjuraton."

XXXIV. STAT. 9 GEORGH II, c. 11 (1). [IRELAND.] A.D. 1735.

STAT. 9 GEO.
2, c. 11. [Ir.]

"An Act for the more effectual preventing of Clandestine Marriages."

"Whereas the several laws made to prevent clandestine marriages have proved ineffectual; and notwithstanding the penalties laid on those who celebrate such marriages, many persons under age who are entitled to considerable fortunes, are frequently married without the consent of their parents or guardians, to the great prejudice of many families; and protestants frequently intermarry with papists, whereby the popish interest and religion are increased and propagated: for remedy whereof be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that from and after the twenty-fifth day of March, which will be in the year of our Lord one thousand seven hundred and thirty-seven, all marriages and matrimonial contracts, where

23 GEO. 2, c. 10,
explained and
made more
effectual.Marriages and
contracts where
either party
under twenty-
one, without
consent of
father, or, if

STAT. 9 GEO.
2, c. 11. [IR.]

dead, of guardian, in writing under his hand, or if none, of lord chancellor, void; and not deemed by spiritual court contracts or marriages, if either entitled to 100*l*. per annum real estate, or 500*l*. personal, or if father or mother in possession of 100*l*. per annum, or 2000*l*. personal.

Father or guardian, or, if none, any person by lord chancellor appointed, may commence a suit in ecclesiastical court to disannul it, to be prosecuted with effect, and if either party proved under twenty-one, it shall be decreed void;

if no suit in a year after, good.

Person of full age marrying or contracting to marry, without such consent, one under age possessed of or entitled to 10,000*l*. forfeits 500*l*. otherwise only 200*l*.

Penalty to the king and prosecutor; and, on conviction, one year's imprisonment.

But prosecution in a year.

No minister to

either of the parties are under the age of twenty-one years, had without the consent of the father (if living), in writing under his hand first had and obtained, or if dead, of the guardian had and obtained in the same manner, or of the lord chancellor or keeper of the great seal, in case no guardian be appointed, shall be absolutely null and void to all intents and purposes whatsoever, and shall not be deemed, adjudged, or construed by any spiritual court as contracts or marriages, if either of the parties marrying or contracting marriage without such consent, and being under the age of twenty-one years, be entitled to any real estate of the value of one hundred pounds per annum, or to any personal estate to the value of five hundred pounds, or if the father or mother of such party so marrying under age be in possession of any real estate of the value of one hundred pounds per annum, or of any personal estate of the value of two thousand pounds.

"II. And be it further enacted by the authority aforesaid, that from and after the said twenty-fifth day of March, in the year of our Lord one thousand seven hundred and thirty-seven, it shall and may be lawful for the father or guardian of any person, who shall marry or be contracted in marriage when under the age of one and twenty years, or, if there be no father or guardian, for any person or persons to be appointed by the lord chancellor or the lord keeper of the great seal, for that purpose, to commence a suit in the proper ecclesiastical court, in order to disannul such marriage or matrimonial contract; which suit, when commenced, shall be prosecuted with effect; and if it appears in the said suit by proper proof, that either of the parties so marrying, or contracting to marry, was at the time of such marriage or matrimonial contract under the age of one and twenty years, such marriage or matrimonial contract shall be declared and adjudged by the ecclesiastical court, where such suit is commenced, to be absolutely null and void to all intents and purposes.

"III. Provided always, that if no such suit be commenced within one year after the solemnization of such marriage, or the making of such matrimonial contract, such marriage or matrimonial contract shall from the expiration of the said year be good and valid to all intents and purposes, as if this act had never been made; anything herein before contained to the contrary thereof in any wise notwithstanding.

"IV. And be it further enacted by the authority aforesaid, that from and after the said twenty-fifth day of March, in the year of our Lord one thousand seven hundred and thirty-seven, if any person of the full age of one and twenty years shall marry, or contract to marry, any person under the said age without such consent as aforesaid, such person being of full age, so marrying or contracting to marry a person under the said age, shall forfeit the sum of five hundred pounds, in case the person so married or contracted to be married, when under the age of one and twenty years, shall be possessed of or entitled unto real or personal estate of the value of ten thousand pounds: but in case the person so married, or contracted to be married, when under the age of one and twenty years shall not be possessed of or entitled unto real or personal estate of the value of ten thousand pounds, then the person being of full age, and so marrying or contracting to marry a person under the said age, shall forfeit only the sum of two hundred pounds; which said respective sums shall be recovered by bill, plaint, or information, in any of his majesty's courts of record; and one moiety of the said forfeitures shall be to the use of his majesty, and the other moiety to the use of him, her, or them who shall sue for the same; and if any person being of full age shall be legally convicted in any such suit of marrying or contracting to marry a person under the said age of twenty-one years, such person so convicted shall likewise be imprisoned in the common gaol of the county or place where such offence is committed, for the space of one year without bail or mainprize.

"V. Provided always, that no such forfeiture or penalty shall be incurred, unless the prosecution be commenced within one year after the fact committed.

"VI. And be it further enacted by the authority aforesaid, that from and

after the said twenty-fifth day of March one thousand seven hundred and thirty-seven, no minister shall knowingly in any church or chapel, where divine service is celebrated according to the usage of the church of Ireland, publish the banns of matrimony between any persons, whereof one is of the protestant and the other of the popish religion, nor without a certificate from three credible persons of the parish or parishes where such banns are published, that the parties so intending to marry are both of the protestant, or both of the popish religion; and every minister offending herein shall be liable to such ecclesiastical censure, as he would have been by the ecclesiastical laws of this kingdom for celebrating a clandestine marriage.

“VII. Provided always, and be it further enacted by the authority aforesaid, that nothing herein contained shall be construed to lessen or take away any of the penalties or disabilities inflicted against any persons who contract, celebrate, or are present at any clandestine marriage, by virtue of any of the laws or statutes now in force in this kingdom; anything herein contained to the contrary thereof in anywise notwithstanding.

persons contracting, celebrating, or present at clandestine marriage.

“VIII. And be it further enacted by the authority aforesaid, that this act shall be publicly read four times in the year in all parish churches, and all public chapels, and other places of public worship, by the parson, vicar, or curate of the respective parishes or chapels immediately after morning prayers on four several Sundays: that is to say, upon the Sunday next after the fifth day of May in the year one thousand seven hundred and thirty-six, upon the Sunday next after the fifth day of August, upon the Sunday next after the fifth day of November, and upon the Sunday next after the fifth day of February next ensuing, and upon the same days in every following year, on pain of five pounds for every such omission or neglect: the said penalty to go to such person as shall first sue for the same by bill, plaint, or information, or by civil bill.”

STAT. 9 GEO. 2, c. 11. [IR.] publish banns of marriage between a protestant and papist, nor without certificate from three parishioners that both are of same religion, on pain of ecclesiastical censures.

Not to take away penalties by any law in force against

Repealed, 19 Geo. 2, c. 13. To be read publicly in churches four Sundays in the year.

Penalty, 5*l*. every omission.

XXXV. STAT. 9 GEORGII 2, c. 12 (1). [IRELAND.] A.D. 1735.

STAT. 9 GEO. 2, c. 12. [IR.]

“*An Act for explaining an Act for real Union and Division of Parishes.*”

XXXVI. STAT. 9 GEORGII 2, c. 13. [IRELAND.] A.D. 1735.

STAT. 9 GEO. 2, c. 13. [IR.]

“*An Act for making more effectual an Act to amend and explain an Act, intituled, An Act to encourage building of Houses and making other Improvements on Church Lands, and to prevent Dilapidations.*”

“Whereas by an act made in the twelfth year of his late majesty King George the First, intituled, ‘An Act to amend and explain an Act, intituled, An Act to encourage building of Houses, and making other Improvements on Church Lands, and to prevent Dilapidations;’ it is enacted, ‘that from and after the first day of May, which was in the year of our Lord one thousand seven hundred and twenty six, instead of the several payments directed to be paid in and by the therein-recited act made in the tenth year of King William the Third of glorious memory, intituled, “An Act to encourage building of Houses, and making other Improvements on Church Lands, and to prevent Dilapidations;” every archbishop, bishop, and other ecclesiastical person whatsoever, who shall from and after the first day of May aforesaid, make, build, erect, add to, or repair any house, outhouses, gardens, or other necessary improvements, on his demesne, glebe, or mensal lands, for which a certificate shall be obtained, as is by the said act appointed, his executors or administrators respectively, shall from his next and immediate successor have and receive three-fourths of the sum or sums so certified; and such successor having paid the three-fourths of the sum or sums so certified as aforesaid, his executors or administrators respectively, shall and may receive two thirds thereof, that is, one moiety of the sum first certified, from his next successor; which successor having paid the said moiety of the said first sum, his executors or adminis-

15 Geo. 2, c. 5. 17 Geo. 2, c. 8.

12 Geo. 1, c. 10, s. 2, recited.

10 Gul. 3, c. 6.

STAT. 9 GEO.
2, c. 13. [1R.]

Doubt there-
upon, where
the whole mo-
ney charged
by said acts
not paid.

Ecclesiastics,
entitled to two
fourths or one
fourth of mo-
ney certified for
improvements
on church
lands, who
shall pay more
than one fourth
of the whole
charged in the
certificate,
shall receive
and recover
from successor
so much as
they shall have
paid more than
one fourth of
the whole
charged in the
certificate;
the like remedy
for the same as
for the whole,
if the whole
had been paid
as by said acts.

trators shall and may receive from his next successor one half thereof, that is, one fourth part of the sum or sums in the first certificate mentioned; all which sums so to be paid and received shall and may be paid and recovered within the times, and in the same manner, as the sums to be paid and recovered by the said former act are directed to be paid and recovered; anything in the said former act to the contrary notwithstanding: and whereas it has been doubted whether any archbishop, bishop, or other ecclesiastical person chargeable by the said act of the twelfth of his late majesty King George the First, with three fourth or two fourth parts of any sum or sums of money certified for buildings or other improvements on church lands, or entitled by the same to receive two fourths or one fourth of such money from his next successor, can sue for or recover the said two fourths or one fourth, or any part thereof, not having paid the whole money charged on him by the said acts: for the removal of such doubt be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that from and after the twenty-fourth day of June, one thousand seven hundred and thirty-six, every archbishop, bishop, or other ecclesiastical person, entitled to receive the said two fourths or one fourth as aforesaid, who hath paid or shall pay more than one fourth of the whole money charged in such certificate as aforesaid, shall and may receive and sue for and recover from his next successor, his executors or administrators, so much of the said two fourths or one fourth respectively, as such archbishop, bishop, or other ecclesiastical person, shall have paid more than the amount of one fourth part of the whole money charged in such certificate as aforesaid; for which money so to be received, sued for, and recovered, every such archbishop, bishop, or other ecclesiastical person respectively, and his and their respective executors and administrators, shall have the like remedy against his next respective successor, and his executors and administrators, as such archbishop, bishop, or other ecclesiastical person might have had for the whole two fourths or one fourth aforesaid, in case the whole money charged upon such archbishop, bishop, or other ecclesiastical person had been paid according to the direction of the said acts; anything in the same to the contrary notwithstanding.

“II. And whereas it may happen, that persons promoted to archbishoprics, bishoprics, or other ecclesiastical benefices, may continue so short a time in such preferments, that the profits thence arising will not answer the charges incident to such promotions, and that their families may be wholly unable upon their death to pay the sums of money charged upon them by the said acts on account of their archbishoprics, bishoprics, or other ecclesiastical benefices, or not able without being reduced to extreme poverty: to remedy those inconveniences, and the better to secure to the builder or improver on any archbishopric, bishopric, or other ecclesiastical benefice, or to such who have paid, what they were by the said act charged with on account of such buildings and improvements, the encouragement designed them by the aforesaid act: be it enacted by the authority aforesaid, that no archbishop, bishop, or other ecclesiastical person, who shall be promoted to any archbishopric, bishopric, or other ecclesiastical benefice, after the said twenty-fourth day of June, one thousand seven hundred and thirty-six, shall be deemed a successor within the intention of this or the former acts liable to the payment of any part of any sum of money charged or to be charged on any archbishopric, bishopric, or other ecclesiastical benefice, by virtue of any certificate made out or given, or to be made out or given, by virtue of this or the said former acts, who shall happen to die or be removed within the space of one year from the death, translation, or removal of the archbishop, bishop, or other ecclesiastical person, immediately preceding him in the archbishopric, bishopric, or other ecclesiastical living, whereunto he was so promoted.

“III. Provided always, and be it enacted by the authority aforesaid, that when any archbishop, bishop, or other ecclesiastical person shall die, or be translated, or removed, the person succeeding who shall first be entitled to a year's profit of such archbishopric, bishopric, or other ecclesiastical benefice, (the said year to be

No ecclesiastic
dying or re-
moved in a
year from
death, transla-
tion, or re-
moval of pre-
decessor,
deemed a suc-
cessor within
said acts, liable
to any part of
the charge by
such certificate.

The person
first entitled
to a year's
profit of the
bishopric or

reckoned from the death, translation, or removal of such archbishop, bishop, or other ecclesiastical person,) shall be deemed and taken to be the next successor to such archbishop, bishop, or other ecclesiastical person so dying, translated, or removed, for the purpose only of being chargeable with the payment of money certified for building on church lands, and for purchasing lands according to this and the said former acts, and that to all other purposes such person shall be deemed and taken to be in such degree of succession to such archbishop, bishop, or other ecclesiastical person, as he should be in case this act had never been made.

“IV. And be it further enacted by the authority aforesaid, that every archbishop, bishop, or other ecclesiastical person, chargeable by this or the former acts with the payment of any sum of money certified or to be certified as aforesaid, shall pay the one moiety of such money, as soon as he is become a successor chargeable therewith, according to the true intention of this act, and the other moiety thereof by two equal half-yearly payments within the next year.

“V. And whereas by the said act made in the twelfth year of King George the First, it is enacted, that when any certificate shall be given or made out by virtue of the said act, for any sum or sums of money to be charged upon any archbishopric, bishopric, or other ecclesiastical living, for any building or improvements, such certificate shall contain a true account of the clear yearly value or income of the said archbishopric, bishopric, or ecclesiastical living, as the same shall be proved to be before such persons respectively, who shall grant such certificate at or before the time of making out such certificate: and whereas it is apprehended, that through ignorance and want of due care some certificates have been made out without inserting in the said certificates an account of the clear yearly value or income of such archbishopric, bishopric, or other ecclesiastical living; and that for want of such account being inserted in such certificate a dispute may arise concerning the validity of such certificate, and that the builder and improver on such archbishopric, bishopric, or other ecclesiastical living, may be in danger of losing the sum or sums of money intended to be reimbursed him for his encouragement to build and improve by the aforesaid act: therefore to avoid any such disputes, and to secure to the builder or improver on any archbishopric, bishopric, or other ecclesiastical living, the encouragement intended him by the aforesaid act; be it further enacted by the authority aforesaid, that where any certificate hath been made out or given by any chief governor or governors of this kingdom, archbishop, or bishop, to charge any archbishopric, bishopric, or other ecclesiastical living, with money for building or making other improvements on church lands, which certificate doth not contain an account of the clear yearly value of such archbishopric, bishopric, or other ecclesiastical living; in every such case the chief governor or governors of this kingdom, archbishop, or bishop, who granted such certificate, or the successor and successors for the time being of such chief governor or governors, archbishop, or bishop, respectively, shall and may, and they are hereby thereunto authorized and empowered, at any time before the twenty-fourth day of June, which shall be in the year of our Lord one thousand seven hundred and thirty-eight, to grant and make out an additional or supplemental certificate; in which shall be contained a true account of the clear yearly value or income of the said archbishopric, bishopric, or other ecclesiastical living, as the same shall be proved to be at or before the time of making out such additional or supplemental certificate before such person or persons respectively, as is or are hereby empowered to make out the same, whose judgment therein shall be final; the said clear yearly value to be computed and proved in the manner directed by the said last-recited act; and such additional or supplemental certificate being made out and granted in manner aforesaid, the respective original certificate, in which an account of the clear yearly value of such archbishopric, bishopric, or other ecclesiastical living was omitted, shall be of the same force and validity to all purposes, as if such account had been contained therein, according to the directions of the said former act; anything in the said act to the contrary in any wise notwithstanding.

“VI. And whereas by the said act made in the twelfth year of King George

STAT. 9 GEO. 2, c. 13. [IR.]

benefice from the death or removal, deemed the next successor for the purpose only of being chargeable with the money certified; and shall pay a moiety as soon as he becomes a successor chargeable, the other by two equal portions the next year.

Recital of 12 Geo. 1, c. 10, s. 1.

Some certificates made out without inserting account of clear yearly value pursuant thereto.

To avoid disputes, and secure improver the encouragement intended,

grantors of such certificates, or their successors, shall, before 24th June, 1738, make out additional certificates, with true account of clear yearly value of the bishoprick or living as then proved, which shall be final; and then the original certificate, in which the account omitted, of same force as if contained therein.

12 Geo. 1, c. 10.

STAT. 9 GEO.
2, c. 13. [1R.]

Bishoprics united by patent, some whereof of small value, so as not sufficient to answer for improvements thereon in the time limited, and doubts whether it can be charged on all the united bishoprics; all certificates of improvements on any bishopric shall contain account of clear yearly value of the several united bishoprics at the time of making; and though the sums laid out on one, it shall be charged on all, while united; and levied as other money for improvements.
12 Geo. 1, c. 10.

Certificates of improvements not invalidated by not giving in account in writing of intended improvements three months before. Sufficient hereafter to give it in a fortnight before.
17 Geo. 2, c. 8.

the First it is provided, 'that in the certificate to be given and made out, the yearly value or income shall be computed of that ecclesiastical living only, whereon such building or improvements are made, and no other, unless there be a real union by or pursuant to any act of parliament of the said ecclesiastical living with other livings, from which it is inseparable:' and whereas two or more bishoprics are united, and now held and enjoyed by one archbishop or bishop by virtue of patents from the crown, some whereof are of small value: and whereas it may happen that houses and improvements may be made by archbishops or bishops on one of the said united bishoprics, which may be of so small a value as not to be sufficient to answer the money laid out in such buildings or improvements in the time limited by the said recited acts: and it hath been doubted on the said recited acts whether money laid out in buildings and improvements on any one of such united bishoprics can be charged on all the said united bishoprics, while they remain united: be it declared and enacted by the authority aforesaid, that all certificates which shall hereafter be given or made out for any sum or sums of money to be charged upon any archbishopric or bishopric for any buildings or improvements to be made pursuant to the said act of the twelfth of his late majesty King George the First, or the act passed in the tenth year of King William the Third, shall contain a true account of the clear yearly value or income of the several united bishoprics, held by the archbishop or bishop so building such houses or making such improvements, at the time of the making thereof; and that all and every the sum and sums so certified, though the same shall be laid out on one only of the said united bishoprics, shall be charged upon all the said united bishoprics, while the same shall continue so united, and shall be raised, levied, and paid, by such person and persons, at such times, by such proportions, and in such manner and form, as all other money laid out in building houses or making other improvements is directed and appointed to be paid by virtue of this present or the said recited acts; anything in the said recited acts to the contrary notwithstanding.

"VII. And whereas it is enacted by the before-mentioned act of the twelfth of his late majesty King George the First, 'that every archbishop, bishop, or other ecclesiastical person, intending to erect or make any building or improvement on his respective demesne or glebe lands, shall, at the least three months before he begins the same, give unto the person or persons, empowered to give such certificate as aforesaid, an account in writing of their intended buildings and improvements;' and whereas it is apprehended, that the giving in such an account three months before any buildings or improvements were begun, hath not been strictly complied with; and whereas so great a space of time for considering of such intended buildings and improvements is not found necessary: to prevent therefore any disputes on this account, and to avoid the like inconveniences for the future, be it enacted by the authority aforesaid, that the not having given in to the person empowered to give a certificate an account in writing of such intended buildings and improvements three months at least before they were begun, shall no ways invalidate or make void any certificate already given or hereafter to be given for any buildings or improvements made or begun in pursuance of this and the aforesaid acts; but that for the future it may be sufficient to give in such account to the person empowered to give a certificate one fortnight before such buildings or improvements are actually begun."

STAT. 9 GEO.
2, c. 22.

XXXVII. STAT. 9 GEORGII 2, c. 22. A.D. 1736.

"An Act for rebuilding the Parish Church of Gainsburgh in the County of Lincoln."

STAT. 9 GEO.
2, c. 25. [1R.]

XXXVIII. STAT. 9 GEORGII 2, c. 25. [IRELAND.] A.D. 1735.

"An Act for rebuilding the Cathedral Church of St. Finbarry in the City of Cork, and for erecting a Workhouse in the City of Cork for employing and maintaining the Poor, punishing of Vagabonds, and providing for and educating Foundling Children."

XXXIX. STAT. 9 GEORGII 2, c. 36(1). A.D. 1736.

STAT. 9 GEO.
2, c. 36.

"An Act to restrain (2) the Disposition of Lands (3), whereby the same become unalienable."

"Whereas gifts or alienations of lands, tenements, or hereditaments, in mortmain, are prohibited or restrained by Magna Charta, and divers other wholesome laws, as prejudicial to, and against the common utility; nevertheless, this public mischief has of late greatly increased by many large and improvident alienations or dispositions made by languishing or dying persons, or by other persons, to uses called charitable uses, to take place after their deaths, to the disherison of their lawful heirs; for remedy whereof, be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the twenty-fourth day of June, which shall be in the year of our Lord one thousand seven hundred and thirty-six, *no manors (4), lands, tenements, rents, advowsons, or other hereditaments, corporeal or incorporeal whatsoever (5), nor any sum or sums of money, goods, chattels, stocks in the public funds,*

No manors, lands, &c. nor money to be laid out in lands, to be given for charitable uses, unless by deed indented, and executed before two witnesses, twelve months before the death of the donor, and enrolled, &c.

(1) *Vide* Stat. 43 Geo. 3, c. 107. Stat. 9 Geo. 4, c. 85. Stat. 2 & 3 Gul. 4, c. 115. Stat. 4 & 5 Vict. c. 38.

(2) *Restrain*:—*Vide* Stat. 9 Hen. 3, c. 36 (*antè* 2). Stat. 7 Edw. 1, St. II. (*antè* 10). Stat. 13 Edw. 1, St. I. c. 32 (*antè* 21). Stat. 13 Edw. 1, St. I. c. 33 (*antè* 22). Stat. 18 Edw. 1, St. I. c. 3 (*antè* 28). Stat. 27 Edw. 1, St. II. (*antè* 29). Stat. 34 Edw. 1, St. III. (*antè* 31). Stat. 18 Edw. 3, St. III. c. 3 (*antè* 50). Stat. 15 Rich. 2, c. 5 (*antè* 87). Stat. 23 Hen. 8, c. 10 (*antè* 136). Stat. 1 Edw. 6, c. 14 (*antè* 294). Stat. 43 Eliz. c. 4 (*antè* 481). Stat. 7 & 8 Gul. 3, c. 37 (*antè* 664).

(3) *Disposition of Lands*:—In *Attorney-General v. Stewart*, (2 Meriv. 161,) Sir William Grant stated, "I conceive that the object of the Statute of Mortmain was wholly political, that it grew out of local circumstances, and was meant to have merely a local operation. It was passed to prevent what was deemed a public mischief, and not to regulate, as between ancestor and heir, the power of devising; or to prescribe, as between the grantor and grantee, the forms of alienation. It is incidentally only, and with reference to a particular object, the exercise of the owner's dominion over his property is abridged."

"It is true that the disherison of lawful heirs is recited as one of the consequences of the unlimited power of devising to charitable uses, and heirs may consequentially be benefited by the prohibition. But, generally to restrain the power of devising, was not in the contemplation of the legislature. Heirs are as liable as before to be disinherited by will, provided the disherison be not in favour of the proscribed object."

This statute has ever received a liberal construction against the alienation of property to superstitious uses: thus, Lord Northington, in *Attorney-General v. Heartwell*, (Ambl. 451,) observed, "I shall always think myself happy, when I can, by authority of law, controul foolish and superstitious acts of persons disposing of their estates in mortmain;"—in fact, courts of justice will

expound the Statute of Mortmain, so as to repress the mischief which gave rise to it, and advance the remedy provided for it. The mischief was, the devising lands in mortmain and creating perpetuities, which is attempted in cases where a perpetuity of trustees is raised by provisions for their successive appointments in wills. The remedy was to avoid all such dispositions in trust for any charitable uses whatsoever, using the largest and most general term, as contradistinguished from religious uses. This statute was not intended solely to restrain devises of lands to charities, but also to prohibit any devise of lands to trustees to sell them, and convert the produce of the sale to such purposes.

(4) *No manors*:—Copyholds are within this statute. *Arnold v. Chapman*, 1 Ves. Sen. 108.

(5) *No manors, lands, tenements, rents, advowsons, or other hereditaments, corporeal or incorporeal whatsoever*:—This statute applies to property of every description which savours of the realty. But where lands are already in mortmain, and vested in an ecclesiastical corporation, a lease of such lands to charitable uses, is not within the Stat. 9 Geo. 2, c. 36. *Walker v. Richardson*, 2 M. & W. 882.

Canal shares, (*Howse v. Chapman*, 4 Ves. 542;) dock or railway shares; money secured on turnpike tolls, (*Knapp v. Williams*, Ibid. 430, n.) or by an assignment of the poor's rates and county rates, (*Finch v. Squire*, 10 Ibid. 41;) leaseholds and mortgages, whether in fee or for years, (*Attorney-General v. Graves*, Ambl. 155; *Negus v. Coulter*, Ambl. 367; *Attorney-General v. Caldwell*, Ibid. 635; *Attorney-General v. Meyrick*, 2 Ves. Sen. 44; *Attorney-General v. Winchelsea* (*Earl of*), 3 Bro. C. C. 373; *White v. Evans*, 4 Ves. 21; *Currie v. Pye*, 17 Ibid. 462;) and judgment debts, so far as they operate as a charge on real estate, (*Collinson v. Pater*, 2 Russ. & M. 344:)—are respectively within the provisions of Stat. 9 Geo. 2, c. 36.

Where a testator, who has given his personal estate to charitable uses, contracts to

STAT. 9 GEO. *securities for money, or any other personal estate whatsoever, to be laid out or disposed*
2, c. 36.

sell real estate, but the sale is not completed in his lifetime, his lien upon the estate for the amount of the purchase money, is an interest in land, within the Statute of Mortmain; and the purchase money will not pass by his will to a charity. *Harrison v. Harrison*, 1 Russ. & M. 71.

Where A, being entitled to certain sums of money which were to be raised by the execution of a trust for sale of real estate, bequeathed all his personal estate to B, who survived A, and afterwards died, having bequeathed the residue of her personal estate to charity: Vice-Chancellor *Leach* held, that these sums, constituting an interest in land at the testatrix's death, could not be legally given to the charities. *Attorney-General v. Harley*, 5 Madd. 321.

If lands be devised in trust for a charity, the trust not only is itself void, but vitiates the devise of the legal estate on which it is ingrafted; (*Adlington v. Cann*, 3 Atk. 155; *Doe d. Burdett v. Wright*, 2 B. & A. 710; vide etiam *Carrick v. Errington*, 2 P. Wms. 361;) and therefore, in such cases, the heir may recover at law, except where there are other trusts not charitable, which, of course, would entitle the trustees to retain the estate, and oblige the heir to prosecute his claim in equity. *Willett v. Sandford*, 1 Ves. Sen. 186. *Doe d. Toone v. Copestake*, 6 East, 328. *Doe d. Thompson v. Pitcher*, 6 Taunt. 359.

But if the devise were of particular lands in fee, and the will contained a residuary devise, the failure of the former would, under a will made since 1837, let in the residuary devise, not the heir. 1 Jarman on Wills, 200.

Where the conveying of land to a charity is enjoined as a condition subsequent, as where the devise is to A, on condition that he shall convey Whiteacre, (part of the devised estate,) to a charity, the condition alone is void, and the devise is absolute. *Poor v. Miall*, 6 Madd. 32.

In *Henchman v. Attorney-General*, (3 M. & K. 492,) Lord Chancellor *Brougham* observed, "The question here arose principally between William Henchman, the devisee of a copyhold estate, and the crown, (for the lord of the manor did not join in the appeal,) and it related to the sum of 2000*l.* which the devisee was to pay the executor within a month after the testator's decease, and which was treated as personalty by the testator, and devised to a charitable use, with the other parts of the residue. There was no customary heir or next of kin, and the question was, did the devisee take the copyhold discharged of the condition for payment of 2000*l.*, and if not, did that sum belong to the crown?"

"His honor the Master of the Rolls held that, whether this sum were to be regarded as real estate or as personalty, made no difference; for, in either case, the crown was entitled by prerogative, though not by escheat. If it was real estate, the crown took for want of a customary heir; if personal, for want of next of kin.

"I cannot at all go along with this view

of the subject. The crown has no such prerogative; it may take personalty as *bona vacantia*, but real estate it can never take unless by escheat, which here can have no place, because the copyhold tenement must escheat to the lord, and not to the crown; but any prerogative extending to real estate, as distinct from escheat, I never yet heard of.

"The case of *Arnold v. Chapman*, (1 Ves. Sen. 108,) was one which received great consideration, and Lord *Hardwicke* there decreed that,—copyhold land being devised to A, he paying 1000*l.* to the testator's executors, and, after payment of debts and legacies, the residue to the Foundling Hospital,—the 1000*l.* was to be considered as real estate undisposed of; and that the executors took it under a resulting trust for the heir-at-law, the Mortmain Act rendering its application to the charity illegal. This decision proceeded upon the ground of the sum given to charitable uses, being excepted out of the devise, and so undisposed of, unless the gift was valid, which by the statute it was not.

"*Gravenor v. Hallum*, (Ambl. 643,) and other cases, take the same view of the subject; on the other hand, where lands are given subject to a charge, and the charge is void under the Mortmain Act, the sum charged shall sink into the specific devise. *Wright v. Row*, (1 Bro. C. C. 61,) and *Jackson v. Hurlock*, (2 Eden, 263,) sufficiently illustrate the distinction.

"In the present case it does not appear to be material, whether the sum is considered as excepted out of the devise, or as a charge upon it; and for this reason. In the latter case, the devisee takes the whole at once, subject only to a charge which has no effect; in the former view there is a resulting trust for the heir; but the heir cannot be found, or rather there is none, and such trust cannot escheat to the lord of the manor. Indeed, as long as there is a tenant to perform the services, the lord never can take by escheat, and it would be absurd and contrary to all principle, and inconsistent with the very nature of property, to hold that, while the devisee was in as tenant of the copyhold in general, a portion of it, or a sum charged on it, was in the possession, or rather in the holding of no one, and so escheated *pro defectu heredis*. As, therefore, the lord cannot take; as, beyond all question, the crown cannot take; and as there is here no heir of the testator, the devisee alone can take. He takes from necessity, indeed, and because there is none other to take, the resulting trust failing for want of a *cestui que* trust.

"But there is another view which may be taken of the question. The money has never been raised; the condition on which the gift was made is unperformed; and this court must be resorted to, in order to vest the money in the executors, and make the devisee perform his condition. Now, that the court will raise the money for the heir-at-law, whom it jealously protects, and will thus execute the trust which results in his favour, so as to treat the proportion given

of in the purchase of any lands, tenements, or hereditaments(1), shall be given, STAT. 9 GEO.
granted, aliened, limited, released, transferred, assigned, or appointed, or any ways 2, c. 36.

contrary to the statute as if it were not given at all, and were still estate descendible on the heir, is certain, and the cases from *Arnold v. Chapman*, (1 Ves. Sen. 108,) downwards, show it. But the court has never lent itself to raise money charged, and destined to an illegal use, for any other party, certainly not for the crown; indeed, that principle is sufficiently established by the case of *Walker v. Denne*, 2 Ves. 170.

"That the crown cannot take by escheat, this being copyhold, I have already observed. That this is not personally there needs no argument to show; indeed, *Arnold v. Chapman*, (1 Ves. Sen. 108,) and all the cases, prove it. That the crown can in no way be entitled, is therefore clear. For, as to the prerogative touching such a case, it is contrary to the plainest and most fundamental principles governing English tenures.

"But, if neither the crown nor the lord can take, the question lies between the devisee and the testator's heir, who has no existence by the case. Therefore, upon the present state of the facts, the devisee is entitled, and the judgment below must be reversed, and the deposit returned."

(1) *Nor any sum or sums of money, goods, chattels, stocks in the public funds, securities for money, or any other personal estate whatsoever, to be laid out or disposed of in the purchase of any lands, tenements, or hereditaments:—*If the pecuniary gift be partly charged upon land, and partly personal, it will be void *pro tanto*. And, therefore, where a testator devised a freehold estate to be sold, and the produce applied, together with so much of the personal estate as should be necessary, to secure an annuity of 30*l.* for the life of A, and, after his death, the principal to go to a charity; the freehold estate not being sufficient to raise the money: it was held, that the bequest was good as to the residue, which was to be raised out of the personal estate. *Waite v. Webb*, 6 Madd. 71.

The statute does not expressly apply to the proceeds of land directed to be sold, but it has been holden, that a fund of this description, is within its spirit, (*Curtis v. Hut-ton*, 14 Ves. 537; *British Museum (Trustees of) v. White*, 2 S. & S. 595;) and a legacy payable out of such a fund, would be equally invalid. *Page v. Leapingwell*, 18 Ves. 463. But the statute directly applies to the case of money being directed to be laid out in land, (*Attorney-General v. Heartwell*, 2 Eden, 234; *Pritchard v. Arbouin*, 3 Russ. 458;) and the prohibition applies not only where the investment in land is expressly directed by the will, but also where it results from the nature of the charity itself. *Widmore v. Woodroffe*, Ambl. 636. *Middleton v. Clitherow*, 3 Ves. 734.

If trustees be recommended to purchase land, such a recommendation will operate as a command, and consequently is equally invalid, as a positive direction. *Attorney-General v. Davies*, 9 Ves. 546.

Where a testator gave the residue of his personal estate for the maintenance and endowment of two schools, &c., and recommended that at a convenient time his money should be collected and laid out in the purchase of a freehold messuage, &c., to be a perpetual endowment for the support of the school: it was held, that the bequest was void under Stat. 9 Geo. 2, c. 36. *Kirkbank v. Hudson*, 1 Daniel, 259.

It is contrary to the policy of the Mortmain Acts to permit testamentary gifts of money to be laid out in land, as an inducement to draw land into mortmain.

Thus, in *Mather v. Scott*, (2 Keen, 178,) Lord Langdale observed, "The question in this case arises on the will of Joseph Spearman; and it is objected, and indeed admitted, that the intention of the testator cannot be carried into effect without bringing land into mortmain, and that is to be done by means pointed out by the will of the testator.

"The testator gives the residue of his property to the chaplains of his majesty's dockyard at Devonport, and of the Royal Hospital at Stonehouse, for the time being, in conjunction with his executors or their representatives, with a request that they will be pleased to entreat the lord of the manor, either at Devonport or East Stonehouse, to grant a spot of land suitable for the erection of dwellings, to be appropriated to the charitable purpose mentioned in the will.

"The first question is, whether the expressions used by the testator imply an expectation or intention, that a gratuitous grant of the land was to be obtained from the lord of the manor. I think this is by no means clear, and that the language of the testator did not exclude the trustees from purchasing the land, if they thought proper; and, if so, the bequest would be void.

"As to the second point raised at the bar, it is settled that a bequest to improve land already in mortmain is good, and that a direction to build for charitable purposes implies that land is to be bought, and is, therefore, void. The question here is whether a bequest of money to be laid out in building upon land, which the testator expected to be procured as a gift, can be supported. I do not think that the case of *Henshaw v. Atkinson*, (3 Madd. 306,) is an authority in support of such a bequest, because the decision proceeded upon the codicils, from which it was to be collected, that the expectation of the testator, as to the purchase of lands and buildings by other persons, had been disappointed, and that he contemplated making other provisions for the establishment of the charities.

"In the absence of direct authority, I must look to the object of the statute, and to the opinions of the judges as they are to be collected from the cases. With the exception of Lord Hardwicke, whose opinion as to this point in *The Attorney-General v. Bowles*, (2 Ves. Sen. 547,) has not been followed, all the judges—Lord Eldon, Sir William Grant, and

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2, c. 36.

conveyed or settled to or upon any person or persons, bodies politic or corporate, or

Lord *Lyndhurst*—concur in one view of the subject, that a bequest to improve or build upon land, unless the land is already in mortmain, is bad.

“In *The Attorney-General v. Davies*, (9 Ves. 544,) Lord *Eldon* says, ‘Whatever were the decisions formerly, when charity in this court received more than fair consideration, it is now clearly established, and I am glad it has come back to some common sense, that, unless the testator distinctly points to some land already in mortmain, the court will understand him to mean that an interest in land is to be purchased, and the gift is not good.’

“In *Pritchard v. Arbouin*, (3 Russ. 458,) Lord *Lyndhurst* says, ‘It is the settled rule of construction, that a direction to build is to be considered as including a direction to purchase land for the purpose of building, unless the testator distinctly points to some land, which is already in mortmain.’

“It is said that the direction to the trustees to be pleased to entreat the lord to grant a piece of ground, does not bring this case within the principle; but I am of opinion that, if the testator intended to exclude a purchase, he has failed to express his intention; and that it is contrary to the policy of the Mortmain Act to permit testamentary gifts of money to be laid out on land, as an inducement to draw land into mortmain.

“I am of opinion, upon the first point, that the language of the bequest is not sufficiently express; and, upon the second, that the charitable gift must fail.”

In *Dixon v. Butler*, (3 Y. & C. 677,) it appeared that the testatrix bequeathed a sum of money to trustees in trust, in case the inhabitants of the parish of A. should, within seven years after her death, build a church within the said parish, to pay and apply the said sum as they should think fit, for and towards defraying the costs and expenses of building and erecting such church: it was held, that such bequest was valid within the Statute of Mortmain: and that, at all events, where the sum so bequeathed did not exceed 500*l.*, and the testator appeared to have survived the making of the will more than three months, the bequest was good within Stat. 43 Geo. 3, c. 108, s. 1.

Mr. Baron *Alderson* observing, “The only question in this case is, whether these bequests are void by reason of the Statute of Mortmain.

“It seems agreed, that, if a testator give money to trustees to build a church, or school, or almshouse, the natural meaning of the word ‘build,’ includes not merely the expending the money in making the erection itself, but the purchasing of land on which such erection is to be made; and that the doctrine of Lord *Hardwicke*, that, if the trustees could obtain the land by gift from a third person, the bequest might be good, cannot be supported. Lord *Eldon*, (in *The Attorney-General v. Parsons*, 8 Ves. 186,) expressly so rules, and says, that, if a testator directs a school to be built, and does not himself advert by words in his will to a purpose

that the land is to be acquired otherwise than by purchase, the inference is, that he meant it to be acquired by purchase, and that the bequest is void. By ‘purchase,’ here Lord *Eldon* clearly means ‘purchase out of the fund bequeathed for building.’ The same rule was, in substance, laid down by the Master of the Rolls in *The Attorney-General v. Davies*, 9 Ves. 535, where the bequest was to a person or body corporate, in order to induce them to give the land; that is treated as, in truth, a purchase of the land from them; and the bequest was held void. But, I apprehend, where a testator gives money to be laid out on land already purchased by others for such building, or on land to be given by a third person for that purpose, and the trustees have only authority to lay out the money in building on such land so procured, and cannot employ it in procuring such land, the bequest, if such an object appear clearly from the language used in the testator’s will, is good. For then the word ‘build’ is not to be taken in its extended sense as including the purchase of the land, but is, by the language of the testator, applied specially to the mere cost of erecting, as contradistinguished from procuring the land on which such erection is to take place.

“This is, I think, the result of all the cases on this point, and the true reading of the Statute of Mortmain.

“Now, let us apply this rule to the facts of the present case.

“There is a bequest of 500*l.* to trustees, and it states the condition to be, that if, within seven years, the inhabitants of Abram shall erect, build, and finish a church or chapel, and procure the same to be consecrated, the trustees, as they shall think fit, shall appropriate the money, with its intermediate interest, for and towards the defraying the costs and expenses of building and erecting such church or chapel.

“Now, here, the church is to be finished and consecrated before any part of the money is to be laid out; the land must, therefore, have been purchased, and must have been finally dedicated to the church; or otherwise the church would not be consecrated; and, thereupon, the trustees are to apply, not at all events and generally, but as they shall think fit, the money bequeathed for and towards the expenses of building and erecting the church. I think this does not devote the money to the purchase of the land, but gives the trustees an option of contributing towards the assistance of the inhabitants in the erecting a church on land, which they, the inhabitants, at their own costs, were previously to procure. And if the trustees have any option to do one of two things, and that one be legal, the cases seem to establish that they may do so, and that such a bequest would not be void. As, where they are to vest the money either in land or in the funds, the bequest is good.

“I should, therefore, probably have come to the conclusion that this was a valid bequest, and that the second bequest also was

otherwise, for any estate or interest whatsoever, or any ways charged or incum- STAT. 9 GEO.
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good, even if it were dependent on the first. But I think the second bequest is not dependent on the first, and may well stand, even if the first failed.

"Independently of the above considerations, however, I apprehend that the Stat. 43 Geo. 3, c. 108, s. 1, makes the first bequest valid. For here, the bequest is for a church—amounts only to 500*l.*—and the testatrix survived the making of the will more than three months.

"The two bequests must be declared good, and the costs must fall on the personal estate of the testatrix."

A charitable donation of 3000*l.* stock towards the education of young men for college, and if their numbers should increase, a building to be purchased or rented as a seminary, was held not to be void under the Mortmain Act. *Davenport v. Mortimer*, 3 Jurist, 287.

If trustees have a discretionary power to lay out the money in land, or upon government or personal security, the statute will not apply to such a bequest. *Soresby v. Hollins*, cit. Ambl. 211. *Curtis v. Hut-ton*, 14 Ves. 537.

In *Baker v. Sutton*, (1 Keen, 224,) it was held, that a bequest of money, directed to be laid out on mortgage security, at the highest interest that could be legally and safely obtained for the same, was void under the Mortmain Act. Lord Langdale observing: "In this case the bequest is for such religious and charitable institutions and purposes as the major part of the trustees shall think proper; and the question is, whether this is to be considered as a gift for charitable purposes. In *Williams v. Kershaw*, (1 Keen, 274, *in not.*) the gift was for such benevolent, religious, and charitable purposes as the trustees should in their discretion think most beneficial; and the Master of the Rolls, considering that these words were to be taken, not conjointly, but in a distributive sense, was of opinion, that they were too vague to raise a charitable trust which this court could carry into execution. [The words of Lord Cottenham, as to this point, were: 'Did he (the testator) mean, that there should be no application of any fund to any but religious purposes? Such is not the natural meaning of the words, or the apparent intention of the testator. He intended to restrain the discretion of his trustees only within the limits of what was benevolent, or charitable, or religious.'—'The option in the present case makes the gift bad, not because illegal, but because it introduces a generality which deprives it of its character of a charity legacy, and makes it impossible for this court to execute it.' (Ibid. 1 Keen, 232.)] I have looked carefully into all the cases, and I do not find any one of them precisely in point with the present. In *Morice v. Durham (Bishop of)*, (9 Ves. 399,) where the bequest was for objects of benevolence and liberality, much stress was laid upon the word 'liberality,' as a word not only necessarily importing charity, but often con-

veying notions inconsistent with any purposes of charity, and at any rate open to such latitude of construction as to raise no trust which a court of equity could carry into execution. All the cases, with one exception, go to support the proposition, that a religious purpose is a charitable purpose. In the *Attorney-General v. Stepney*, (10 Ves. 22,) the testator gave the residue of his personal estate for the use of the Welsh circulating charity schools, as long as they should continue, and for the increase and improvement of Christian knowledge, and promoting religion, and to purchase Bibles and other religious books, Lord Eldon assumes, throughout his judgment, that a religious purpose was a charitable purpose. He adverts to the case of Mr. Bradley's will, *Browne v. Yeall*, (7 Ves. 50 (n.)) where the testator directed such books to be purchased and circulated as might have a tendency to promote the interests of virtue and religion, and the happiness of mankind, and he sufficiently manifests his dissent from Lord Thurlow's decision in that case, in favour of the next of kin, by intimating that he should not follow it unless the very words were again to be decided upon.

"I am of opinion that the bequest, in the present case, for such religious and charitable institutions and purposes as the trustees should think fit, is a good charitable gift.

"As to the other point, I think I am not at liberty to adopt the refinements suggested at the bar, but that I must look to what the testator really and substantially meant. I cannot suppose that the testator meant the mortgage of a ship, or of any personal chattel, or that the testator contemplated the investment of the money in Ireland or Scotland, or in any foreign country. The impression upon my mind is, that the testator intended an investment in real security; but I will consider that point before I finally decide it."

On the following day his lordship intimated his adherence to that opinion, and made the following decree.

"Declare, that the bequest of 6200*l.* is void by the Statute of Mortmain. Declare, that the bequest of the residue of the testator's estate for charitable purposes is void under the Statute of Mortmain, so far as such residue consists of any interest in land or money payable out of or secured on land. Declare, that the Hibernian mining shares and Anglo-Mexican mining shares in the report mentioned, are not such an interest in lands as that the bequest thereof for charitable purposes, is within the operation of the Statute of Mortmain. Declare, that the funeral and testamentary expenses, debts, and legacies, (except the 6200*l.* legacy,) and the costs of all parties of this suit, as between solicitor and client, ought to be paid *pro rata* out of the mixed personalty and pure personalty; and refer it to the master to apportion the same accordingly. Declare, that the plaintiffs entitled as next of kin to

STAT. 9 GEO. 2, c. 36. bered by any person or persons whatsoever, *in trust, or for the benefit of any chari-*

so much of the mixed personalty as shall remain after paying its proportion of such funeral and testamentary expenses, debts, legacies, and costs. Let the costs of all parties be taxed and paid as between solicitor and client. Let the trustees submit a scheme to the master for an application of so much of the pure personalty as shall remain after paying its proportion of such funeral and testamentary expenses, debts, legacies, and costs. And let the costs of and incident to such scheme be paid exclusively out of the pure personalty."

If investment in land be the ultimate destination of the money, the bequest will not be protected by the circumstance of provision being made for its suspension during an indefinite period. *Grieves v. Case*, 4 Bro. C. C. 67. *English v. Orde*, Duke's Charitable Uses, 432. *Pritchard v. Arbouin*, 3 Russ. 458. These decisions overruled *Grimmett v. Grimmett*, (Ambl. 210,) and it seems difficult to reconcile with them *Attorney-General v. Goddard*, (1 Turn. & R. 348,) where a testatrix, after bequeathing 1000*l.* Indian annuities, to trustees, for charitable purposes, added, "as money is of more uncertain value than land, I do also give them [the trustees] power to make such purchase as they shall think best for perpetuating the gift:—" and Sir Thomas Plumer held the bequest to be valid—though he admitted it to be doubtful, whether the clause in the will did not amount to a direction to purchase land, and whether the discretion extended to anything further than the selection of the estate.

Where the will is silent as to the purchase or acquisition of land, and the charitable trust or purpose is of a nature which admits of its being fully and conveniently executed without such purchase or acquisition, the legacy will be good. *Attorney-General v. Williams*, 4 Bro. C. C. 526. *Attorney-General v. Jordan*, Highmore on Mortmain, 225. In *Johnston v. Swann*, (3 Madd. 457,) the bequest of personalty, "to be a perpetual endowment and maintenance of two schools," was considered by Chief Baron Richards, to be so far good; though it was rendered void by the addition of a recommendation to purchase land. *Kirkbank v. Hudson*, 7 Price, 221. And even if the interest of the bequeathed fund be directed to be applied in providing a proper school-house, as the intention might be executed by hiring a house, without the necessity of purchasing land, the bequest will be valid; notwithstanding the will may contain expressions showing that the testator contemplated the perpetuity of the charity.

It has been doubted whether a bequest of money, to be applied in the erection of a school-house, or other building, for charitable purposes, is bad, as involving a trust to purchase. Lord Hardwicke considered, that if the trustees could get a piece of ground given to them, so that land need not be purchased, the gift was good; (*Vaughan v. Farrer*, 2 Ves. Sen. 182; *Attorney-General v. Bowles*, Ibid. 547;) but the con-

trary is now settled. *Foy v. Foy*, 1 Cox, 163. *Attorney-General v. Nash*, 3 Bro. C. C. 588. *Attorney-General v. Whitechurch*, 3 Ves. 144. *Chapman v. Brown*, 6 Ibid. 604. *Attorney-General v. Parsons*, 8 Ibid. 186. *Attorney-General v. Davies*, 9 Ibid. 535. *Pritchard v. Arbouin*, 3 Russ. 458. 1 Jarman on Wills, 203.

A bequest to a charity, however, would not be invalidated by the mere expression of the testator's hope or expectation that land would be provided by a third person, unless this were made a *sine qua non*; for, if it appear, that the testator intended the gift to take effect, whether land be provided or not, the legacy will be valid. *Henshaw v. Atkinson*, 3 Madd. 306. See vide *Attorney-General v. Tyndall*, 2 Eden, 207.

If a legacy be given to a charity, on condition that the land be provided from another source for effecting the testator's object, it will be void, because fresh land is put into mortmain. *Attorney-General v. Davies*, 9 Ves. 535. And it would not avail, that charity legatees, by whom a fund is directed to be laid out in the erection of buildings, possess, and offer to appropriate for the purpose, land already in mortmain, unless the bequest were so framed as not to admit of a new purchase being made for the occasion. 1 Jarman on Wills, 204. *Mathew v. Scott*, 2 Keen, 172.

Thus in *Giblett v. Hobson*, (3 M. & K. 524, 5 Sim. 651,) Lord Chancellor Brougham observed, "The facts of this case are few, and not in dispute. In the year 1828, the principal butchers in London and Westminster formed a charitable society for the relief of their widows and decayed members, and the plan originally was to allow only pensions out of their funds. Next year, however, they determined to add almshouses, and with that view, John Knight, one of their number, announced his intention of conveying to them a piece of ground at Farnham Royal, in Berkshire; he also put them into immediate possession, so that from 1829, the building-fund committee of the society received the rents and profits of the land. On the 14th of June, 1831, John Jay Graves, also a member, made and published his will, by which he 'gave and bequeathed to the Butcher's Charitable Institution the sum of 5000*l.* towards building almshouses to the said Institution.' He died on the 28th of November in the same year, and a month after that, on the 28th of December, 1831, the conveyance of the land at Farnham Royal, by Mr. Knight, to the Institution, was executed by bargain and sale, afterwards enrolled according to the provisions of the Stat. 9 Geo. 2, c. 36, commonly called the Mortmain Act, as being the last of that class. The question raised below, and brought here by appeal from his honour the Vice-Chancellor, is whether the bequest of Mr. Graves was void by that act.

"The words of the act confine its invalidating operations to devises of lands, tenements, and hereditaments, or of money and

other personalty to be laid out in purchasing lands, tenements, or hereditaments, or incumbrances upon the same; and it must be admitted, that there is no provision against bequests to be laid out in building, or erecting buildings, unless in so far as these may come within the description of purchases of lands, from the impossibility of building without land. It has been doubted whether or not this omission be intentional or accidental; some contending that, inasmuch as the object of the act was to prevent property being placed *extra commercium*, the legislature must have intended to prevent large sums being locked up in building upon land held in mortmain independently of the will by a prior title, or by another contemporaneous conveyance, duly executed according to the provisions of the statute; while others hold, that the only object was to prevent land being placed *extra commercium*, and that no intention existed of preventing land already in mortmain from being improved; on the contrary, one of the main objections to mortmain, its tendency to obstruct the improvement of the soil, would thereby be removed. I am of the latter opinion, both upon the reason of the matter, and because the last Mortmain Act refers, in the preamble, to real property alone, citing the twenty-third chapter of Magna Charta, and the other older mortmain statutes, which were made upon the mere feudal principle of protecting the lords against having tenants, who never died, imposed upon them. Placing land in mortmain is, therefore, the object against which the act is pointed; but then money is equally forbidden to be devised for the purpose of buying land, because that would indirectly put the land purchased in mortmain. So, charitable bequests to be invested in real securities, are equally forbidden, in consequence of their tendency to bring land by foreclosure into the perpetual ownership of a corporate mortgagee.

"It cannot be denied, that the current of the decisions, during the early part of the period that has elapsed since the act was passed, set in against the act, and gave birth to a restrictive construction favourable to mortmain, upon some mistaken view of encouraging charity, although certainly no one felt more, or has more severely commented upon the evils of improvident charity than Lord Hardwicke himself has done, in the the *Attorney-General v. Day*, (1 Ves. Sen. 218,) and the *Attorney-General v. Graves*; (Ambl. 155;) yet the *Attorney-General v. Bowles*, (2 Ves. Sen. 547,) and other cases, now no longer law, stretched the exception, in order to take bequests out of the statute, which have since been held to be within its purview, as they are clearly within its mischief. Nor does it seem possible to reconcile, as was attempted in the *Attorney-General v. Downing (Lady)*, (Ambl. 550,) the decision of Lord Northington in the *Attorney-General v. Tyndall*, (Ibid. 614; 2 Eden, 207,) with that of Lord Hardwicke in the *Attorney-General v. Bowles*. 2 Ves. Sen. 547.

"On the other hand, no one can doubt that the doctrine which Lord Northington

laid down in the *Attorney-General v. Tyndall*, (Ambl. 614, and 2 Eden, 207,) though not the decision itself, is contrary to law. When he states it to be as clear as any proposition in Euclid, that the Mortmain Act prohibits not merely bequests for the purchasing of lands, but also all realizing for the benefit of a charity; and expressly adds, to leave no doubt as to what he meant by realizing, that but for such prohibition, 20,000*l.* might be laid out in building upon land not worth 50*l.* (Ibid. 2 Eden, 214,) it is quite clear, that his lordship stated what was not law, for no one can think of maintaining, that a bequest of money to be laid out in building on land already in mortmain, or which might be acquired in aid of a testator's charitable purpose, through independent and valid titles, is struck at by the statute. This erroneous doctrine cannot, I fear, be rejected from the judgment of Lord Northington, on the ground of error by the reporter; for Lord Henley, in his excellent edition of his ancestor's Judgments, states that this case is in Lord Northington's own handwriting; and he only corrects the earlier portion of the report in Ambler, where Lord Northington is most absurdly, and, as it appears, without the least warrant from his own manuscript, made to say, that the master of the rolls was bound by the authority of the lord chancellor, but that he (Lord Northington) felt only one authority, that of the House of Lords, which was a superior court, no other authority having any influence on his judgment. Ibid. Ambl. 616.

"The first position which I am justified by the cases in laying down, nay, by the whole authorities together called upon to lay down, is this, that a bequest of money or other personalty to any charitable institution, to build or erect buildings, taken by itself, is within the statute. This seems plainly the good sense of the thing; for when I give any one 1000*l.* to build a house with, and say no more, it is plain I imply that he should lay it out in buying land, and building upon that land. Accordingly, the cases hold that such a bequest, without more, is void under the act; nor can any words be stronger to this effect than those used by Lord Eldon in the *Attorney-General v. Parsons*, (8 Ves. 191,) and the *Attorney-General v. Davies*, 9 Ves. 544. In the former case he says, 'that the good sense is with the later cases, requiring that the testator himself should have manifested his purpose to be sufficiently answered, if they could hire or beg land.' And he afterwards says, that he has reason to know 'it was Lord Thurlow's opinion that, if a testator directs a school to be built, and does not advert himself, by words in his will, to a purpose that the land is to be acquired otherwise than by purchase, you ought to infer that he meant it to be acquired by purchase, and then it will not do.' So in the *Attorney-General v. Davies*, (8 Ves. 544,) he expressly says, 'Whatever were the decisions formerly, when charity in this court received more than fair consideration, it is now clearly established, and I am glad it

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is come back to some common sense, that, unless the testator distinctly points to some land already in mortmain, the court will understand him to mean that an interest in land is to be purchased, and the gift is not good.' I consider the decision of Lord Bathurst in the *Attorney-General v. Hyde*, (Ambl. 751,) to be a case to the same effect. In that case, the circumstances were very strong for presuming, if presumption had been admissible, an intention to direct the building on land already in mortmain; for it was a bequest to trustees, among whom the ministers and churchwardens were included, to build a school-house in the parish, and there was land in the parish on which a school-house had once stood, that land being in mortmain.

"The next position which I deduce from the authorities is, that, though the testator's intention to confine the bequest to mere building is best gathered from his own words in the will, yet we have a right to look at the whole circumstances of the case, because if these be such, as to leave no doubt of the meaning which he had, and that the bequest was to build only upon land already in mortmain, or which should be acquired by other means than the legacy, then the provisions of the act do not apply. It seems, at first sight, as if the authorities to which I have referred were opposed to this extension, and prevented us from looking to matter *dehors* the will; for the language of Lord Eldon, and the opinion he cites from Lord Thurlow, are strong to confine us within the four corners of the will. But Lord Bathurst plainly went out of the will in the *Attorney-General v. Hyde*, (Ibid.) and took into consideration the fact of land being in mortmain under the control of the trustees, and of a school having formerly stood upon it. Indeed, he states those facts *dehors* the will, as forming the distinguishing feature of the case; and a case may be imagined, where no doubt could exist, as to the testator's intention, though not apparent on the face of the will; for example, a bequest to trustees to build in the parish of A, and all the land except one acre in that parish in settlement, being, we may suppose, to make it stronger, estate tail, with reversion in the crown, so that the remainders could not be barred without an act of parliament, and the one excepted acre in mortmain, and the testator himself a co-trustee and also tenant in tail of the settled lands, consequently consant of the state of the title of the lands in the parish. Here the presumption would be too violent to be resisted, that the testator could only intend a bequest to build with his legacy on the land already in mortmain; indeed, no words he could have used could add to the evidence of such being his intention. In these cases we do not admit evidence *dehors* to give a meaning, or discover the intention of words used, but only place ourselves in the situation of him who made the instrument, by enabling ourselves to suppose we are in the circumstances in which he stood.

"Again, if we take the words of Lord Eldon literally, in the *Attorney-General v. Davies*, (8 Ves. 544,) they seem to confine

the exception to cases where the land to build upon is already, (that is, at the date of the will, or at least at the testator's death,) in mortmain. But the reason of the matter extends this, also, to cases where the testator may plainly appear to have in contemplation a future acquisition of building-land, otherwise than by means of the legacy; and Lord Eldon clearly assumes this in what he says in the other case I have referred to, the *Attorney-General v. Parsons*, (8 Ves. 191,) where he speaks of hiring or begging land.

"I must, however, add this further position in limitation of the former, that the onus of showing that the intention of the testator was restrained within lawful limits, is upon the party seeking to take the bequest out of the statute; and that in one way or another, but especially where it is to be by matter *dehors*, that is, by considering to what circumstances the instrument was applied, the intention must appear absolutely certain and clear to exclude the employment of the fund in purchasing land, and must not be a matter of speculation or conjecture. We may add, further, that where the purchase of land, or otherwise obtaining land to build upon, is the fact relied upon, the circumstance of the land having been actually purchased by, and vested in the legatees, must always be a great deal more powerful than any expectation possibly can be; I mean where the words used do not apply directly to such land, and we only gather the intention from the fact of a purchase actually made, or in progress or contemplation.

"These positions, which appear warranted both by principle and authority, lead us to an easy determination of the present question.

"The bequest is of money to a charitable institution, towards building almshouses without more. This *primâ facie* is a bequest for buying land and building upon it, nor does the word *towards* make any difference; it only indicates, that the legacy was intended to increase a fund already begun, or intended to be formed for that purpose; and something must therefore be shown *dehors* the will, something in the circumstances to which the testator must be understood to refer, and necessarily to refer; something which leaves no doubt at all that he did not mean the money to be used in buying land, but only in building houses. Now the only thing relied on with this view, is the fact of Mr. Knight having previously given a piece of land, upon which it is said the almshouses might be built. Even if the fact had been so, would it prove more than that Mr. Graves's money might be used in building on the land so given; that is, would it show more than a possibility of the money being used in building without purchasing? More than this it could not prove; for no one can maintain that the existence of such land in the possession of the institution, precluded the application of the legacy to the purchase of other building land; and it is equally certain, that the words of the bequest would amply have justified such further acquisition of land, independent of Mr. Knight's land altogether. Indeed, there is much weight in the argument that the building on Mr.

Knight's land, would have been a more questionable use of the fund, than buying more land whereon to build. Therefore it is clear, in any view, that the having such a piece of land already, did not at all tie the trustees down to building upon it. But if it did not, the conclusion follows irresistibly, that a course of conduct on the part of the legatees which was far from necessary, and was only one of two kinds of proceeding equally open to them, was not necessarily in the testator's contemplation, and therefore that we can have no right to read his bequest as if it were not towards building almshouses generally, but towards building them upon land already in the possession of the institution. So it would stand if the conveyance had actually been made of that land prior to the will.

"This inference, however, is greatly strengthened, when we consider that this is by no means the case. The land had not been conveyed; the institution, by Mr. Knight's sufferance, stood in the situation of tenants at will to him, and he had only let them into possession in the intention of making a merely voluntary conveyance to them; which intention was unexecuted till five months after the date of Mr. Graves's will, and one month after his decease. Mr. Knight might during all that time, nay, after the death of the testator, have altered his intention; or creditors, or the bankrupt laws, might have interposed to interrupt the execution of his design. In the *Attorney-General v. Hyde*, (Ambl. 751,) the land was actually in mortmain, and in the ownership as well as occupation of the parties entrusted with the legacy to build a school, nay, a school had once stood upon it, and yet Lord Bathurst decreed it to be a bequest to buy other land, because he did not think that fact sufficient to show an intention of building on the parish land, thinking it on the whole more probable that the testatrix designed to found a school of her own. Surely we may consider it as probable here, that Mr. Graves did not intend to make the execution of his benevolent design, with respect to so considerable a sum, depend upon the many accidents which might intervene to prevent the transfer of Knight's land in the ownership of the institution. Who can doubt that if any one had said, 'You mean this 5000*l.* to be used in building on the present land at Farnham Royal?' he would have answered, 'Aye, or any other land you can conveniently buy with part of the money.' He has said nothing at all to exclude that supposition, and the facts do not prove in the least degree that he did not contemplate it. Indeed, the institution held Knight's land under a power of selling it when and as they should please. The price would have gone to the building fund, and then Mr. Graves's legacy becomes a gift to a fund, part of which must be vested in the purchase of land, in order that the rest might be used in building; and neither by the words of the will, nor by the facts of the case, is there any kind of restraint imposed which should direct the use of the legacy towards the one purpose rather than the other, if it once found its way into the fund.

"I am therefore of opinion that his honour the Vice-Chancellor has come to a sound conclusion upon the subject, and that the decree dismissing the bill must be affirmed, but without any costs. The question was a very fit one to be brought here, and the institution would not have discharged its duty had it not come forward to claim the legacy. I further consider that the next of kin have, by the decision, obtained a fund contrary to the intention of the testator, and in consequence of his ignorance of the law, and of his omitting expressions, which, had he known the law, he would assuredly have inserted in his will. The charity, and not the next of kin, were intended to be benefited; and therefore I give the costs out of the fund."

If a sum of money be bequeathed, to be applied in the erection of buildings, on land which is already devoted to charitable purposes, (*Glubb v. Attorney-General*, Ambl. 373; *Brodie v. Chandos* (Duke of), 1 Bro. C. C. 444, n.; *Attorney-General v. Oxford* (Bishop of), *Ibid.*; *Attorney-General v. Parsons*, 8 Ves. 186; *Attorney-General v. Munby*, 1 Meriv. 327,) or in the repair and improvement of buildings appropriated to charity, (*Harris v. Barnes*, Ambl. 651; *Attorney-General v. Chester* (Bishop of), 1 Bro. C. C. 444,) it will be valid, as by such gifts no additional land will be thrown into mortmain.

It is contrary to the policy of the Mortmain Act, and to the usual practice of the court, to allow money belonging to a charity to be vested in land, even for the purpose of enlarging the charities. *Attorney-General v. Wilson*, 2 Keen, 680.

A legacy to be applied in the liquidation of a subsisting incumbrance, on real estate which is already subject to charitable uses, appears to have been considered as not falling within this principle, but as appropriating to charity a new interest in land. Thus, a bequest of a sum of money, to be applied in paying off a mortgage debt on a meeting-house, cannot be supported; (*Corbyn v. French*, 4 Ves. 418;) and it matters not that the incumbrance is merely equitable. *Waterhouse v. Holmes*, 2 Sim. 162.

If a legacy, which *per se* would be valid, but which is founded upon, and derives its purpose and object from, an illegal devise, it will be necessarily involved in the failure of such devise. Thus, if a testator, after devising certain messuages to be converted into almshouses, bequeath the interest of a sum of money to the occupiers of such houses—as the devise will be clearly void, the legacy will be equally so. *Attorney-General v. Goulding*, 2 Bro. C. C. 428. *Attorney-General v. Whitchurch*, 3 Ves. 141. *Limbrej v. Gurr*, 6 Madd. 151. *Price v. Hathaway*, *Ibid.* 304. Or, if a testator devise a messuage to be used as a school-house for the education of poor children, and bequeath a fund to trustees, with a direction to apply the income in keeping the school-house in repair, and providing a master, the statute, by invalidating the devise of the house, deprives the pecuniary legacy of its object, which consequently fails. *Attorney-General v. Hinxman*, 2 J. & W. 270. In cases

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the converse of this, namely, where the valid gift is the pecuniary one, and the invalid gift is ancillary and subordinate to it, the former, of course, is not affected by the illegality of the latter. *Blandford v. Fackerell*, 4 Bro. C. C. 394. And in some other instances a bequest, valid in itself, has been held to fail, from the impracticability of the general scheme, of which it forms a part. *Grieves v. Case*, 2 Cox, 301. 4 Bro. C. C. 67.

Where the proportion of a fund, which is to be appropriated to a legal charity, depends on, and is to be ascertained only by the previous application of an adequate portion thereof to a purpose which the Statute of Mortmain forbids, the necessary effect of the illegality of the latter is to defeat the former. Thus, if the testator bequeath a sum of 5000*l.*, part to be applied in erecting almshouses, and the residue to St. Thomas's Hospital, the failure of the first object is fatal to the second; the erection of the almshouses, which is illegal, being necessary to ascertain the proportion intended for the hospital. *Attorney-General v. Davies*, 9 Ves. 535. *Limbrey v. Gurr*, 6 Madd. 151. *Attorney-General v. Hinzman*, 3 J. & W. 270. 1 Jarman on Wills, 206.

(1) *In trust, or for the benefit of any charitable uses whatsoever*:—Where a testator, after reciting that he had purchased an estate for the purpose of endowing a chapel, directed, that if at the time of his decease, such chapel should not be built and endowed, then such estate should enure; and he thereby gave and devised the same unto and to the use of T. B. and F. T., their heirs and assigns, upon trust, to receive the rents, issues, and profits thereof, and apply the same to such uses as certain other persons should appoint, trusting that, out of respect to his memory, such persons would exercise their power in doing such charitable acts as they knew the testator would most approve of: it was held, that this devise was void under the Mortmain Act, and the estate passed to the heir. *Pilkington v. Boughey*, 5 Jurist, 1149.

Where there was a bequest to a man and his heirs, to hold to the use of him and his heirs, with a desire, that he would convey to some charitable uses, and the will afterwards contained a bequest to him of an estate for life: it was held, that the whole of the former devise, and not merely the trust, was void, because Stat. 9 Geo. 2, c. 36, makes void the legal estate given, as well as the trust. *Doe d. Burdett v. Wrighte*, 2 B. & A. 710.

In *Doe d. Wellard v. Hawthorn*, (2 B. & A. 96,) it appeared, that the owner of land having, at his own expense, built a chapel, which was used for the purpose of public worship, and the congregation having subscribed a sum of money for the purpose of enlarging and improving the same, he, in consideration that the money so subscribed should be expended for that purpose, demised the premises by lease for twenty-three years, reserving a peppercorn rent during his life,

and 10*l.* per annum after his death. A declaration of trust was afterwards executed by some of the lessees, declaring that they would hold the premises in trust for the congregation assembling at the chapel; and that in case the public worship should be there discontinued, then, that they would assign the premises for civil purposes: it was held, that this was a conveyance for the benefit of a charitable use, and therefore void within Stat. 9 Geo. 2, c. 36, s. 1; that neither the sum agreed to be expended on the premises, nor the rent reserved at the death of the lessor, could be considered a full consideration paid for the lease, so as to bring the case within the second section of that statute; that the declaration of trust, although executed only by some out of the several lessees, was evidence against all, as to the purpose for which the lease was granted.

If a trustee, to whom a legacy bequeathed upon trust, to purchase lands for charitable purposes, receive the money and lay it out in lands, which are conveyed to him upon the trusts expressed in the will; the trust thus executed is contrary to the Mortmain Act, and will not be carried into effect by the court. *Attorney-General v. Ackland*, 1 Russ. & M. 243.

But the legacy, if paid in mistake, might, it is presumed, be recovered back by the party paying it, and it seems that where a legatee is called upon to refund, he is not, in general, liable to interest. *Gittins v. Steele*, 1 Swanst. 199.

Stat. 9 Geo. 2, c. 36, cannot be evaded by a secret trust, and the heir may compel a devisee to disclose any promise which he may have made to the testator to devote the land to charity. *Boson v. Statham*, 1 Eden, 508. *Muckleston v. Brown*, 6 Ves. 52. *Martin v. Hutton*, cit. Ibid. 61. *Stickland v. Aldridge*, 9 Ibid. 516. *Paine v. Hall*, 18 Ibid. 475. And such promise, if denied by the devisee, may be proved by evidence *aliunde*. *Edwards v. Pike*, 1 Cox, 17. 1 Eden, 267. The trust, by whatever means established, invalidates the devise. This doctrine evidently assumes that the trust, if legal, would have been binding on the conscience of, and might have been enforced against, the devisee; and this ground failing, the rule does not apply. As where a testator, after devising lands by a will, duly attested, declares a trust in favour of charity by an unattested paper, the statute law which affords to the devisee a valid defence against any claim on the part of the charity, of course, equally defends him against the claim of the heir, founded on the charitable trust. *Adlington v. Cann*, 3 Atk. 141. *Stickland v. Aldridge*, 9 Ves. 519. The case would be different, however, if the devisee had prevailed on the testator to give him the estate absolutely, under an assurance that the unattested paper was a sufficient declaration of the trust for a charity. *Adlington v. Cann*, 3 Atk. 152.

In *Doe d. Williams v. Lloyd*, (5 Bing.

estate, (other than stocks in the public funds,) be and be made by deed indented, sealed, and delivered in the presence of two or more credible witnesses, twelve calendar months at least before the death of such donor or grantor, (including the days of the execution and death,) and be enrolled (1) in his majesty's high court of

STAT. 9 GEO.
2, c. 36.

N. C. 741,) it appeared that a person named Lloyd, when eighty-four years old, conveyed a house and land to the plaintiffs, in June, 1836, for 490*l.* which was paid down; Lloyd lived in the house till March, 1838, when he died; the property was conveyed by deed indented, executed in the presence of two witnesses, and enrolled within six months after the execution, upon trusts, to promote the religious observances of a congregation of dissenters; and shortly after the execution of it, Lloyd transferred 500*l.* to the plaintiffs, who built a chapel on the land: it was held, that it was open to Lloyd's heir to impeach the validity of this deed, and that it was a question for the jury, whether the transaction was a fraudulent contrivance to elude the Statutes of Mortmain.

A conveyed a piece of ground, by bargain and sale enrolled, to trustees for charitable purposes; but he retained possession of the deed, and of the land, for more than twenty years afterwards, and then the trustees re-conveyed the land to him. After A's death, his heir agreed to sell the land to B. An information was then filed, against the heir and B claiming the land on behalf of the charity: but the court held, that the conveyance to the trustees was void, as it was to be inferred from the circumstances above mentioned, that there was a secret trust for A. *Attorney-General v. Poulden*, 8 Sim. 472.

A testatrix, by her will, in 1680, gave to C and his heirs a rent charge, issuing out of the lands therein described, and, subject thereto, she gave the lands to W and to his heirs, and by a paper of instructions, reciting that from the malignancy of the times she could not declare the uses to which she intended the rent-charge to be disposed, she gave the same to C and his heirs, upon the trusts thereafter mentioned; she requested of W, that a particular estate therein mentioned should always be let to farm to some deserving catholic, qualified to entertain a priest for the help of poor catholics in the parishes therein specified; and she desired that a Dominican or Franciscan priest, if a priest of such order could be conveniently had, should be kept at the particular estate, and she gave 20*l.* per annum out of the rent-charge for the maintenance of such priest: it was held, (the information having been filed before the enactment of Stat. 2 & 3 Gul. 4, c. 115,) that the direction in the paper of instructions was illegal and void, but given for a charitable purpose, and applicable, therefore, *cypres*, to a charitable purpose, to be determined by the sign-manual of the crown. *Attorney-General v. Todd*, 1 Keen, 803.

(1) *Be enrolled*:—A lease of land already in mortmain made to a charity does not require enrolment under Stat. 9 Geo. 4, c. 36. *Attorney-General v. Glyn*, 12 Sim. 84.

A clause of redemption in a mortgage is not a power of revocation or a condition, &c., for the benefit of the grantor, within

the meaning of the mortmain acts, 9 Geo. 2, c. 36, s. 1, and 9 Geo. 4, c. 85, s. 1. Therefore, if a mortgage to a charitable foundation, executed before Stat. 9 Geo. 4, c. 85, has not been duly enrolled, but is otherwise regular, it is rendered valid by Stat. 9 Geo. 4, c. 85, s. 1, though containing a clause for redemption on payment of the principal money and interest. *Doe d. Graham v. Hawkins*, 2 Q. B. 212.

A conveyance of copyhold lands to charitable uses in the lifetime of the party, is equally within the operation of Stat. 9 Geo. 2, c. 36, as freeholds, and must, therefore, be executed with the formalities required by that statute; and it seems that a bargain and sale and enrolment cannot be presumed to have been made, even after a long and undisturbed enjoyment. It is doubtful whether it would be sufficient, in the case of copyholds, to declare the uses by a deed, conformably to that statute, and to cause such deed to be enrolled in Chancery. *Doe d. Howson v. Waterton*, 3 B. & A. 149.

A pauper being in custody for having left his wife and children chargeable to a parish for several years, executed an indenture, reciting "that the present, as well as former parish officers, had expended 174*l.* in maintaining his wife and children, and that he had agreed to convey to the parish officers certain lands, &c.," and he thereby conveyed the same to trustees for the churchwardens and overseers of the poor, and of the inhabitants of the parish, to the intent, that the rents and profits might be applied to their use and benefit, in aid of the poor-rates: it was held, that this was a conveyance for the benefit of a charitable use, requiring enrolment, pursuant to Stat. 9 Geo. 2, c. 36, s. 1, and not a conveyance for a "valuable consideration actually paid," within s. 2 of that act; and that a person who had been a party to the deed conveying the property, was not estopped from taking advantage of this objection. *Doe d. Preece v. Howells*, 2 B. & Ad. 744.

To prove the enrolment of a deed under Stat. 9 Geo. 2, c. 36, the deed was produced, with the following memorandum endorsed thereon: "Enrolled in his majesty's high court of Chancery, the 1st day of December, 1836, being first duly stamped according to the tenor of the statute made for that purpose. D. Drew." Evidence was given that Mr. Drew was a person who, at the time of the trial, acted as the clerk of the enrolments in the court of Chancery, and that, on the memorandum being produced to him a short time before the trial, at the six clerks' office, which is under the same roof as the enrolment office, Mr. Drew acknowledged the name to be his signature: which was held, sufficient, the memorandum having been made by the proper officer in the execution of his duty. *Doe d. Williams v. Lloyd*, 1 M. & G. 671.

STAT. 9 GEO.
2, c. 36.

The said limitations not to extend to purchases or transfers made for valuable considerations.

Gifts, &c. made otherwise, absolutely void.

But not to prejudice the two universities, or the colleges of Eton, Winchester, or Westminster.

No college to hold more advowsons than shall be equal to one moiety of their fellows, &c.

Chancery, within six calendar months next after the execution thereof; and unless such stocks be transferred in the public books usually kept for the transfer of stocks, six calendar months at least before the death of such donor or grantor, (including the days of the transfer and death,) and unless the same be made to take effect in possession for the charitable use intended, immediately from the making thereof, and be *without any power of revocation, reservation* (1), trust, condition, limitation, clause, or agreement whatsoever, for the benefit of the donor or grantor, or of any person or persons claiming under him.

“II. (2) Provided always, that nothing hereinbefore mentioned relating to the sealing and delivering of any deed or deeds, twelve calendar months at least before the death of the grantor, or to the transfer of any stock six calendar months before the death of the grantor or person making such transfer, shall extend, or be construed to extend, to any purchase of any estate or interest in lands, tenements, or hereditaments, or any transfer of any stock, to be made really and *bonâ fide* for a full and valuable consideration actually paid at or before the making such conveyance or transfer without fraud or collusion.

“III. And be it further enacted by the authority aforesaid, that all gifts, grants, conveyances, appointments, assurances, transfers, and settlements whatsoever, of any lands, tenements, or other hereditaments, or of any estate or interest therein, or of any charge or incumbrance affecting or to affect any lands, tenements, or hereditaments, or of any stock, money, goods, chattels, or other personal estate, or securities for money to be laid out or disposed of in the purchase of any lands, tenements, or hereditaments, or of any estate or interest therein, or of any charge or incumbrance affecting or to affect the same, to or in trust for any charitable uses whatsoever, which shall at any time from and after the said twenty-fourth day of June, one thousand seven hundred and thirty-six, be made in any other manner or form than by this act is directed and appointed, shall be absolutely, and to all intents and purposes, null and void.

“IV. Provided always, that this act shall not extend; or be construed to extend, to make void the disposition of any lands, tenements, or hereditaments, or of any personal estate to be laid out in the purchase of any lands, tenements, or hereditaments, which shall be made in any other manner or form than by this act is directed, to or in trust for either of the two universities within that part of Great Britain called England, or any of the colleges or houses of learning within either of the said universities, or to or in trust for the colleges of Eton, Winchester, or Westminster, or any or either of them, for the better support and maintenance of the scholars only upon the foundations of the said colleges of Eton, Winchester, and Westminster.

“V. (3) Provided nevertheless, and be it enacted by the authority aforesaid, that no such college or house of learning, which doth or shall hold or enjoy so many advowsons of ecclesiastical benefices as are or shall be equal in number to one moiety of the fellows or persons usually styled or reputed as fellows, or where there are or shall be no fellows or persons usually styled or reputed as fellows, to one moiety of the students upon the foundation, whereof any such college or house of learning doth or may by the present constitution of such college or house of learning consist, shall, from and after the twenty-fourth day of June, one thousand

(1) *Without any power of revocation, reservation*:—A grant by deed, executed and enrolled pursuant to the Statute of Mortmain, of lands to trustees and their heirs, to the use of one of them, his heirs and assigns, upon condition that he, his heirs and assigns, should, from time to time, repair a vault and tomb, standing upon part of the lands; and, if need be, rebuild it, and permit the same to be used as a family vault for the grantor and any of her family; and in default thereof, then over to the other trustee, his heirs and assigns, was held not to be within the words of the statute, which prohibit the granting of

lands, &c., to charitable uses, unless the deed be without any condition or reservation for the benefit of the grantor, or any person claiming under him. *Doe d. Thompson v. Pitcher*, 3 M. & S. 407. 6 Taunt. 359.

If there be in a deed, one limitation to an use which is a charitable use within Stat. 9 Geo. 2, c. 36, that statute does not there fore avoid other limitations in the same deed, which are not within the act. *Ibid.*

(2) Amended and explained by Stat. 9 Geo. 4, c. 85.

(3) Repealed by Stat. 45 Geo. 3, c. 101.

seven hundred and thirty-six, be capable of purchasing, acquiring, receiving, taking, holding, or enjoying any other advowsons of ecclesiastical benefices by any means whatsoever; the advowsons of such ecclesiastical benefices as are annexed to, or given for, the benefit or better support of the headships of any of the said colleges or houses of learning, not being computed in the number of advowsons hereby limited. STAT. 9 GEO. 2, c. 36.

“VI. Provided always, that nothing in this act contained shall extend, or be construed to extend, to the disposition, grant, or settlement of any estate, real or personal, lying or being within that part of Great Britain called *Scotland* (1).” This act not to extend to estates in Scotland.

XL. STAT. 10 GEORGII 2, c. 21. A.D. 1737.

“*An Act for making the Chapel in the Hamlet of Abthorpe and Foxcoate in the Parish of Towcester in the County of Northampton, a Parish Church, and for appointing a District or Parish thereto, and for enabling the Master of the Free Grammar School within the said Hamlet of Abthorpe and Foxcoate, to be Vicar of the said Parish Church.*” STAT. 10 GEO. 2, c. 21.

XLI. STAT. 11 GEORGII 2, c. 5. A.D. 1738.

“*An Act for taking down and rebuilding the Church of the Parish of All Saints in the City of Worcester.*” STAT. 11 GEO. 2, c. 5.

XLII. STAT. 11 GEORGII 2, c. 10. [IRELAND.] A.D. 1737.

“*An Act for allowing further Time to Persons in Offices to qualify themselves pursuant to an Act, intituled, An Act to prevent the further Growth of Popery; and for giving further Ease to Protestant Dissenters with respect to Matrimonial Contracts.*” STAT. 11 GEO. 2, c. 10. [Ir.]

“III. And whereas several protestants dissenting from the church of Ireland as by law established, scrupling to be married according to the form of matrimony prescribed by the said church, do therefore frequently enter into matrimonial contracts in their own congregation before their ministers or teachers, and thereupon live together as husband and wife; be it enacted by the authority aforesaid, that for the ease of such protestant dissenters, who have already entered, or shall hereafter enter, into such matrimonial contracts, and thereupon live together as husband and wife, that they shall not be prosecuted in any ecclesiastic court in this kingdom, *ex officio mero*, or on the presentment of any minister or churchwardens of any parish, for or by reason of their entering into such matrimonial contracts, or for their living together as husband and wife by virtue of such contract: provided such protestant dissenters and such minister or teacher have or shall take the oaths, and subscribe the declaration, according to a statute made in the sixth year of the reign of King George the First, intituled, ‘An Act for exempting the Protestant Dissenters of this Kingdom from certain Penalties, to which they are now subject.’” Protestant dissenters shall not be prosecuted for matrimonial contracts in their congregation, and living as husband and wife, taking the oaths, &c. pursuant to 6 Geo. 1, c. 5.

XLIII. STAT. 11 GEORGII 2, c. 15. [IRELAND.] A.D. 1737.

“*An Act to repeal part of an Act passed in the tenth and eleventh years of King Charles the First, intituled, An Act for the Preservation of the Inheritance, Rights, and Profits of Lands belonging to the Church and Persons Ecclesiastical; and also for the more easy Recovery of Arrears of Rent due to Archbishops and Bishops upon their Translation.*” STAT. 11 GEO. 2, c. 15. [Ir.]

“Whereas by an act passed in the tenth and eleventh years of King Charles the First, intituled, ‘An Act for the Preservation of the Inheritance, Rights, and Profits of Lands belonging to the Church and Persons Ecclesiastical, it is among 10 & 11 Car. 1, c. 3, recited.

(1) *Scotland*.—Devise of money to be laid out in land in Scotland for charitable purposes, has been held to be good. *Othphant v. Hendrie*, 1 Bro. C.C. 571. *Mackintosh v. Townsend*, 16 Ves. 330.

STAT. II GEO.
2, c. 15. [Ir.]

Repeal of so
much thereof
as relates to
the commission
and certificate.

Lessors, in
pursuance of
said act shall
file counter-
parts in their
registries for
benefit of suc-
cessors;
register's fee
from lessee 20s.
recovered by
civil bill.

On payment
thereof, lessee
not subject to
penalties for
not entering
counterpart in
books of the
bishop, &c. nor
the lease void.

Difficult for
bishop to
recover rent
due on trans-
lation.

Bishop, his
executors, &c.
shall have debt
for arrears of
rents, at time
of translation,
against tenants,
their executors,
&c.

and may dis-
train on the
lands so long
as in posses-
sion of said
tenant or

other things enacted, 'that all grants made by any archbishops, bishops, deans and chapters, archdeacons, prebendaries, and other dignitaries, ecclesiastical persons, vicars, masters and governors, and fellows of colleges, and masters, guardians, or other governors of hospitals, or any of them, of any manors, lands, tenements, or other hereditaments, being parcel of their possessions, should be void, except leases therein mentioned for twenty-one years; a counter-part whereof should be entered in the respective register-books of the said archbishops, bishops, deans, deans and chapters, and of the said colleges and hospitals, for the benefit of succession, upon which should be reserved so much yearly rent or profits, or more, at the peril of the lessees, as the moiety of the true value of the said lands should amount to, as should appear by verdict of twelve indifferent persons, or otherwise by the certificate of four or more honest, equal, and indifferent persons, authorized by commission under the great seal of this kingdom to inquire and find the same, and the said certificate approved of by the lord deputy and privy council of this kingdom for the time being; which verdict or certificate should be peremptory to both parties, and their respective successors and assignees, during the said term: and whereas the issuing of such commission and such certificate thereon may be inconvenient, therefore be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that so much of the said act as relates to the said commission under the great seal of this kingdom, and any such certificate thereupon, shall be repealed, and shall from henceforth be declared null and void to all intents and purposes whatsoever.

"II. And whereas some doubts have arisen concerning the registering of such leases; be it enacted and declared by the authority aforesaid, that on the perfection of any leases in pursuance of the said recited act, the respective lessors shall file a counterpart or counterpart of such lease or leases in their respective registries for the benefit of their successors; for which the respective register shall have and receive from every such lessee the fee or sum of twenty shillings, and no more; to be recovered in case of refusal by civil bill before the judges of assize, or the justices of the peace at their quarter sessions in the county of Dublin, or county of the city of Dublin; and on paying such fee or sum of money, when demanded, the respective lessees in such leases shall be subject to no loss or penalty for not entering any counter-part or counter-parts of such lease or leases in their respective register books of the said archbishops, bishops, deans, deans and chapters, and of the said colleges and hospitals; nor shall the said leases be avoided for default thereof, anything in the said recited act, or any other law or usage to the contrary notwithstanding.

"III. And whereas archbishops and bishops are sometimes translated from one see or diocese to another, having great arrears of chief rents and other rents, due and owing to them at the time of such their respective translations by the tenants of the lands, tenements, or hereditaments, out of which such rents were due and payable, and who of right ought to have paid the same at such days and times as the same became due: and whereas great part of such arrears is frequently lost by the difficulties such archbishops or bishops after such translation are often put to in suing for the same: for remedy whereof be it enacted by the authority aforesaid, that from and after the first day of May, one thousand seven hundred and thirty-eight, every archbishop or bishop so translated, unto whom any such chief rent or other rent is or shall be due, and not paid at the time of such his translation, and in case of his decease his executors or administrators, shall and may have an action of debt for all such arrears of chief rents and other rents, against the tenant or tenants respectively, who ought to have paid the same to the time of such his translation, or against the executors or administrators of the said tenants; and also that it shall and may be lawful for every such archbishop and bishop so translated, his executors and administrators, to distrain for such arrears upon the lands, tenements, and hereditaments, which were charged with the payment of such chief rents or other rents, and liable to the distress of such archbishop or bishop at the time of such translation, so long as the said lands, tenements, or

hereditaments, continue, remain, and be, in the seisin or possession of the said tenant, who ought to have paid the said chief rent, or other rent, to the archbishop or bishop so translated, or in the seisin or possession of any other person or persons claiming the said lands, tenements, or hereditaments, only by, from, or under, the same tenant by purchase, gift, descent, or assignment; and that such archbishop or bishop, his executors, or administrators, may lawfully avow upon such distress for the matter aforesaid.

“IV. Provided nevertheless, that such action of debt shall be commenced, or such distress be taken, within two years after such translation; anything in this act to the contrary notwithstanding.”

STAT. 11 GEO.
2, c. 15. [1R.]
person under
him,
and avow;

but must pro-
secute in two
years.

XLIV. STAT. 11 GEORGII 2, c. 17. A.D. 1738.

“*An Act for securing the Estates of Papists conforming to the Protestant Religion, against the Disabilities created by several Acts of Parliament relating to Papists, and for rendering more effectual the several Acts of Parliament made for vesting in the two Universities in that part of Great Britain called England the Presentations (1) of Benefices belonging to Papists.*”

STAT. 11 GEO.
2, c. 17.

“Whereas persons professing or educated in the popish religion, are by divers acts of parliament subjected to several disabilities and incapacities, which may affect persons conforming from the popish to the protestant religion; and whereas many persons have already conformed to the protestant religion, and are willing to submit to his majesty’s government in as full and ample manner as any other of his majesty’s subjects, and others are likely so to do: be it therefore enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that all and every person or persons being reputed owner or owners, or in possession or receipt of the rents and profits of any manors, messuages, lands, tenements, or hereditaments, or of any interest therein, who having been, or reputed to be a papist or papists, or educated in the popish religion, hath or have conformed to, or hereafter shall conform to and profess, the protestant religion, and hath or have taken, or shall take the oaths of allegiance, supremacy, and abjuration, and also subscribed, or shall subscribe, the declarations set down and expressed in an act of parliament made in the thirtieth year of the reign of the late King Charles the Second, intituled, ‘An Act for the more effectual preserving the King’s Person and Government, by disabling Papists from sitting in either House of Parliament,’ to be by him, her, or them, repeated and subscribed in the courts of Chancery or King’s Bench, or quarter sessions of the county, where such person or persons shall reside, (all which shall be recorded in one of his majesty’s courts of Record at Westminster, or such quarter sessions as aforesaid,) and all and every person and persons being protestants, claiming under such person or persons conforming and performing the requisites as aforesaid, for their own benefit, or for the benefit of any other protestant or protestants, and not for the benefit of any papist or papists, shall hold, possess, and enjoy all such manors, messuages, lands, tenements, and hereditaments, freed and discharged of and from the disabilities and incapacities in the said acts, or any of them, contained, incurred, or supposed to be incurred by such person or persons so reputed owner or owners, or in possession or receipt of the rents and profits as aforesaid, or by any other person or persons, by, from, or through whom the title to such manors, messuages, lands, tenements, or hereditaments, or any interest therein, was or shall be derived, or supposed to be derived, for such estate, right, title, or interest, as he, she, or they had, or would have had, if no such disability or incapacity had been incurred; unless the person or persons entitled to take advantage of such disability, incapacity, or defect of title, hath or have actually and *bonâ fide* recovered, or shall hereafter recover, such manors, messuages, lands, tenements, or hereditaments, by judgment or decree, in some action or suit already commenced,

Owners of any
estate being
papists, on
conforming,
&c. to possess
such estate,
freed of disa-
bilities, unless
persons enti-
tled to take
advantage of
such disability
shall recover
judgment in
some action to
be commenced
within six
months before
conforming.

(1) *Presentations*:—*Vide antè* 529, n. (7).

STAT. 11 GEO.
2, c. 17.

Not to preju-
dice right in
possession two
months.

Persons re-
turning to
popish religion,
not to have
any benefit.

Act not to pre-
judice right of
any person en-
titled to any
reversion, if
pursued within
twelve months,
&c.

12 Ann. St. II.
c. 14.

1 G. & M.
St. I. c. 26.

or hereafter to be commenced, six calendar months at least before the making of such record, and to be prosecuted with due diligence.

“II. Provided nevertheless, that this act, or any thing herein contained, shall not take away or prejudice the right of any person or persons entitled to take advantage of such disability or incapacity, who now is or are in the actual possession of, or shall have precedent to the making of such record, been in quiet possession of any such manors, messuages, lands, tenements, or hereditaments, by the space of two calendar months.

“III. Provided always, and be it further enacted by the authority aforesaid, that if any such person or persons so conforming as aforesaid, shall, after such conformity, return to, or again profess, the popish religion, every such person and persons shall for ever afterwards be disabled from, and be incapable of, having or enjoying any benefit, privilege, or advantage of this act, and shall from thenceforth be liable to the same disabilities, incapacities, and forfeitures, as if he, she, or they had not taken the said oaths, and subscribed the declaration as aforesaid; any thing herein contained to the contrary notwithstanding.

“IV. Provided always, that nothing in this act contained shall extend to take away or prejudice the right of any person entitled to any remainder or reversion in any such manors, messuages, lands, tenements or hereditaments, in case such person shall pursue his or her said right by some action or suit to be commenced within the space of twelve calendar months next after the precedent estate or estates, on which such remainder or reversion depends and is expectant, shall be determined; or within twelve calendar months from and after the twenty-ninth day of September, one thousand seven hundred and thirty-eight, if such precedent estate or estates be already determined by the death or deaths of any person or persons, whose deaths have been concealed from, or not known to, the person entitled to such remainder or reversion, by reason of their having been buried beyond the seas, or in a private and clandestine manner at home, and shall prosecute such action or suit with due diligence.

“V. And whereas by an act made in the twelfth year of the reign of Queen Anne, for rendering more effectual an act made in the third year of the reign of King James the First, intituled, ‘An Act to prevent and avoid Dangers which may grow by Popish Recusants;’ and also one other act made in the first year of the reign of King William and Queen Mary, intituled, ‘An Act to vest in the two Universities the Presentations of Benefices belonging to Papists;’ it was enacted, that every papist or person making profession of the popish religion, and every child, not being a protestant, under the age of one and twenty years, of every such papist or person professing the popish religion, and every mortgagee, trustee, or person any ways intrusted directly or indirectly, mediately or immediately, by or for any such papist or person making profession of the popish religion, or such child as aforesaid, whether such trust be declared by writing or not, should be disabled and made incapable to present, collate, or nominate to any benefice, prebend, or ecclesiastical living, school, hospital, or donative, or to grant any avoidance of any benefice, prebend, or ecclesiastical living, and that every such presentation, collation, nomination, and grant, and every admission, institution, and induction to be made thereupon, should be utterly void and of no effect to all intents, constructions, and purposes whatsoever; and that in every such case the chancellor and scholars of the university of Oxford, and the chancellor and scholars of the university of Cambridge, should respectively have the presentation, nomination, collation, and donation of and to every such benefice, prebend, or ecclesiastical living, school, hospital, and donative, set, lying and being in the respective counties, cities, and other places and limits in the said act of the third year of King James mentioned, as in and by the said act is directed and appointed in the case of a popish recusant convict; and whereas for the better discovery of all secret trusts and fraudulent conveyances made by papists or persons making profession of the popish religion, of their advowsons and right of presentation, nomination, and donation to any benefices or ecclesiastical livings, several provisions were made by the said act of the twelfth year of the reign of Queen Anne, which have been

fraudulently evaded by persons obtaining from such papists, without a full and valuable consideration, grants of such advowsons and right of presentation, nomination, and donation, upon confidence only, that such grantees will, at the request of such papists, present to such benefices or ecclesiastical livings, clerks nominated by such papists, who have been presented accordingly, contrary to the true intent and meaning of the said acts, and to the great hurt of the protestant interest of this kingdom: be it therefore enacted by the authority aforesaid, that every grant to be made from and after the sixth day of May, one thousand seven hundred and thirty-eight, of any advowson or right of presentation, collation, nomination, or donation, of and to any benefice, prebend, or ecclesiastical living, school, hospital, or donative, and every grant or any avoidance thereof, by any papist, or person making profession of the popish religion, or any mortgagee, trustee, or person any ways intrusted directly or indirectly, mediately or immediately, by or for any such papist or person making profession of the popish religion, whether such trust be declared by writing or not, shall be null and void, unless such grant shall be made *bonâ fide*, and for a full and valuable consideration to and for a protestant purchaser or protestant purchasers, and merely and only for the benefit of a protestant or protestants; and that every such grantee, or person claiming under any such grant, shall be deemed to be a trustee for a papist or person professing the popish religion as aforesaid, within the true intent and meaning of the said act; and that all such grantees, or persons claiming under such grants, and their presentees, shall be compelled to make such discovery relating to such grants and presentations made thereupon, and by such methods, as in and by the said act of the twelfth year of the reign of Queen Anne, are directed in the case of trustees of papists or persons professing the popish religion; and that every devise to be made from and after the said sixth day of May, by any papist or person professing the popish religion, of any such advowson or right of presentation, collation, nomination, or donation, or any such avoidance, with intent to secure the benefit thereof to the heirs or family of such papist or person professing the popish religion, shall be null and void; and that all such devisees, and persons claiming under such devises, and their presentees, shall in the like manner, and by such methods, be compelled to discover, whether, to the best of their knowledge and belief, such devises were not made with the said intent."

STAT. 11 GEO.
2, c. 17.

Every grant of any ecclesiastical living, &c. by papist, void;

unless for valuable consideration, or protestant purchaser.

Every devise made of any ecclesiastical living by a papist, void.

XLV. STAT. 11 GEORGII 2, c. 21. A.D. 1738.

"An Act to empower the present Trustees under the last Will and Testament of John Marshall, Gentleman, deceased, to lay out a certain Sum of Money, now in their Hands, for pulling down and rebuilding the Parish Church of Christ Church in the County of Surrey, and for inclosing a piece of Ground lately purchased for an additional Churchyard to the said Church."

STAT. 11 GEO.
2, c. 21.

XLVI. STAT. 11 GEORGII 2, c. 23. A.D. 1738.

"An Act to explain and amend an Act passed in the eighth year of His present Majesty's Reign, intituled, 'An Act for rebuilding the Parish Church of St. Leonard, Shoreditch, in the County of Middlesex.'"

STAT. 11 GEO.
2, c. 23.

XLVII. STAT. 12 GEORGII 2, c. 4. A.D. 1739.

"An Act to enable the Inhabitants of the Parish of St. Nicholas, in the City of Worcester, to raise Money for discharging the Debts they have contracted in rebuilding their Parish Church."

STAT. 12 GEO.
2, c. 4.

XLVIII. STAT. 12 GEORGII 2, c. 7. A.D. 1739.

"An Act to enable the Parishioners of the Parish of Ealing, in the County of Middlesex, to raise Money by Rates upon themselves for finishing the Church of the said Parish."

STAT. 12 GEO.
2, c. 7.

STAT. 12 GEO.
2, c. 9.

XLIX. STAT. 12 GEORGII 2, c. 9. A.D. 1739.

"An Act for applying a Sum of Money given by the Will of Daniel Wiseman, Esquire, deceased, for finishing the new Church at Woolwich, in the County of Kent, and for raising an Annuity by an Assessment on the Parish of Woolwich, during the Lives of Mary Wiseman and Elizabeth Crouch, and the Life of the Survivor of them, pursuant to the said Will."

STAT. 12 GEO.
2, c. 17.

L. STAT. 12 GEORGII 2, c. 17. A.D. 1739.

"An Act to enable the Parishioners of the Parish of St. Catharine Coleman, in Fenchurch Street, in the City of London, to rebuild the Church of the said Parish."

STAT. 13 GEO.
2, c. 7.

LI. STAT. 13 GEORGII 2, c. 7. A.D. 1740.

"An Act for naturalizing such Foreign Protestants, and others therein mentioned, as are settled, or shall settle, in any of His Majesty's Colonies in America."

STAT. 13 GEO.
2, c. 12.

LII. STAT. 13 GEORGII 2, c. 12. A.D. 1740.

"An Act for making a Chapel lately built by Robert Downes, Goldsmith, and others, in the Town of Sheffield, in the County of York, a perpetual Cure and Benefice, and for making a Provision for the Maintenance of the Curate or Minister of the said Chapel, pursuant to an Agreement for that purpose."

STAT. 13 GEO.
2, c. 29.

LIIL. STAT. 13 GEORGII 2, c. 29. A.D. 1740.

"An Act for confirming and enlarging the Powers granted by His Majesty to the Governors and Guardians of the Hospital for the Maintenance and Education of exposed and deserted young Children, by his most gracious Charter, bearing date the Seventeenth Day of October, in the Year of our Lord One thousand seven hundred and thirty-nine, and to enable them to execute the good Purposes of the said Charter."

STAT. 14 GEO.
2, c. 5.

LIV. STAT. 14 GEORGII 2, c. 5. A.D. 1741.

"An Act for making the Chapelry of Nether Knutsford, in the Parish of Rosthern and County of Chester, a separate and distinct Parish, and for erecting a Parish Church therein, endowing the same, settling the Right of Presentation thereto, and other Purposes."

STAT. 14 GEO.
2, c. 15.

LV. STAT. 14 GEORGII 2, c. 15. A.D. 1741.

"An Act for finishing and completing the Parish Church of Gainsborough in the County of Lincoln."

STAT. 14 GEO.
2, c. 20.

LVI. STAT. 14 GEORGII 2, c. 20. A.D. 1741.

"An Act to amend the Law concerning common Recoveries, and to explain and amend an Act made in the twenty-ninth year of the Reign of King Charles the Second, intituled, 'An Act for the Prevention of Frauds and Perjuries so far as the same relates to Estates pur auter Vie(1).'"

STAT. 14 GEO.
2, c. 26.

LVII. STAT. 14 GEORGII 2, c. 26. A.D. 1741.

"An Act for making a Chapel lately built by John Coppin, Esquire, at Market Street, in the Parish of Cadington, in the County of Hertford, a perpetual Cure and Benefice; and for other Purposes therein mentioned."

LVIII. STAT. 14 GEORGII 2, c. 27. A.D. 1741.

STAT. 14 GEO.
2, c. 27.

"An Act to enable the Parishioners of the Parish of Saint Botolph, without Aldgate, in the City of London and County of Middlesex, to rebuild the Church of the said Parish."

LIX. STAT. 15 GEORGII 2, c. 5. [IRELAND.] A.D. 1741.

STAT. 15 GEO.
2, c. 5. [IR.]

"An Act to enable Archbishops and Bishops to demise Part of their Demesne Lands, and to change the Site of their Mansion Houses."

"Whereas several archbishops and bishops of this kingdom are seised in right of their archbishoprics and bishoprics of large tracts of land as demesne or mensal lands, being more than is necessary to be kept in their own hands, and which cannot, as the laws now stand, be let for any longer term than their respective lives, or during their continuance in their respective sees; by means whereof such lands are unimproved to the great detriment of the public: and whereas part of the demesne or mensal lands, belonging to the several archbishops and bishops in right of their respective archbishoprics and bishoprics, are situate in or near towns corporate and market towns, which, if set in small parcels for reasonable terms, would be of great service and benefit to such towns corporate and market towns, and promote the carrying on the linen manufacture in such towns: be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that it shall and may be lawful to and for the lord lieutenant, or other chief governor or governors of this kingdom for the time being, on the application of any archbishop, to grant a commission to five or more credible persons dwelling within ten miles distance at farthest from the said demesne lands, empowering them, or any three of them, to view the demesne or mensal lands belonging to such archbishopric, and cause a survey to be taken and a map to be made thereof, and in such map to distinguish and set apart such part, not less than two hundred and fifty acres, plantation measure, of the said lands, as they shall judge fit and sufficient for a demesne for an archbishop of that see, as actually resident, for the support of his house, and keeping hospitality in the said see, and the nature and quality thereof, and to certify the same under their hands and seals to the lord lieutenant or other chief governor or governors of this kingdom for the time being; in which commission a power shall be given to two or more justices of the peace of the county or one of the counties, in which the said demesne lands shall lie, to administer an oath to the said commissioners, so appointed as aforesaid, justly and faithfully to execute the said commission according to the best of their skill and knowledge; which oath the commissioners, who shall make such certificate, shall accordingly take; on return of which certificate and map, it shall and may be lawful to and for the said lord lieutenant, or other chief governor or governors of this kingdom for the time being, by writing under his or their hands and seals to set out and settle a proper demesne for such archbishop, not containing less than two hundred and fifty acres, plantation measure, and to cause a map thereof to be made and affixed to such writing; which writing and map, and also the said certificate, shall be lodged in the council office; and a duplicate thereof, being lodged in the archbishop's registry, and the said lands so set out as demesne or mensal lands, shall always from thenceforth be esteemed and taken to be the demesne or mensal lands belonging to the said archbishop and his successors; and that then and from thenceforth it shall and may be lawful to and for such archbishop and his successors to demise the remaining part of the said demesne or mensal lands for such term and terms, as is hereinafter mentioned; (that is to say,) all such lands as do lie within any town corporate or market town, or within half a mile thereof, for any term not exceeding forty years in possession, and all the rest and residue of such lands for such term of years as by the laws now in being he is empowered to demise other lands to the said archbishopric belonging.

Chief governors may, on application of archbishop, grant commission to five persons within ten miles of his demesne lands. 19 Geo. 2, c. 16, amended; to survey and set apart in a map not less than 250 acres for a demesne, with the nature and quality; and certify to chief governors.

Oath to be taken by commissioners before two justices; on return thereof, chief governors, under hand and seal, may settle archbishop's demesne, not less than 250 acres, affixing a map, lodged in council office, and duplicate in archbishop's registry, who may then demise lands in or in half a mile of a corporate or market town for forty years in possession, the residue for such term as by law empowered to demise the other lands.

STAT. 15 GEO.
2, c. 5. [IR.]

Archbishop, on application of a bishop, may grant commission to five to view the demesne lands;

a survey, map, certificate, and oath;

And on return thereof, under archiepiscopal seal, settle a demesne, not less than 250 profitable acres as aforesaid. The writing and map lodged in archbishop's, and duplicate in bishop's, registry. Bishop may then demise as aforesaid.

The full value to be reserved on such demise, without fine.

If under colour of such powers are included in such demises other lands of the see above half a mile from corporate or market town, or above ten acres, to or in trust for one person, demise void.
10 Gul. 3, c. 6.

12 Geo. 1, c. 10.

9 Geo. 2, c. 13.

"II. And be it further enacted by the authority aforesaid, that it shall and may be lawful for any archbishop and his successors, on the application of any bishop of his province, to grant a commission to five or more credible persons, empowering them or any three of them to view the demesne or mensal lands belonging to such bishop, and cause a survey to be taken, and a map to be made thereof, and in such map to distinguish and set apart such part of said lands as they shall judge fit and sufficient for a demesne for a bishop of that see, as actually resident, for the support of his house, and keeping hospitality in the said see, and the nature and quality thereof, and to certify the same under their hands and seals to the said archbishop or his successors; in which commission a power shall be given to two or more justices of the peace of the county or counties in which the said demesne lands shall lie, to administer an oath to the said commissioners, so appointed as aforesaid, justly and faithfully to execute the said commission according to the best of their skill and knowledge; which oath the commissioners, who shall make such certificate, shall accordingly take; on return of which certificate and map it shall and may be lawful to and for the archbishop of the said province, and his successors for the time being, by writing under the archiepiscopal seal to set out and settle a proper demesne for such bishop, not containing less than two hundred and fifty acres profitable land, plantation measure, and to cause a map thereof to be made and affixed to such writing; which writing and map, and the said certificate, shall be lodged in the registry of the archbishop, and a duplicate thereof in the said bishop's registry; and the said lands so set out as demesne shall always from thenceforth be esteemed and taken to be the demesne or mensal lands belonging to the said bishop and his successors; and that then and from thenceforth it shall and may be lawful to and for such bishop and his successors to demise the remaining part of the said demesne or mensal lands for such term and terms as is hereinafter mentioned: (that is to say,) all such lands as do lie within any town corporate or market town, or within half a mile thereof, for any term not exceeding forty years in possession, and all the rest and residue of such lands for such term of years as by the laws now in being he is empowered to demise other lands to the bishopric belonging.

"III. Provided always, that the full yearly value of such remaining part of the said demesne or mensal lands, as shall be demised pursuant to this act, at the time of leasing or demising the same without any fine shall be always reserved to the archbishop or bishop demising the same, and his successors upon every such demise.

"IV. Provided also, that if any archbishop or bishop, under colour or pretence of the powers hereby granted to demise for the term of forty years any of their now demesne or mensal lands, which shall not be set out as demesne or mensal lands pursuant to this act, and which lie within a town corporate or market town, or within half a mile thereof as aforesaid, shall include in such demises any other lands belonging to their respective sees, which lie at a further or greater distance than half a mile from a town corporate or market town, or shall demise more than ten acres of the said lands to, or in trust, or for the use or benefit of, any one person, then and in all such cases every such lease or demise shall be utterly void to all intents, constructions, and purposes whatsoever; anything herein contained to the contrary notwithstanding.

"V. And whereas an act passed in the tenth year of King William the Third of glorious memory, intituled, 'An Act to encourage the building of Houses and making other Improvements on Church Lands, and to prevent Dilapidations;' and another act passed in the twelfth year of his late majesty King George, intituled, 'An Act to explain and amend an Act, intituled, "An Act to encourage building of Houses, and making other Improvements on Church Lands, and to prevent Dilapidations;"' and another act passed in the ninth year of his present majesty's reign, intituled, 'An Act for making more effectual an Act to amend and explain an Act, intituled, "An Act to encourage building of Houses, and making other Improvements on Church Lands, and to prevent Dilapidations;"' and whereas several of the mansion houses of archbishops and bishops in this kingdom have

been built of bad materials, and are so ill built, contrived, and situated, as that they require to be rebuilt; which in many places cannot conveniently be done by the reason of the bad situation thereof; and a doubt hath arisen, whether the site of such old houses may be changed, and a new house built in any other place, within the intent and meaning of the said acts, so as to entitle the archbishop or bishop, that shall build such new house, to the encouragement given in and by the said acts for building and improving: for clearing of which doubt, and the better execution of the said acts, be it declared and enacted by the authority aforesaid, that it shall and may be lawful to and for any archbishop, by and with the consent and approbation of the lord lieutenant or other chief governor or governors of this kingdom for the time being, signified by writing under the hand and seal of such lord lieutenant or other chief governor or governors, and for any bishop, by and with the consent and approbation of the archbishop of the province, signified by writing under his hand and archiepiscopal seal, to change the site of the mansion house of such archbishopric or bishopric, and to make, build, or erect a new mansion house, outhouses, orchards, gardens, and other necessary improvements on any other part of his demesne or mensal lands, or other lands in his possession belonging to his see, that shall be more fit and convenient for the residence and habitation of him and his successors; and that such archbishop or bishop, who shall build or improve in manner aforesaid, and shall procure such certificate, as is directed by the said recited acts of the twelfth of his said late majesty and ninth of his present majesty, shall be entitled to all the encouragements, and shall and may have, take, receive, and recover all such sum and sums of money, as he or they would or might be entitled to have and receive for the building such house, and making such improvements by the said recited acts of the twelfth of his said late majesty and the ninth of his present majesty, in case such houses had been built, or other improvements made on the site of the said old mansion house of the said see; and that the immediate successor of such archbishop or bishop, and his successors respectively, and their respective executors and administrators, shall also be entitled to, and shall and may have and receive, such proportions of the sum and sums of money laid out and expended in making and erecting such new house, and making other improvements, as they would be respectively entitled to, in case the site of such mansion house had not been changed; the said several and respective sums to be received and recovered at such times, and in such manner, and by such ways and methods, as archbishops and bishops are enabled by the said recited acts to recover any sum or sums of money laid out in building and making other improvements on their demesne lands; anything in the said recited acts to the contrary notwithstanding.

said act, sums laid out in improvements on

“VI. Provided always, that no archbishop or bishop, who at the time of his building pursuant to this act shall have a mansion house on his see, shall be entitled to or have any certificate for erecting or building a new house, or making other improvements, in virtue of this act, until such time as he shall execute and perfect a good and sufficient release and discharge of all demands whatsoever, that he, his executors, or administrators, might or could have had, or be entitled unto, for or on account of the building or repairing of that house, whereof the site shall be changed pursuant to this act.

“VII. Provided also, that no archbishop or bishop, that shall so build or improve pursuant to this act, or his successors, shall be obliged to keep the former mansion house or the outhouses thereunto belonging in repair, or be chargeable with dilapidations for not repairing thereof.”

LX. STAT. 15 GEORGH 2, c. 12. A.D. 1742.

“An Act to explain and amend an Act passed in the twelfth year of His present Majesty's Reign, intituled, ‘An Act to enable the Parishioners of Saint Catharine Coleman, in Fenchurch Street, in the City of London, to rebuild the Church of the said Parish;’ and for making the said Act more effectual for the Purposes thereby intended.”

STAT. 15 GEO. 2, c. 5. [I.R.]

Doubt thereupon, whether bishops entitled to the encouragement therein for building in another place. Archbishop, with consent of chief governors, or bishop, with consent of archbishop, under hand and seal, may change the site of mansion house, and build a new one, with necessary improvements, on any other part of the see lands more convenient; and on certificate, as by 12 Geo. 1, c. 10, and 9 Geo. 2, c. 13, entitled to all encouragement therein, as if built on the old site; and the successors entitled to such proportion of sums expended as if the site not changed, recovered as by demesne lands;

but no archbishop or bishop entitled to certificate for such new buildings or improvements, till he releases all demands for building or repairing the other house. Not obliged to keep the former in repair.

STAT. 15 GEO. 2, c. 12.

STAT. 15 GEO.
2, c. 30.

LXI. STAT. 15 GEORGII 2, c. 30(1). A.D. 1742.

"An Act to prevent the Marriage of Lunatics."

4 Geo. 2, c. 10.

"Whereas persons who have the misfortune to become lunatics, may, by reason of such their disorder, be liable to be surprised into unsuitable marriages, which may be of pernicious consequence, and a great misfortune to their families: wherefore for preventing the same, and the ill consequence thereof, be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the twenty-fourth day of June, in the year of our Lord one thousand seven hundred and forty-two, in case any person who now is, or at any time hereafter shall be, found a lunatic, by any inquisition taken or to be taken by virtue of a commission under the great seal of Great Britain; or any lunatic or person under a frenzy, whose person and estate, by virtue of any act of parliament, now are, or hereafter shall be committed to the care and custody of particular trustees, shall marry before he or she shall be declared of sane mind by the lord high chancellor of Great Britain, the lord keeper, or lords commissioners of the great seal of Great Britain for the time being, or such trustees as aforesaid, or the major part of them respectively; every such marriage shall be, and is hereby declared to be null and void to all intents and purposes whatsoever."

STAT. 16 GEO.
2, c. 28.

LXII. STAT. 16 GEORGII 2, c. 28. A.D. 1743.

"An Act to make the Hamlet of Bethnal Green, in the Parish of St. Dunstan, Stepney, in the County of Middlesex, a separate and distinct Parish, and for erecting a Parish Church therein."

STAT. 17 GEO.
2, c. 8. [IR.]

LXIII. STAT. 17 GEORGII 2, c. 8. [IRELAND.] A.D. 1743.

"An Act for continuing several Statutes now near expiring, and for amending other Statutes, and for other Purposes therein mentioned."

Church lands,
glebes.
10 Gul. 3, c. 6,

"... And whereas an act passed in this kingdom in the tenth year of King William, of glorious memory, intituled, 'An Act to encourage the building of Houses, and making other Improvements on Church Lands, and to prevent Dilapidations,' by which it is enacted, 'that every archbishop, bishop, or other ecclesiastical person whatsoever, that had since the year one thousand six hundred and ninety, or at any time thereafter should make, build, erect, add to, or repair any house, outhouse, garden, orchard, or other necessary improvement on his demesne, glebe, or mensal land, that should be certified, as in and by the said act is required, should have and receive from his next and immediate successors such sum as in and by the said act is directed and appointed;' which act having been found by experience not to answer the good ends proposed thereby, an act passed in the twelfth year of his late majesty King George, intituled, 'An Act to amend and explain an Act, intituled, An Act to encourage building of Houses, and making other Improvements in Church Lands, and to prevent Dilapidations,' by which act a further encouragement was given to such of the said persons, as should make, build, erect, add to, or repair any house, outhouses, gardens, or other necessary improvements on their demesne, glebe, or mensal lands, pursuant to the terms and conditions therein mentioned, and it is among other things thereby enacted, 'that every archbishop, bishop, or other ecclesiastical person, intending to erect or make any building or improvement on his respective demesne or glebe lands, shall, at the least three months before he begins the same, give unto the person or persons, who by that or the other above-mentioned act is or are empowered to give them such certificate, as is therein mentioned, a writing subscribed with his hand in the presence of two credible witnesses, setting forth the length, breadth, height, and thickness of the wall of such house or houses as

amended and
explained,
12 Geo. 1, c. 10.

he intends to build, with the number of stories in them or each of them to be contained, together with the situation of the ground on which the same are to stand, as also the nature and extent of all other improvements which he so intends to make:’ and whereas by an act made in the ninth year of his present majesty, intituled, ‘An Act for making more effectual an Act to amend and explain an Act, intituled, An Act to encourage building of Houses, and making other Improvements on Church Lands, and to prevent Dilapidations,’ it is amongst other things recited, that the giving in such an account (as by the last-mentioned act is required), three months before any buildings or improvements were begun, hath not strictly been complied with, and that so great a space of time for considering of such intended improvements is not found necessary, it is enacted, ‘that the not having given in to the person empowered to give a certificate, an account in writing of such intended buildings and improvements, three months at least before they were begun, should no ways invalidate or make void any certificate before that time given or hereafter to be given for any buildings or improvements made in pursuance of that and the aforesaid acts; but that for the future it might be sufficient to give in such account unto the person empowered to give a certificate, one fortnight before such buildings or improvements are actually begun:’ and whereas through a difficulty and almost impossibility of specifying or giving in a particular account beforehand of the intended repairs of an old house, and also an apprehension that the said statute of the twelfth of King George the First extended only to new buildings or other new improvements intended to be made, several old and ruinous houses and outhouses on demesne or glebe lands have been repaired without giving in such an account in writing, and a doubt having arisen whether an archbishop, bishop, or other ecclesiastical person, that hath repaired an old and ruinous house or outhouses on his demesne or glebe land, without having given to the person or persons, who by the said acts are empowered to give them a certificate, such an account in writing as by the said recited acts or any of them is directed, is to have such encouragement, and be paid such sum or sums of money, as he would be entitled to if such account in writing, as by the said acts or any of them is directed, had been given in: for clearing which doubts and avoiding the suits that may arise thereupon, and for the better execution of the said acts, be it declared and enacted by the authority aforesaid, that it shall and may be lawful to and for the chief governor or governors of this kingdom for the time being, and every archbishop and bishop respectively, to grant a commission, as by the said acts or any of them is respectively directed, to two or more persons to view and examine all repairs heretofore made of any old and ruinous houses, outhouses, or buildings on any demesne, glebe, or mensal lands, since the passing the said acts or any of them, and to return a true, just, and faithful account and estimate of such repairs, pursuant to and under the regulations and restrictions in the said acts; and on such return it shall and may be lawful to and for the chief governor or governors of this kingdom, and the said archbishops and bishops respectively to grant a certificate, as by the said acts or any of them is directed, according to the value reported by such commissioners, or for any lesser sum than shall be so returned by the said commissioners, if to the said chief governor or governors, archbishops, or bishops respectively, it shall seem meet, although no such account in writing, as by the said act of the twelfth of his late majesty King George is mentioned, was delivered in to the person or persons empowered by the said acts, or any of them, to grant such certificate previous to the beginning such repairs; which certificate, so to be granted pursuant to this act, shall be as good and valid to all intents and purposes, as if such account in writing had been given in pursuant to the said former acts, or any of them, and shall entitle the person obtaining the same, his executors, or administrators, and also the successor and successors of the person obtaining the same, their executors and administrators respectively, to receive and recover such proportion of the sum so certified to have been laid out from such person or persons, and in such manner, and by such ways and means, as any other certificate granted in pursuance of the said acts or any of them might have done; and that such certificate shall to all intents and purposes be as good and valid for

STAT. 17 GEO.
2, c. 8. [I.R.]

9 Geo. 2, c. 13.

Difficult to give in an account of intended repairs of an old house, as thereby required.

Doubt upon said acts.

Chief governors, bishops, &c. may grant commission, as by said acts, to examine repairs on demesne or glebe lands, and return an estimate, as by said acts, and grant such certificate according to value reported, or for any lesser sum, though no account in writing, as by 12 Geo. 1, c. 10, delivered; which certificate as valid as if account in writing given: and shall entitle the person, executors, successors, &c. to proportion of the sum certi-

STAT. 17 GEO. 2, c. 8. [IR.] the recovery of the sum certified, and the respective proportions thereof to be paid by the first, second, and third successor of the person, that obtained such certificate, as if a previous account in writing as aforesaid had been given and delivered in to such person or persons as by the said acts or any of them are empowered to grant such certificate; and that for the future an account in the general of the house, outhouses, or other buildings, and the several parts thereof, intended to be repaired, and of the sum intended to be laid out in such repairs, shall be delivered in to the person or persons empowered to grant such certificate, one fortnight before such repairs are begun; provided this shall not extend to annual necessary repairs.”
 and hereafter an account in general of the buildings, repairs, and sum intended, shall be delivered a fortnight before: not to extend to annual necessary repairs.

STAT. 17 GEO. 2, c. 11.

LXIV. STAT. 17 GEORGII 2, c. 11 (1). A.D. 1744.

“An Act for raising and establishing a Fund for a Provision for the Widows and Children of the Ministers of the Church of Scotland, and of the Heads, Principals, and Masters of the Universities of Saint Andrew’s, Glasgow, and Edinburgh.”

STAT. 18 GEO. 2, c. 3.

LXV. STAT. 18 GEORGII 2, c. 3. A.D. 1745.

“An Act to enable the Parishioners of the Parish of Saint Margaret within the Borough of King’s Lynn, in the County of Norfolk, to raise Money by Rates upon themselves, for finishing the Church of the said Parish.”

STAT. 19 GEO. 2, c. 13. [IR.]

LXVI. STAT. 19 GEORGII 2, c. 13 (2). [IRELAND.] A.D. 1745.

“An Act for annulling all Marriages to be celebrated by any popish Priest, between Protestant and Protestant, or between Protestant and Papist, and to amend and make more effectual an Act passed in this Kingdom in the sixth year of the Reign of Her late Majesty Queen Anne, intituled, ‘An Act for the more effectual preventing the taking away and marrying Children against the Wills of their Parents or Guardians.’”

Marriage between a papist and protestant within twelve months before, or between two protestants, by popish priest, void. 23 Geo. 2, c. 10. Felony in the priest, notwithstanding, as by 12 Geo. 1, c. 3.

“Whereas the laws now in being to prevent popish priests from celebrating marriages between protestant and protestant, or between protestant and papist, have hitherto been found ineffectual: for remedy whereof be it enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that every marriage that shall be celebrated after the first day of May, which shall be in the year of our Lord God one thousand seven hundred and forty-six, between a papist and any person who hath been, or hath professed him or herself to be, a protestant at any time within twelve months before such celebration of marriage, or between two protestants, if celebrated by a popish priest, shall be and is hereby declared absolutely null and void to all intents and purposes without any process, judgment, or sentence of law whatsoever.

Recital of 6 Ann. c. 16, s. 7.

“II. And whereas by an act made in the sixth year of the reign of her late majesty Queen Anne, intituled, ‘An Act for the more effectual preventing the taking away and marrying Children against the Wills of their Parents or Guardians,’ it is amongst other things enacted, ‘that if any maid or woman be taken or carried away by force against her consent, and after be married or defiled by such person or persons, who carried her away, or by any other person by his or their assent or procurement, whether such marriage or defilement be with or without the consent of such maid or woman, so carried away by force, against her will as aforesaid; every such person so marrying or defiling such maid or woman, and the aiders and procurers of such forcible taking away such maid or woman, and all, as well prin-

Evasion thereof by difficulty of proving mar-

cipals as accessories before such fact committed, should lose the benefit of clergy, and should be deemed and adjudged to be felons, and should suffer pains of death without benefit of clergy:’ and whereas the good intent of the said law is in a great measure frustrated, and offenders emboldened to act in open violation thereof, by reason of the difficulty of proving a marriage or defilement: be it further enacted by the authority aforesaid, that if any maid or woman be taken or carried away by force against her consent with an intent to marry or defile such maid or woman contrary to the true intent and meaning of the said in part recited act, every such person so taking or carrying away by force, and against the consent of such maid or woman, any maid or woman, with an intent to marry or defile her, and the aiders and procurers of such forcible taking or carrying away such maid or woman, and all, as well principals as accessories before such fact committed, shall be deemed and adjudged to be felons, and shall suffer pains of death without benefit of clergy or of the statute; any former law to the contrary thereof notwithstanding.

“III. And whereas by an act, intituled, ‘An Act for the more effectual preventing Clandestine Marriages,’ made in the ninth year of his present majesty’s reign, it is enacted, ‘that the said act shall be publicly read four times in the year in all parish churches, and all public chapels, and other places of public worship, by the parson, vicar, or curate of the respective parishes or chapels immediately after morning prayers: (that is to say,) upon the Sunday next after the fifth of May, in the year of our Lord one thousand seven hundred and thirty-six, upon the Sunday next after the fifth day of August, upon the Sunday next after the fifth day of November, and upon the Sunday next after the fifth day of February next ensuing, and upon the same days in every following year, on pain of five pounds for every such omission or neglect; the said penalty to go to such person as shall first sue for the same by bill, plaint, or information, or by civil bill;’ which clause hath been found burdensome: be it enacted by the authority aforesaid, that the said clause in the said act of the ninth of his present majesty be and is hereby repealed; and that the said act, and this present act, shall be read once in every year from the first day of May, which shall be in the year one thousand seven hundred and forty-six, in all parish churches, and all public chapels, and other places of public worship, by the parson, vicar, or curate of the respective parishes or chapels immediately after morning prayers, and in open court at every general quarter sessions of the peace in this kingdom.”

STAT. 19 GEO. 2, c. 13. [Ir.]
riage or defilement.

Taking away maids or women by force, with intent to marry or defile, aiders and procurers, principals and accessories before, felony without benefit of clergy or the statute.

Recital of a clause, 9 Geo. 2, c. 11, s. 8.

Burdensome. Repeal thereof. This and said act shall be read once a year in churches and chapels by the minister, after morning prayers, and at sessions.

LXVII. STAT. 19 GEORGII 2, c. 15. A.D. 1746.

“An Act for enabling the Inhabitants of the Hamlet of Bethnal Green in the County of Middlesex, to complete their Church, and to pay Debts already contracted for the Relief of the Poor of the said Hamlet.”

STAT. 19 GEO. 2, c. 15.

LXVIII. STAT. 19 GEORGII 2, c. 16(1). [IRELAND.] A.D. 1745.

“An Act for amending the Laws in relation to Demesne Lands belonging to Archbishops, and in relation to the building of new Parish Churches.”

STAT. 19 GEO. 2, c. 16. [Ir.]

“Whereas by an act of parliament made in the fifteenth year of his present majesty’s reign, intituled, ‘An Act to enable Archbishops and Bishops to demise part of their Demesne Lands, and to change the Site of their Mansion-houses,’ it is amongst other things enacted, ‘that it shall and may be lawful to and for the lord lieutenant, or other chief governor or governors of this kingdom for the time being, on the application of any archbishop, to grant a commission to five or more credible persons, dwelling within ten miles distance at farthest from the said demesne lands, for the purposes as by the said act is directed:’ and whereas altering the powers given by the said act in manner herein after mentioned will more effectually answer the good design and purport of the said act: be it enacted by the king’s most excellent majesty, by and with the advice and consent of the lords

Recital of 15 Geo. 2, c. 5.

To alter the powers therein, chief governors, on application of arch-

STAT. 19 GEO.
2. c. 16. [1R.]

bishop, may grant commission (as by said act in case of bishops) to five, or any three, to view the demesne, survey, and make a map, and set apart not less than 250 acres for demesne, and the quality, and certify to chief governors, with power to two justices to administer oath to commissioners; on return whereof, chief governors, by writing, &c. to settle a demesne, not less than 250 acres, affixing a map; lodged with the certificate in council office, and duplicate in archbishop's registry: to be archbishop's demesne, who may then demise remainder of demesne in a corporate or market town, or in half a mile, forty years in possession, and the residue as other lands of the archbishopric.

Reserving full yearly value at time of leasing, without fine. Not to demise more than ten acres of demesne in corporate or market town, or half a mile, for one person.

2 Geo. 1, c. 14.
10 Geo. 1, c. 6.

Benefit of said acts prevented

spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that it shall and may be lawful to and for the lord lieutenant, or other chief governor or governors of this kingdom for the time being, on the application of any archbishop to grant a commission in like manner, as is by the aforesaid act provided in the case of bishops, to five or more credible persons, empowering them, or any three of them, to view all the demesne or mensal lands belonging to such archbishopric, and cause a survey to be taken and a map made thereof, and in such map to distinguish and set apart such part, not less than two hundred and fifty acres plantation measure of the said lands, as they shall judge fit and sufficient for a demesne for an archbishop of that see, and the nature and quality thereof, and to certify the same under their hands and seals to the lord lieutenant, or other chief governor or governors of this kingdom for the time being; in which commission a power shall be given to two or more justices of the peace of the county, wherein the said demesne lands, or any part of them (in case they are in different counties) shall lie, to administer an oath to such commissioners, so appointed as aforesaid, justly and faithfully to execute the said commission according to the best of their skill and knowledge; which oath the commissioners who shall make such certificate, shall accordingly take; on return of which certificate and map, it shall and may be lawful to and for the lord lieutenant, or other chief governor or governors of this kingdom for the time being, by writing under his or their hands and seals to set out and settle a proper demesne for such archbishop, not containing less than two hundred and fifty acres plantation measure, and to cause a map thereof to be made and affixed to such writing; which writing and map, and also the said certificate, shall be lodged in the council office, and a duplicate thereof shall be lodged in the archbishop's registry; and the said lands so set out as demesne or mensal lands shall always from thenceforth be esteemed and taken to be the demesne or mensal lands belonging to the said archbishop and his successors; and that then and from thenceforth it shall and may be lawful to and for such archbishop and his successors to demise the remaining part of the said demesne or mensal lands for such term and terms as is hereinafter mentioned: that is to say, all such lands, as do lie within any town corporate or market town, or within half a mile thereof, for any term not exceeding forty years in possession, and all the rest and residue of such lands for such term of years as by the laws now in being he is empowered to demise other lands to the said archbishopric belonging.

"II. Provided always, that the full yearly value of such part of the said demesne or mensal lands, as shall be demised pursuant to this act, at the time of leasing or demising the same without any fine, shall be always reserved to the archbishop demising the same, and his successors, upon every such demise; and that no more than ten acres, plantation measure, of such part of the said demesne or mensal lands as shall lie within any town corporate or market town, or within half a mile thereof, shall be demised by such archbishop to, or in trust, or for the use or benefit of, any one person; anything herein contained to the contrary notwithstanding.

"III. And whereas by an act of parliament made in the second year of the reign of his late majesty King George the First, intituled, 'An Act for real Union and Division of Parishes;' and by one other act made in the tenth year of the reign of his late majesty King George the First, intituled, 'An Act for explaining and amending an Act, intituled, "An Act for real Union and Division of Parishes; and for confirming an Exchange made of a piece of Ground, whereon the Parish Church and Vicarage-house of the Parish of Saint Anne, in the Suburbs of the City of Dublin, was by a former Act of Parliament directed to be built, for another piece of Ground, and for appropriating such other piece of Ground to the same Uses,"' it is amongst other things enacted, 'that it shall be lawful to and for the lord lieutenant, lord deputy, lords justices, or other chief governor or governors of this kingdom for the time being, to direct and order new churches to be built in

more convenient places in manner as by the said act is directed:’ and whereas the said acts have been in a great measure prevented from having the good effect thereby intended through a want of power in the proprietor or proprietors, upon whose land such new churches might be most conveniently erected, to grant proper parts of the said lands for sites of churches and churchyards: be it enacted by the authority aforesaid, that from and after such time as the lord lieutenant, lord deputy, lords justices, or other chief governor or governors of this kingdom for the time being, shall order and direct any new church to be built pursuant to the powers vested in them by the said acts, it shall and may be lawful for all persons whatsoever seised in fee simple, fee tail, or for life with immediate remainder over in tail to his, her, or their own issue, of or in such land whereon such new church shall be directed to be built as aforesaid, to grant by his, her, or their deeds respectively such lands, not exceeding one acre plantation measure, to the churchwardens of the parish wherein such new church is to be built, and their successors for ever, as and for a site for such new church, and for a churchyard, for the use of the parishioners of the said parish; and that such grant shall be good and effectual against all persons claiming any estate, right, title, or interest in such land by virtue of or under any limitation, remainder, or reversion in any settlement or settlements theretofore made; and that the churchwardens of the said parish and their successors for ever shall be and are hereby empowered and made capable of receiving such grant for the purpose aforesaid.”

STAT. 19 GEO. 2, c. 16. [1R.]
by defect of power to grant land for site of new churches.

Tenant in fee, tail, or for life, with immediate remainder in tail to issue, may grant one acre to churchwardens as a site for a new church, pursuant to said acts.
Good against any limitation in a settlement. Churchwardens empowered to take.

LXIX. STAT. 19 GEORGII 2, c. 21 (1). A.D. 1746.

“An Act more effectually to prevent profane Cursing and Swearing (2).”

STAT. 19 GEO. 2, c. 21.

LXX. STAT. 19 GEORGII 2, c. 38 (3). A.D. 1746.

“An Act more effectually to prohibit and prevent Pastors or Ministers from officiating in Episcopal Meeting-Houses in Scotland, without duly qualifying themselves according to Law; and to punish Persons for resorting to any Meeting-Houses where such unqualified Pastors or Ministers shall officiate.”

STAT. 19 GEO. 2, c. 38.

LXXI. STAT. 20 GEORGII 2, c. 27. A.D. 1747.

“An Act for founding and building a Chapel in Wednesfield, in the Parish of Wolverhampton, in the County of Stafford.”

STAT. 20 GEO. 2, c. 27.

LXXII. STAT. 20 GEORGII 2, c. 29. A.D. 1747.

“An Act to confirm an Agreement made by the Rector and Vestrymen of the Parish of Saint James within the Liberty of Westminster, for enlarging the Churchyard of the said Parish, and for other Purposes therein mentioned.”

STAT. 20 GEO. 2, c. 29.

LXXIII. STAT. 20 GEORGII 2, c. 32. A.D. 1747.

“An Act for uniting the two Colleges of Saint Salvator and Saint Leonard, in the University of Saint Andrew’s, pursuant to an Agreement for that Purpose.”

STAT. 20 GEO. 2, c. 32.

(1) Vide Stat. 22 Geo. 2, c. 33, s. 2, Art. 2. read quarterly in all churches, has been repealed by Stat. 4 Geo. 4, c. 31.

(2) The thirteenth section of this statute, which required that its provisions should be

(3) Vide Stat. 32 Geo. 3, c. 63. Stat. 3 & 4 Vict. c. 33.

STAT. 20 GEO.
2, c. 33.

LXXIV. STAT. 20 GEORGII 2, c. 33. A.D. 1747.

"An Act to enable the Parishioners of the Parish of Saint Andrew, Holborn, in the City of London and County of Middlesex, to purchase a convenient piece of Ground, for an additional Burying Ground, for the use of the said Parish, and to enable the said Parishioners to raise such Sum and Sums of Money as shall be necessary for that Purpose."

STAT. 20 GEO.
2, c. 44.

LXXV. STAT. 20 GEORGII 2, c. 44. A.D. 1747.

"An Act to extend the Provisions of an Act made in the thirteenth year of His present Majesty's Reign, intituled, 'An Act for naturalizing such foreign Protestants, and others therein mentioned, as are settled, or shall settle in any of His Majesty's Colonies in America, to other foreign Protestants, who conscientiously scruple the taking of an Oath.'"

STAT. 20 GEO.
2, c. 52.

LXXVI. STAT. 20 GEORGII 2, c. 52. A.D. 1747.

"An Act for the King's most gracious, general, and free Pardon."

[Offences by jesuits, or seminary priests; lands given to superstitious uses; convicted recusants; titles, suits, and actions of *quare impedit*; and contempts in the ecclesiastical court in matters of correction, in causes which have been commenced for matters of right:—excepted out of pardon.]

STAT. 21 GEO.
2, c. 8. [I.R.]

LXXVII. STAT. 21 GEORGII 2, c. 8 (1). [IRELAND.] A.D. 1747.

"An Act for disappropriating Benefices belonging to Deans, Archdeacons, Dignitaries, and other Members of Cathedral Churches, and for appropriating others in their stead; and also for the Removal of the Sites of ruined Cathedral Churches."

2 Geo. 1, c. 14. Many dignitaries, &c. having benefices appropriated at great distances from the dignity, or each other; doubts whether said benefices can be united to parishes convenient for service, and cures thereby neglected. Chief governors, with assent of majority of council assembled, six at least, and of the archbishop and bishops under seal, and of the king where patron, and all other patrons and incumbents,

"Whereas in many places in this kingdom deans, archdeacons, dignitaries, prebendaries, and canons of cathedral churches, have one or more benefice or benefices appropriated to one deanery, archdeaconry, dignity, prebend, or canonry, situated at great distances from such deanery, archdeaconry, dignity, prebend, or canonry, or from each other; and whereas by reason of the said appropriation doubts have arisen, whether the said benefices can by virtue of any law now in being be united to such parishes, as lie convenient to them for divine service, or they to such benefices; by reason whereof the cures of souls in such benefices have been often too much neglected, to the great detriment of the inhabitants resident in such benefices: for remedy whereof, be it declared and enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that from and after the twenty-fifth day of March, which shall be in the year of our Lord one thousand seven hundred and forty-eight, it shall and may be lawful for the chief governor or governors of this kingdom for the time being, with the assent of the major part of the privy council in the council assembled, six at least consenting, and with the advice and approbation of the archbishop of the province and bishop of the diocese, certified under their hands and archiepiscopal and episcopal seals, and with the consent of the king's majesty, where he shall be patron, signified in such manner as herein after shall be appointed, and with the consent of all other patrons, and of all incumbents, certified under their hands and seals respectively, and attested by two or more credible witnesses, to disappropriate such benefice or benefices, and to unite or appropriate any other parish or parishes of the value at least equal to such disappropriated benefice or benefices, and which lie contiguous or convenient to each other, to such deanery, archdeaconry, dignity,

(1) So much of this statute as relates to the disappropriation of benefices belonging to deans, archdeacons, dignitaries, and other members of cathedral churches, and the appropriation of others in their stead, and as

relates to the consent of the crown to the making of any union, appropriation, or disappropriation, was repealed by Stat. 7 Geo. 4, c. 73. *Vide etiam* Stat. 3 & 4 Gul. 4, c. 37, s. 64.

prebend, or canonry, and afterwards to unite such disappropriated benefice or benefices to such other parish or parishes, or such other parish or parishes to them, or any of them, as lie convenient for such an union; saving to all deans, deans and chapters, archdeacons, dignitaries, prebendaries, and canons, and all other incumbents, at the time of such union, appropriation, or disappropriation, during their respective incumbencies, and to all patrons and ordinaries, all their respective rights, titles, and interests in and to the said united, appropriated, or disappropriated benefices, or to any of them; and saving to every archbishop, and bishop, register, and schoolmaster, their respective dues payable out of such parish so united: saving also to all tenants, who have any lease or leases of any glebes or tithes belonging to any part of such union, appropriation, or disappropriation, all their right and interest during their respective leases.

and unite said benefices to other parishes convenient. Saving the rights of dignitaries and incumbents at the time, and during incumbencies, and of patrons and ordinaries; and saving dues to bishops, register, and schoolmaster; and saving the right of lessees of glebes and tithes.

“II. Provided always, that such union or appropriation, as is before mentioned, which shall be made to such deanery, archdeaconry, dignitary, prebend or canonry, shall not operate or take place, until such times as such deanery, archdeaconry, dignitary, prebend, or canonry, shall actually become vacant, and destitute of an incumbent.

“III. Provided also, that no dean, archdeacon, dignitary, prebendary, or canon, to whose deanery, archdeaconry, dignity, prebend, or canonry, such parish or parishes shall be united or appropriated, shall be discharged of residence in the church so united or appropriated; but shall be obliged to such residence, as the incumbent of such church was obliged to before the making of such appropriation or union, and shall also be subject as dean, archdeacon, dignitary, prebendary, or canon of the cathedral church, to which they respectively belong, to all jurisdictions, duties, or penalties, in like manner as the said dean, archdeacon, dignitary, prebendary, or canon, was subject at the time of making such union.

“IV. And be it further enacted by the authority aforesaid, that all and every such union, appropriation, or disappropriation, as shall be made by virtue of this act, shall be enrolled in the rolls office of the high court of Chancery within six months after the making thereof; for the enrolment whereof respectively the fee of thirteen shillings and four pence shall be paid, and no more; and that every instrument under the hands of the chief governor or governors and council testifying such union, appropriation, or disappropriation, shall contain in it a clause or proviso, that the same shall be enrolled in six months after the date thereof, or else to be void.

“V. Provided that where any of the said deaneries, archdeaconries, dignitaries, prebendaries, canonries, parishes, or benefices, to be united as aforesaid, have several and distinct patrons, and that the king's majesty, his heirs, and successors, are or shall be entitled to the presentation to any of them, in such case his majesty, his heirs, and successors, shall immediately from and after such union upon the then first vacancy have the first presentation of an incumbent unto such union by the name, by which it shall be called in the instrument erecting the same; and that the chief governor or governors and council, as aforesaid, with the advice and approbation of the archbishop of the province and bishop of the diocese, certified as aforesaid, shall divide and settle the patronage by turns afterwards among the several patrons, giving a right to each of them to present oftener or seldomer according to the true yearly value of the respective parish or parishes, whereof they are patrons, the consent of each patron being first had thereto, and entered in the instrument erecting the said union; and that such settlement shall be final and binding to all patrons, whether ecclesiastical or lay patrons, and to all parties for ever.

settle the patronage by turns afterwards, according to value of the parishes; consent of each patron first had, and entered in the instrument. Such settlement final.

“VI. And whereas in several dioceses in this kingdom cathedral churches are so incommodiously situated, that they cannot be conveniently resorted to for divine service; by reason whereof they for some years past have had no divine

STAT. 21 GEO. 2, c. 8. [Ir.] under hand and seal, and attested by two, may disappropriate said benefices, and appropriate other parishes of equal value, and contiguous;

2 Geo. 1, c. 14,

But no such appropriation till the dignitary, &c. vacant.

And such dignitary, &c. obliged to residence in the church appropriated, as the incumbent before, and subject, as dignitary, &c. to all jurisdictions and penalties, as at time of union. Such union, &c. enrolled in Chancery in six months. Fee, 13s. 4d. Instrument of union, &c. to contain proviso for enrolment in six months, or void.

Where distinct patrons, and the king entitled to any presentation, he shall have the first presentation to the union by the name in the instrument. 2 Geo. 1, c. 14. Chief governors and council, with advice of archbishop and bishop, as aforesaid, shall

Many cathedrals incommodiously

STAT. 21 GEO.
2, c. 8. [IR.]

situated and
decayed, and
not likely to
be repaired.

Parish
churches near,
convenient
both for cath-
edral and paro-
chial churches.

Chief govern-
ors, with assent
and advice as
aforesaid, and
consent of dean
and chapter
under seal,
may remove
the site of the
cathedral to a
convenient
parochial
church, to
serve for both.
Members of
cathedral so
removed shall
be members of
such cathedral
and parochial
church; and
called by name
thereof in the
act of council,
and subject to
jurisdictions
and penalties
as in the ancient
cathedral; and
the economy fund

thereof applied
to the cathedral
and parochial
church, &c. and
the plate and
utensils.

When made
cathedral and
parochial, it
shall be re-
paired jointly
by dean and
chapter, out of
economy fund.
and parishion-
ers, in propor-
tion as agreed
to by dean and
chapter under
seal, and en-
tered in their
book, and by
majority of
protestant pa-
rishioners in

service celebrated in them, and therefore have been suffered to go to ruin and decay: and whereas there is no likelihood of their being ever repaired, as well by reason of their said incommodious situation, as because they have no fund belonging to them sufficient thereto; and whereas there are parish churches, which lie near such cathedral churches, which may be conveniently used both as cathedral and parochial churches, and made sufficient to answer the uses and purposes of such cathedral churches: be it further enacted by the authority aforesaid, that from and after the twenty-fifth day of March aforesaid, it shall and may be lawful for the chief governor or governors of this kingdom for the time being, with the assent of the privy council as aforesaid, and with the consent of the king's majesty, his heirs, and successors, signified as is herein after mentioned, and by and with the advice and approbation of the archbishop of the province, and bishop of the diocese, certified under their hands and archiepiscopal and episcopal seals, and with the consent of the respective deans and chapters, certified under their chapter seal, to remove the site or sites of such cathedral church or churches to some convenient parochial church or churches, and to make such parochial church or churches both cathedral and parochial.

“VII. And be it further enacted by the authority aforesaid, that from and after the time that any such parochial church shall be made cathedral and parochial as aforesaid, the dean, the dean and chapter, the archdeacon, dignitaries, prebendaries, canons, vicars, and vicars chorals, and all other members of such cathedral church, the site whereof shall be removed as aforesaid, shall be deemed and taken to be and become the dean, the dean and chapter, the archdeacon, dignitaries, prebendaries, canons, vicars, vicars chorals, and members of such cathedral and parochial church, and shall be called by the name or names respectively, by which such cathedral and parochial church shall be called in the act of council making it cathedral and parochial; and shall respectively be subject to all such jurisdictions, duties, and penalties, as they were subject to in the ancient cathedral church; and that the economy fund of the said ancient cathedral church shall be appropriated and applied to the use of the said cathedral and parochial church, and to such other use as is hereinafter mentioned; and also that the plate, and all other utensils belonging to the said ancient cathedral church, shall be applied to the uses of the said cathedral and parochial church.

“VIII. Provided always, that before such parochial church shall be made cathedral and parochial, the consent thereto shall be first had of the incumbent, churchwardens, and protestant inhabitants of the church of Ireland, as by law established, in vestry assembled, or the major part of them, of the parish to which such church doth belong, and of the other parishes united thereunto: saving nevertheless to such parochial church all its parochial rights, which it had before it was made cathedral and parochial.

“IX. And be it further enacted by the authority aforesaid, that from and after the time that such church shall be made cathedral and parochial, it shall be put and kept in repair jointly by the said dean and chapter out of the economy fund, and by the inhabitants of the said parish, and of the parishes thereunto united; who respectively shall contribute to such repair in such proportion, as shall from time to time be agreed to by the said dean and chapter in chapter assembled, testified under their chapter seal, and entered in their chapter book, and by the protestant inhabitants of the church of Ireland, as by law established, of the said parish, and the other parishes thereunto united, or the major part of them in vestry assembled, testified by their act of vestry, entered in their vestry book, and signed by them, or the major part of them, and by and with the advice and approbation of the archbishop or bishop of the diocese, certified under his archiepiscopal or episcopal seal, and entered in the registry office of the diocese where the said church doth lie: provided that due notice be given of such vestry or vestries, as is or are before mentioned, in the church where the same is or are to be held, and of the design of calling the same, two Sundays successively immediately preceding

the time appointed for the meeting of such vestry or vestries; and where there is no church used for the celebration of divine service, the like notice shall be posted up in the next market town, fourteen days before the meeting of such vestry or vestries.

of the bishop under seal, and entered in registry of the diocese. Notice of vestry and the design next before. Where no church, notice posted in next market town fourteen days before.

“X. And be it further enacted by the authority aforesaid, that the site of every such ancient cathedral church, as by virtue of this act shall be removed, and of the churchyard belonging thereunto, be from time to time kept inclosed and apart from profane uses, by stone walls or other fences sufficient for that purpose, to be built or made about the said cathedral church or churchyard; the charge and expense whereof shall from time to time be defrayed out of the said economy fund by the said dean and chapter, and that the said dean and chapter be forever after discharged from all other repairs of the said ancient cathedral church.

“XI. Provided always, that when the consent of the king’s majesty, his heirs, and successors, is to be given to the removal of the site of any ancient cathedral church, and to the making of any parochial church, cathedral and parochial, or to the making of any union, appropriation, or disappropriation, in pursuance of this act, the consent of the chief governor or governors of this kingdom for the time being under his or their hands and seals to such removal, or to the making such parish church cathedral and parochial, or to such union, appropriation, or disappropriation, shall to all intents and purposes be as good and valid in law, as if the consent of his majesty, his heirs, and successors, was thereunto signified by letters patent under the great seal of this kingdom.

“XII. Provided also, that such consent of the chief governor or governors as aforesaid be enrolled in the rolls office in the high court of Chancery in this kingdom within six months after the date thereof; for the enrolment whereof three shillings and four pence, and no more, shall be paid.

“XIII. Provided always, and be it further enacted by the authority aforesaid, that nothing herein contained shall be deemed or construed to extend to take away any right or title of any dean, dean and chapter, prebendary, dignitary, canon, vicar, or vicars chorals, of such cathedral church, which shall or may be removed by virtue of this act to the ancient site of such cathedral church, or the churchyard, or other ground, or buildings thereunto belonging and appertaining; but that such dean, dean and chapter, prebendary, dignitary, canon, vicar, and vicars chorals, his and their successors, shall and may hold and enjoy the same in such and the like manner, as they might have done, if this act had never been made; anything herein contained to the contrary thereof in any wise notwithstanding.”

STAT. 21 GEO. 2, c. 8. [IR.] vestry, entered and signed, and with advice

two Sundays

The old site and churchyard to be kept inclosed.

Expense thereof out of economy fund.

Dean and chapter discharged from other repairs of the old cathedral.

Where the king’s consent necessary, consent of chief governors, under hands and seals, as valid as if by letters patent.

Such consent being enrolled in Chancery in six months, paying 3s. 4d. Not to take away the right of dignitaries, &c. to the ancient site, churchyard, other ground, or buildings.

LXXVIII. STAT. 21 GEORGII 2, c. 24. A.D. 1748.

“*An Act for building a Church in the Town of Liverpool, in the Coun’ty Palatine of Lancaster. . . .*”

STAT. 21 GEO. 2, c. 24.

LXXIX. STAT. 21 GEORGII 2, c. 34(1). A.D. 1748.

“*An Act to amend and enforce so much of an Act made in the nineteenth year of His Majesty’s Reign, as relates . . . to Masters and Teachers of private Schools, and Chaplains; and to explain a Clause in another Act, made in the same year, relating to Letters of Orders of Episcopal Ministers in Scotland. . . .*”

STAT. 21 GEO. 2, c. 34.

LXXX. STAT. 22 GEORGII 2, c. 21. A.D. 1749.

“*An Act for explaining and amending an Act passed in the seventeenth year of His present Majesty’s Reign, intituled, An Act for raising and establishing a Fund for a Provision for the Widows and Children of the Ministers of the Church of Scotland, and of the Heads, Principals, and Masters of the Universities of St. Andrew’s, Glasgow, and Edinburgh.*”

STAT. 22 GEO. 2, c. 21.

STAT. 22 GEO.
2, c. 30.

LXXXI. STAT. 22 GEORGII 2, c. 30. A.D. 1749.

"An Act for encouraging the People known by the Name of 'Unitas Fratrum,' or 'United Brethren,' to settle in His Majesty's Colonies in America."

STAT. 22 GEO.
2, c. 33.

LXXXII. STAT. 22 GEORGII 2, c. 33. A.D. 1749.

"An Act for amending and explaining . . . the Laws relating to the Government of His Majesty's Ships, Vessels, and Forces by Sea."

"II. 'Art. 2. All flag officers, and all persons in or belonging to his majesty's ships or vessels of war, being guilty of profane oaths, cursings, execrations, drunkenness, uncleanness, or other scandalous actions in derogation of God's honour, and corruption of good manners, shall incur such punishment as a court-martial shall think fit to impose.'"

STAT. 23 GEO.
2, c. 10. [IR.]

LXXXIII. STAT. 23 GEORGII 2, c. 10 (1). [IRELAND.] A.D. 1749.

"An Act for explaining and making more effectual an Act, intituled, An Act for the more effectual preventing Clandestine Marriages; and another Act passed in the twelfth year of His late Majesty's Reign, intituled, An Act to prevent Marriages by Degraded Clergymen and Popish Priests, and for preventing Marriages consummated from being avoided by Pre-contracts, and for the more effectual punishing of Bigamy."

STAT. 23 GEO.
2, c. 12. [IR.]

LXXXIV. STAT. 23 GEORGII 2, c. 12. [IRELAND.] A.D. 1749.

"An Act for amending, continuing, and making more effectual, the several Acts now in force in this Kingdom for the more easy Recovery of Tithes (2), and other Ecclesiastical Dues of small Value; and also for the more easy providing a Maintenance for Parish Clerks (3)."

STAT. 23 GEO.
2, c. 18. [IR.]

LXXXV. STAT. 23 GEORGII 2, c. 18. [IRELAND.] A.D. 1749.

"An Act for regulating the Hospital founded by Mary Mercer, Spinster."

STAT. 23 GEO.
2, c. 28.

LXXXVI. STAT. 23 GEORGII 2, c. 28. A.D. 1750.

"An Act to explain part of an Act passed in the thirteenth and fourteenth years of the Reign of King Charles the Second, for the Uniformity of Public Prayers and Administration of Sacraments; and also part of an Act passed in the thirteenth year of the Reign of Queen Elizabeth, for the Ministers of the Church to be of sound Religion."

13 & 14 Car.
2, c. 4, s. 6.

"Whereas by an act passed in the thirteenth and fourteenth years of the reign of the late King Charles the Second, intituled, 'An Act for the Uniformity of public Prayers, and Administration of Sacraments, and other Rites and Ceremonies; and for establishing the Form of making, ordaining, and consecrating Bishops, Priests, and Deacons, in the Church of England;' it was enacted, that every person who should thereafter be presented or collated, or put into any ecclesiastical benefice or promotion, within England, the dominion of Wales, and town of Berwick upon Tweed, should, in the church, chapel, or place of public worship, belonging to his said benefice or promotion, within two months next after that he shall be in the actual possession of the said ecclesiastical benefice or promotion, upon some Lord's day, openly, publicly, and solemnly read the morning and evening prayers appointed to be read by and according to the Book of Common Prayer, at the times thereby appointed or to be appointed; and after such reading thereof,

(1) Partly repealed by Stat. 3 & 4 Gul. 1 & 2 Vict. c. 109.
4, c. 102.

(3) *Parish Clerks*:—Repealed by Stat. 7
(2) *Tithes*:—Virtually repealed by Stat. Geo. 4, c. 72.

should openly and publicly, before the congregation there assembled, declare his unfeigned assent and consent to the use of all things therein contained and prescribed, according to the form thereinbefore appointed; and that all and every such person who should (without some lawful impediment, to be allowed and approved by the ordinary of the place) neglect or refuse to do the same within the time aforesaid, (or, in case of such impediment, within one month after such impediment removed,) should (*ipso facto*) be deprived of all his said ecclesiastical benefices and promotions; and that from thenceforth, it should and might be lawful to and for all patrons and donors of all and singular the said ecclesiastical benefices and promotions, or any of them, according to their respective rights and titles, to present or collate to the same, as though the person or persons so offending or neglecting were dead: and it was by the said act (amongst other things) further enacted, that every parson, vicar, curate, lecturer, and every other person in holy orders, should, before his or their respective admission to be incumbent, or have possession of any parsonage, vicarage, or any curate's place or lecture, subscribe the declaration or acknowledgment therein directed, before the respective archbishop, bishop, or ordinary of the diocese; upon pain that all and every of the persons afore mentioned, failing in such subscription, should lose and forfeit such respective parsonage, vicarage, curate's place, or lecture, and should be utterly disabled and (*ipso facto*) deprived of the same; and that every such respective parsonage, vicarage, curate's place, or lecture, should be void, as if such person so failing were naturally dead: and that after such subscription made, every parson, vicar, curate, or lecturer should procure a certificate under the hand and seal of the respective archbishop, bishop, or ordinary of the diocese, (who were thereby enjoined and required, upon demand, to make and deliver the same,) and should publicly and openly read the same, together with the declaration or acknowledgment therein mentioned, upon some Lord's day within three months then next following, in his parish church where he was to officiate, in the presence of the congregation there assembled, in the time of divine service; upon pain, that every person failing therein should lose such parsonage, vicarage, or benefice, curate's place or lecturer's place respectively, and should be utterly disabled, and (*ipso facto*) deprived of the same; and that the said parsonage, vicarage, or benefice, curate's place or lecturer's place should be void, as if he were naturally dead: and whereas doubts have arisen, whether the allowance and approbation of any lawful impediment before mentioned doth extend to both the said before-recited cases, or whether any archbishop, bishop, or other ordinary, hath power by the said act to allow and approve of any lawful impediment, as to reading the said last-mentioned certificate and declaration, within the time limited by the said act: for the obviating thereof, be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that every allowance and approbation of any lawful impediment already given and declared, or which shall hereafter be given and declared, in pursuance of the said act, by any archbishop, bishop, or ordinary, to any person for or in respect of not reading in the church, chapel, or place of public worship, belonging to his benefice or promotion, within two months next after that he shall be in the actual possession of the said benefice or promotion, upon some Lord's day, openly, publicly, and solemnly, the morning and evening prayers, appointed to be read by and according to the said Book of Common Prayer, and for or in respect of not openly and publicly, before the congregation there assembled, declaring his unfeigned assent and consent to the use of all things therein contained and prescribed, shall extend, and be construed to extend, to the not reading the said last-mentioned certificate and declaration, although the same be not mentioned in the said allowance and approbation, for the like time as the said allowance and approbation shall extend to.

STAT. 23 GEO.
2, c. 28.

Allowance of a lawful impediment extended to the not reading the certificate and declaration, within the time limited.

“II. And whereas by an act passed in the thirteenth year of the reign of Queen Elizabeth, intituled, ‘An Act for the Ministers of the Church to be of sound Religion;’ it was (amongst other things) enacted, that every person who should be admitted to a benefice with cure, except that within two months after

13 Eliz. c. 12.

STAT. 23 GEO.
2, c. 28.

his induction, he should publicly read the articles therein mentioned, in the same church whereof he should have cure, in the time of common prayer there, with declaration of his unfeigned assent thereunto, should be, upon every such default, (*ipso facto*) immediately deprived: and whereas it hath happened, and may hereafter happen, through sickness, or other lawful impediment, that divers persons have been, and may be hindered from reading the said articles, and making the said declaration, within the time directed by the said act, and yet such person after such sickness or other lawful impediment removed, hath read, and may hereafter read the said articles, and make the said declaration; and it is reasonable that such persons should be deemed to have complied with the true intent and meaning of the said act; be it therefore further enacted by the authority aforesaid, that every person who hath already read, or who shall hereafter read the said articles, and hath made, or shall hereafter make the said declaration, at the same time that he did read, or shall hereafter read the morning and evening prayer, and declare his unfeigned assent and consent to the use of all things therein contained and prescribed, according to the directions of the said in part recited act of the thirteenth and fourteenth years of the reign of King Charles the Second, shall be, and is hereby declared and adjudged to have complied with the true intent and meaning of the said act of the thirteenth year of the reign of Queen Elizabeth, although the same were not, or may not be read within the space of two months after such person's induction into any benefice with cure; and that every such person shall, and he is hereby declared to be freed and *discharged from any deprivation or other forfeiture* (1) by virtue of the said act; anything therein contained to the contrary notwithstanding.

Persons who shall read the articles and declaration at the time of reading the morning and evening prayer, are declared to have complied.

Limitation of this act.

"III. Provided always, that this act shall not extend to restore any person to any parsonage, vicarage, or benefice, curate's place or lecturer's place, which, for want of reading such certificate and declaration, within the time directed by the said first in part recited act, or of reading the said articles and declaration concerning the same, according to the said last-mentioned act, hath been forfeited or become void, and is already filled up or enjoyed by any person or persons whatsoever."

STAT. 23 GEO.
2, c. 36.

LXXXVII. STAT. 23 GEORGII 2, c. 36. A.D. 1750.

"An Act for settling a Stipend or Maintenance upon the Rector of the Parish of St. George the Martyr, in the Borough of Southwark, in the County of Surrey, and his Successors, in lieu of Tithes."

STAT. 24 GEO.
2, c. 15.

LXXXVIII. STAT. 24 GEORGII 2, c. 15. A.D. 1751.

"An Act to enable the Parishioners of the Parish of St. Mary Islington, in the County of Middlesex, to rebuild the Church of the said Parish."

STAT. 24 GEO.
2, c. 23.

LXXXIX. STAT. 24 GEORGII 2, c. 23 (2). A.D. 1751.

"An Act for regulating the Commencement of the Year, and for correcting the Calendar now in use."

Amended by
25 Geo. 2, c. 30.

"Whereas the legal supputation of the year of our Lord in that part of Great Britain called England, according to which the year beginneth on the twenty-fifth day of March, hath been found by experience to be attended with divers inconveniences, not only as it differs from the usage of neighbouring nations, but also from the legal method of computation in that part of Great Britain called Scotland, and from the common usage throughout the whole kingdom, and thereby

(1) *Discharged from any deprivation or other forfeiture*:—Before this statute, if a party had neglected to declare his assent within the specified time, but was permitted to continue in possession, and afterwards declared his assent, this was considered to be a

new nomination, and entitled him to the augmentation which had been granted under Stat. 29 Car. 2, c. 8 (*antè* 619). *Carver v. Pinkney*, 3 Lev. 82.

(2) *Vide* Stat. 25 Geo. 2, c. 30, ss. 1, 2, & 4.

frequent mistakes are occasioned in the dates of deeds, and other writings, and disputes arise therefrom; and whereas the calendar now in use throughout all his majesty's British dominions, commonly called The Julian Calendar, hath been discovered to be erroneous, by means whereof the vernal or spring equinox, which at the time of the general council of Nice, in the year of our Lord three hundred and twenty-five, happened on or about the twenty-first day of March, now happens on the ninth or tenth day of the same month; and the said error is still increasing, and if not remedied, would, in process of time, occasion the several equinoxes and solstices to fall at very different times in the civil year from what they formerly did, which might tend to mislead persons ignorant of the said alteration: and whereas a method of correcting the calendar in such manner as that the equinoxes and solstices may for the future fall nearly on the same nominal days on which the same happened at the time of the said general council, hath been received and established, and is now generally practised by almost all other nations of Europe; and whereas it will be of general convenience to merchants, and other persons corresponding with other nations and countries, and tend to prevent mistakes and disputes in or concerning the dates of letters and accounts, if the like correction be received and established in his majesty's dominions; may it therefore please your majesty, that it may be enacted; and be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that in and throughout all his majesty's dominions and countries in Europe, Asia, Africa, and America, belonging or subject to the crown of Great Britain, the said supputation, according to which the year of our Lord beginneth on the twenty-fifth day of March, shall not be made use of from and after the last day of December, one thousand seven hundred and fifty-one; and that the first day of January next following the said last day of December shall be reckoned, taken, deemed, and accounted to be the first day of the year of our Lord one thousand seven hundred and fifty-two; and the first day of January, which shall happen next after the said first day of January, one thousand seven hundred and fifty-two, shall be reckoned, taken, deemed, and accounted to be the first day of the year of our Lord one thousand seven hundred and fifty-three; and so on, from time to time, the first day of January in every year, which shall happen in time to come, shall be reckoned, taken, deemed, and accounted to be the first day of the year; and that each new year shall accordingly commence, and begin to be reckoned, from the first day of every such month of January next preceding the twenty-fifth day of March, on which such year would, according to the present supputation, have begun or commenced; and that from and after the said first day of January, one thousand seven hundred and fifty-two, the several days of each month shall go on, and be reckoned and numbered in the same order; and the feast of Easter, and other movable feasts thereon depending, shall be ascertained according to the same method as they now are, until the second day of September in the said year one thousand seven hundred and fifty-two inclusive; and that the natural day next immediately following the said second day of September, shall be called, reckoned, and accounted to be the fourteenth day of September, omitting for that time only the eleven intermediate nominal days of the common calendar; and that the several natural days, which shall follow and succeed next after the said fourteenth day of September, shall be respectively called, reckoned, and numbered forwards in numerical order from the said fourteenth day of September, according to the order and succession of days now used in the present calendar; and that all acts, deeds, writings, notes, and other instruments, of what nature or kind soever, whether ecclesiastical or civil, public or private, which shall be made, executed, or signed, upon or after the said first day of January, one thousand seven hundred and fifty-two, shall bear date according to the said new method of supputation, and that the two fixed terms of St. Hilary and St. Michael, in that part of Great Britain called England, and the courts of great sessions in the counties palatine, and in Wales, and also the courts of general quarter sessions and general sessions of the peace, and all other courts of what nature or

STAT. 24 GEO.
2, c. 23.

The old supputation of the year not to be made use of after December, 1751. Year to commence, for the future, on 1st January.

The days to be numbered as now until 2nd September, 1752; and the day following to be accounted 14th September, omitting eleven days.

Hilary and Michaelmas terms, and all courts, to be held on the

STAT. 24 GEO.
2, c. 23.
same nominal
days.

Courts held
with fairs or
martsexcepted.

Hundredth
years,
except every
fourth hun-
dred, to be
common years
of 365 days.

Years Bissex-
tile of 366
days.

Easter, and the
other movable
feasts, to be
observed ac-
cording to the
new calendar,
tables, and
rules.

kind soever, whether civil, criminal, or ecclesiastical, and all meetings and assemblies of any bodies politic or corporate, either for the election of any officers or members thereof, or for any such officers entering upon the execution of their respective offices, or for any other purpose whatsoever, which by any law, statute, charter, custom, or usage within this kingdom, or within any other the dominions or countries subject or belonging to the crown of Great Britain, are to be holden and kept on any fixed or certain day of any month, or on any day depending upon the beginning, or any certain day of any month, (except such courts as are usually holden or kept with any fairs or marts,) shall, from time to time, from and after the said second day of September, be holden and kept upon or according to the same respective nominal days and times whereon or according to which the same are now to be holden, but which shall be computed according to the said new method of numbering and reckoning the days of the calendar as aforesaid; that is to say, eleven days sooner than the respective days whereon the same are now holden and kept; any law, statute, charter, custom, or usage, to the contrary thereof in anywise notwithstanding.

“II. And for the continuing and preserving the calendar or method of reckoning, and computing the days of the year in the same regular course, as near as may be, in all times coming; be it further enacted by the authority aforesaid, that the several years of our Lord, one thousand eight hundred, one thousand nine hundred, two thousand one hundred, two thousand two hundred, two thousand three hundred, or any other hundredth years of our Lord, which shall happen in time to come, except only every fourth hundredth year of our Lord, whereof the year of our Lord two thousand shall be the first, shall not be esteemed or taken to be Bissextile or leap years, but shall be taken to be common years, consisting of three hundred and sixty-five days, and no more; and that the years of our Lord two thousand, two thousand four hundred, two thousand eight hundred, and every other fourth hundredth year of our Lord, from the said year of our Lord two thousand inclusive, and also all other years of our Lord, which by the present supputation are esteemed to be Bissextile or leap years, shall for the future, and in all times to come, be esteemed and taken to be Bissextile or leap years, consisting of three hundred and sixty-six days, in the same sort and manner as is now used with respect to every fourth year of our Lord.

“III. And whereas according to the rule prefixed to the Book of Common Prayer of the Church of England, Easter Day is always the first Sunday after the first full moon which happens next after the one and twentieth day of March, and if the full moon happens upon a Sunday, Easter Day is the Sunday after; which rule was made in conformity to the decree of the said general council of Nice, for the celebration of the said feast of Easter: and whereas the method of computing the full moons now used in the church of England, and according to which the table to find Easter for ever, prefixed to the said Book of Common Prayer, is formed, is by process of time become considerably erroneous; and whereas a calendar, and also certain tables and rules for the fixing the true time of the celebration of the said feast of Easter, and the finding the times of the full moons on which the same dependeth, so as the same shall agree as nearly as may be with the decree of the said general council, and also with the practice of foreign countries, have been prepared, and are hereunto annexed: be it therefore further enacted by the authority aforesaid, that the said feast of Easter, or any of the movable feasts thereon depending, shall, from and after the said second day of September, be no longer kept or observed in that part of Great Britain called England, or in any other the dominions or countries subject or belonging to the crown of Great Britain, according to the said method of supputation now used, or the said table prefixed to the said Book of Common Prayer; and that the said table, and also the column of golden numbers, as they are now prefixed to the respective days of the month in the said calendar, shall be left out in all future editions of the said Book of Common Prayer; and that the said new calendar, tables, and rules, hereunto annexed, shall be prefixed to all such future editions of the said book, in the room and stead thereof; and that from and after the said second day of September, all and every

the fixed feast-days, holy-days, and fast-days, which are now kept and observed by the church of England, and also the several solemn days of thanksgiving, and of fasting and humiliation, which by virtue of any act of parliament now in being, are, from time to time, to be kept and observed, shall be kept and observed on the respective days marked for the celebration of the same in the said new calendar; that is to say, on the same respective nominal days on which the same are now kept and observed; but which, according to the alteration by this act intended to be made as aforesaid, will happen eleven days sooner than the same now do; and that the said feast of Easter, and all other movable feasts thereon depending, shall, from time to time, be observed and celebrated according to the said new calendar, tables, and rules hereunto annexed, in that part of Great Britain called England, and in all the dominions and countries aforesaid, wherein the Liturgy of the church of England now is, or hereafter shall be used; and that the two movable terms of Easter and Trinity, and all courts of what nature or kind soever, and all meetings and assemblies of any bodies politic or corporate, and all markets, fairs, and marts, and courts thereunto belonging, which by any law, statute, charter, custom, or usage are appointed, used, or accustomed to be holden and kept at any movable time or times depending upon the time of Easter, or any other such movable feast as aforesaid, shall, from time to time, from and after the said second day of September, be holden and kept on such days and times whereon the same shall respectively happen or fall, according to the happening or falling of the said feast of Easter, or such other movable feasts as aforesaid, to be computed according to the said new calendar, tables, and rules.

STAT. 24 GEO.
2, c. 23.

Feasts and
fasts, &c. to
be according
to the new
calendar.

“IV. And be it further enacted by the authority aforesaid, that the several meetings of the court of session, and terms fixed for the court of exchequer in Scotland, the April meeting of the governor, bailiffs, and commonalty of the company of conservators of the great level of the fens, and the holding and keeping of all markets, fairs, and marts, whether for the sale of goods or cattle, or for the hiring of servants, or for any other purpose, which are either fixed to certain nominal days of the month, or depending upon the beginning, or any certain day of any month, and all courts incident or belonging to, or usually holden or kept with any such fairs or marts, fixed to such certain times as aforesaid, shall not, from and after the said second day of September, be continued upon, or according to the nominal days of the month, or the time of the beginning of any month, to be computed according to the said new calendar, but that from and after the said second day of September, the said courts of session and exchequer, the said April meeting, and all such markets, fairs, and marts as aforesaid, and all courts incident or belonging thereto, shall be holden and kept upon, or according to the same natural days, upon or according to which the same should have been so kept or holden, in case this act had not been made; that is to say, eleven days later than the same would have happened, according to the nominal days of the said new supputation of time, by which the commencement of each month, and the nominal days thereof, are anticipated or brought forward, by the space of eleven days; anything in this act contained to the contrary thereof in anywise notwithstanding.

Courts of ses-
sion and ex-
chequer in
Scotland, and
markets, fairs,
and marts, to
be held upon
the same natu-
ral days.

“V. And whereas, according to divers customs, prescriptions, and usages, in certain places within this kingdom, certain lands and grounds are, on particular nominal days and times in the year, to be open for common of pasture, and other purposes; and at other times, the owners and occupiers of such lands and grounds have a right to inclose or shut up the same, for their own private use; and there is, in many other instances, a temporary and distinct property and right vested in different persons, in and to many such lands and grounds, according to certain nominal days and times in the year: and whereas the anticipating or bringing forward the said nominal days and times, by the space of eleven days, according to the said new method of supputation, might be attended with many inconveniences: be it therefore further declared, provided, and enacted by the authority aforesaid, that nothing in this act contained shall extend, or be construed to extend, to accelerate or anticipate the days or times for the opening, inclosing, or

The times for
opening and

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inclosing of
commons, not
altered.

Times of pay-
ment of rents,
annuities, &c.

or of delivery
of goods.

Commence-
ment or expi-
ration of
leases, &c.
or of attaining
the age of
twenty-one
years, &c. not
altered.

See 26 Geo. 2.
c. 34, s. 4.

shutting up any such lands or grounds as aforesaid, or the days or times on which any such temporary or distinct property or right in or to any such lands or grounds as aforesaid is to commence; but that all such lands and grounds as aforesaid shall from and after the said second day of September be, from time to time, respectively opened, inclosed, or shut up, and such temporary and distinct property and right in and to such lands and grounds as aforesaid, shall commence and begin upon the same natural days and times on which the same should have been so respectively opened, inclosed, or shut up, or would have commenced or begun, in case this act had not been made; that is to say, eleven days later than the same would have happened, according to the said new account and supputation of time, so to begin on the said fourteenth day of September as aforesaid.

“VI. Provided also, and it is hereby further declared and enacted, that nothing in this present act contained shall extend, or be construed to extend, to accelerate or anticipate the time of payment of any rent or rents, annuity or annuities, or sum or sums of money whatsoever, which shall become payable by virtue or in consequence of any custom, usage, lease, deed, writing, bond, note, contract, or other agreement whatsoever, now subsisting, or which shall be made, signed, sealed, or entered into, at any time before the said fourteenth day of September, or which shall become payable by virtue of any act or acts of parliament now in force, or which shall be made before the said fourteenth day of September, or the time of doing any matter or thing directed or required by any such act or acts of parliament to be done in relation thereto; or to accelerate the payment of, or increase the interest of, any such sum of money which shall become payable as aforesaid; or to accelerate the time of the delivery of any goods, chattels, wares, merchandize, or other things whatsoever; or the time of the commencement, expiration, or determination of any lease, or demise of any lands, tenements, or hereditaments, or of any other contract or agreement whatsoever; or of the accepting, surrendering, or delivering up the possession of any such lands, tenements, or hereditaments; or the commencement, expiration, or determination of any annuity or rent; or of any grant for any term of years, of what nature or kind soever, by virtue or in consequence of any such deed, writing, contract, or agreement; or the time of the attaining the age of one and twenty years, or any other age requisite by any law, custom, or usage, deed, will, or writing whatsoever, for the doing any act, or for any other purpose whatsoever, by any person or persons now born, or who shall be born before the said fourteenth day of September; or the time of the expiration or determination of any apprenticeship or other service, by virtue of any indenture, or of any articles under seal, or by reason of any simple contract or hiring whatsoever; but that all and every such rent and rents, annuity and annuities, sum and sums of money, and the interest thereof, shall remain and continue to be due and payable; and the delivery of such goods and chattels, wares and merchandize, shall be made; and the said leases and demises of all such lands, tenements, and hereditaments, and the said contracts and agreements shall be deemed to commence, expire, and determine; and the said lands, tenements, and hereditaments, shall be accepted, surrendered, and delivered up; and the said rents and annuities, and grants for any term of years, shall commence, cease, and determine, at and upon the same respective natural days and times as the same should and ought to have been payable or made, or would have happened, in case this act had not been made; and that no further or other sum shall be paid or payable for the interest of any sum of money whatsoever, than such interest shall amount unto, for the true number of natural days for which the principal sum bearing such interest shall continue due and unpaid; and that no person or persons whatsoever shall be deemed or taken to have attained the said age of one and twenty years, or any other such age as aforesaid, or to have completed the time of any such service as aforesaid, until the full number of years and days shall be elapsed on which such person or persons respectively would have attained such age, or would have completed the time of such service as aforesaid, in case this act had not been made; anything herein before contained to the contrary in anywise notwithstanding.”

The New Calendar, Tables, and Rules, mentioned and referred to in the Act for regulating the Commencement of the Year; and for correcting the Calendar now in use. STAT. 24 GEO. 2, c. 23.

The Calendar, with the Table of Lessons.				Morning Prayer.		Evening Prayer.	
JANUARY hath XXXI Days.				1 Lesson.	2 Lesson.	1 Lesson.	2 Lesson.
1	A	Calendæ	<i>Circumcision</i>	1 Lesson.		1 Lesson.	
2	b	4 Non.	.....	Gen. 1	Matt. 1	Gen. 2	Rom. 1
3	c	3 Non.	.....	— 3	— 2	— 4	— 2
4	d	Pr. Non.	.....	— 5	— 3	— 6	— 3
5	e	Nonæ	.....	— 7	— 4	— 8	— 4
6	f	8 Id.	<i>Epiphany</i> .....	.....	.....	.....	.....
7	g	7 Id.	.....	— 9	— 5	— 12	— 5
8	A	6 Id.	Lucian, Priest & M.	— 13	— 6	— 14	— 6
9	b	5 Id.	.....	— 15	— 7	— 16	— 7
10	c	4 Id.	.....	— 17	— 8	— 18	— 8
11	d	3 Id.	.....	— 19	— 9	— 20	— 9
12	e	Pr. Id.	.....	— 21	— 10	— 22	— 10
13	f	Idus.	Hilary, Bish. & Con.	— 23	— 11	— 24	— 11
14	g	19 Cal. Feb.	.....	— 25	— 12	— 26	— 12
15	A	18 Cal.	.....	— 27	— 13	— 28	— 13
16	b	17 Cal.	.....	— 29	— 14	— 30	— 14
17	c	16 Cal.	.....	— 31	— 15	— 32	— 15
18	d	15 Cal.	Prisca, Rom. V. & M.	— 33	— 16	— 34	— 16
19	e	14 Cal.	.....	— 35	— 17	— 37	1 Cor. 1
20	f	13 Cal.	Fabian, B. of Rom. M.	— 38	— 18	— 39	— 2
21	g	12 Cal.	Agnes, Rom. V. & M.	— 40	— 19	— 41	— 3
22	A	11 Cal.	Vinc. Span. Deac. M.	— 42	— 20	— 43	— 4
23	b	10 Cal.	.....	— 44	— 21	— 45	— 5
24	c	9 Cal.	.....	— 46	— 22	— 47	— 6
25	d	8 Cal.	<i>Conv. of St. Paul</i> .....	.....	.....	.....	.....
26	e	7 Cal.	.....	— 48	— 23	— 49	— 7
27	f	6 Cal.	.....	— 50	— 24	Exod. 1	— 8
28	g	5 Cal.	.....	Exod. 2	— 25	— 3	— 9
29	A	4 Cal.	.....	— 4	— 26	— 5	— 10
30	b	3 Cal.	K. Charles Mart.	* — 6	— 27	— 7	— 11
31	c	Pr. Cal.	.....	— 8	— 28	— 9	— 12

Note. That * Exodus vi. is to be read only to Ver. 14.

The Calendar, with the Table of Lessons.				Morning Prayer.		Evening Prayer.	
FEBRUARY hath XXVIII Days, and in every Leap Year XXIX Days.				1 Lesson.	2 Lesson.	1 Lesson.	2 Lesson.
1	d	Calendæ	..... <i>Fast.</i>	1 Lesson.		1 Lesson.	
2	e	4 Non.	<i>Purification V. M.</i>	Exod. 10	Mark 1	Exod. 11	1 Cor. 13
3	f	3 Non.	Blasius, Bish. & Mart.	— 12	— 2	— 13	— 14
4	g	Pr. Non.	.....	— 14	— 3	— 15	— 15
5	A	Nonæ	Agatha Sicilian, V. & M. ..	— 16	— 5	— 17	2 Cor. 1
6	b	8 Id.	.....	— 18	— 6	— 19	— 2
7	c	7 Id.	.....	— 20	— 7	— 21	— 3
8	d	6 Id.	.....	— 22	— 8	— 23	— 4
9	e	5 Id.	.....	— 24	— 9	— 32	— 5
10	f	4 Id.	.....	— 33	— 10	— 34	— 6
11	g	3 Id.	.....	Levit. 18	— 11	Levit. 19	— 7
12	A	Pr. Id.	.....	— 20	— 12	— 26	— 8
13	b	Idus.	.....	Num. 11	— 13	Num. 12	— 9
14	c	16 Cal. Mar.	Valentine, Bish. & M.	— 13	— 14	— 14	— 10
15	d	15 Cal.	.....	— 16	— 15	— 17	— 11
16	e	14 Cal.	.....	— 20	— 16	— 21	— 12
17	f	13 Cal.	.....	— 22	L. 1, to 39	— 23	— 13
18	g	12 Cal.	.....	— 24	— 1, 39	— 25	Galat. 1
19	A	11 Cal.	.....	— 27	— 2	— 30	— 2
20	b	10 Cal.	.....	— 31	— 3	— 32	— 3
21	c	9 Cal.	.....	— 35	— 4	— 36	— 4
22	d	8 Cal.	.....	Deut. 1	— 5	Deut. 2	— 5
23	e	7 Cal.	..... <i>Fast.</i>	— 3	— 6	— 4	— 6
24	f	6 Cal.	<i>S. Matthias, A. M.</i> .....	.....	— 7	.....	Ephes. 1
25	g	5 Cal.	— 5	— 8	— 6	— 2
26	A	4 Cal.	— 7	— 9	— 8	— 3
27	b	3 Cal.	— 9	— 10	— 10	— 4
28	c	Pr. Cal.	— 11	— 11	— 12	— 5
29	— 13	Matt. 7	— 14	Rom. 12

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The Calendar, with the Table of Lessons.

MAY hath XXXI Days.				Morning Prayer.		Evening Prayer.	
				1 Lesson.	2 Lesson.	1 Lesson.	2 Lesson.
1	b	Calendæ	<i>S. Phil. and Jac. A. and M.</i>	1 Lesson.		Jude	
2	c	6 Non.		1 Kings 8	Acts 28	1 Kings 9	Rom. 1
3	d	5 Non.	Invention of the Cross	— 10	Matt. 1	— 11	— 2
4	e	4 Non.		— 12	— 2	— 13	— 3
5	f	3 Non.		— 14	— 3	— 15	— 4
6	g	Pr. Non.	<i>S. John Evang. ante port.</i>	— 16	— 4	— 17	— 5
7	A	Nonæ	[<i>Lat.</i>	— 18	— 5	— 19	— 6
8	b	8 Id.		— 20	— 6	— 21	— 7
9	c	7 Id.		— 22	— 7	2 Kings 1	— 8
10	d	6 Id.		2 Kings 2	— 8	— 3	— 9
11	e	5 Id.		— 4	— 9	— 5	— 10
12	f	4 Id.		— 6	— 10	— 7	— 11
13	g	3 Id.		— 8	— 11	— 9	— 12
14	A	Pr. Id.		— 10	— 12	— 11	— 13
15	b	Idus.		— 12	— 13	— 13	— 14
16	c	17 Cal. Jun.		— 14	— 14	— 15	— 15
17	d	16 Cal.		— 16	— 15	— 17	— 16
18	e	15 Cal.		— 18	— 16	— 19	1 Cor. 1
19	f	14 Cal.	<i>Dunstan, Archb. Cant.</i>	— 20	— 17	— 21	— 2
20	g	13 Cal.		— 22	— 18	— 23	— 3
21	A	12 Cal.		— 24	— 19	— 25	— 4
22	b	11 Cal.		Ezra 1	— 20	Ezra 3	— 5
23	c	10 Cal.		— 4	— 21	— 5	— 6
24	d	9 Cal.		— 6	— 22	— 7	— 7
25	e	8 Cal.		— 9	— 23	Nehem. 1	— 8
26	f	7 Cal.	<i>Aug. first Archb. Cant.</i>	Nehem. 2	— 24	— 4	— 9
27	g	6 Cal.	<i>Venerable Bede, Pr.</i>	— 5	— 25	— 6	— 10
28	A	5 Cal.		— 8	— 26	— 9	— 11
29	b	4 Cal.	<i>K. Charles II. Nat. and</i>	— 10	— 27	— 13	— 12
30	c	3 Cal.	[<i>Return.</i>	Esther 1	— 28	Esther 2	— 13
31	d	Pr. Cal.		— 3	Mark 1	— 4	— 14

The Calendar, with the Table of Lessons.

JUNE hath XXX Days.				Morning Prayer.		Evening Prayer.	
				1 Lesson.	2 Lesson.	1 Lesson.	2 Lesson.
1	e	Calendæ	<i>Nicom. Rom. Pr. & M.</i>	1 Lesson.		1 Lesson.	2 Lesson.
2	f	4 Non.		Esther 5	Mark 2	Esther 6	1 Cor. 15
3	g	3 Non.		— 7	— 3	— 8	— 16
4	A	Pr. Non.		— 9	— 4	Job 1	2 Cor. 1
5	b	Nonæ	<i>Bonif. B. of Mentz. M.</i>	Job 2	— 5	— 3	— 2
6	c	8 Id.		— 4	— 6	— 5	— 3
7	d	7 Id.		— 6	— 7	— 7	— 4
8	e	6 Id.		— 8	— 8	— 9	— 5
9	f	5 Id.		— 10	— 9	— 11	— 6
10	g	4 Id.		— 12	— 10	— 13	— 7
11	A	3 Id.		— 14	— 11	— 15	— 8
12	b	Pr. Id.	<i>S. Barnab. A. M.</i>	— 16	— 12	— 17, 18	— 9
13	c	Idus.		— 19	— 13	— 20	— 10
14	d	18 Cal. Julii.		— 21	— 14	— 22	— 11
15	e	17 Cal.		— 23	— 15	— 24, 25	— 12
16	f	16 Cal.		— 26, 27	— 16	— 28	— 13
17	g	15 Cal.	<i>S. Alban, Mart.</i>	— 29	Luke 1	— 30	Galat. 1
18	A	14 Cal.		— 31	— 2	— 32	— 2
19	b	13 Cal.		— 33	— 3	— 34	— 3
20	c	12 Cal.	<i>Transl. of Ed. K. of West</i>	— 35	— 4	— 36	— 4
21	d	11 Cal.	[<i>Sax.</i>	— 37	— 5	— 38	— 5
22	e	10 Cal.		— 39	— 6	— 40	— 6
23	f	9 Cal.	<i>Fast.</i>	— 41	— 7	— 42	Ephes. 1
24	g	8 Cal.	<i>Nativity of S. J. Bap.</i>	— 41	— 7	— 42	Ephes. 1
25	A	7 Cal.		Prov. 1	— 8	Prov. 2	— 2
26	b	6 Cal.		— 3	— 9	— 4	— 3
27	c	5 Cal.		— 5	— 10	— 6	— 4
28	d	4 Cal.	<i>Fast.</i>	— 7	— 11	— 8	— 5
29	e	3 Cal.	<i>S. Peter, A. and M.</i>	— 9	— 12	— 10	— 6
30	f	Pr. Cal.		— 9	— 12	— 10	— 6

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The Calendar, with the Table of Lessons.			
JULY hath XXXI Days.			
		Morning Prayer.	
		Evening Prayer.	
		1 Lesson.	2 Lesson.
1	g	Calendæ	Prov. 11
2	A	6 Non.	Luke 13
3	b	5 Non.	Prov. 12
4	c	4 Non.	Philip. 1
5	d	3 Non.	Colos. 1
6	e	Pr. Non.	Colos. 2
7	f	Nonæ	Colos. 3
8	g	8 Id.	Colos. 4
9	A	7 Id.	1 Thes. 1
10	b	6 Id.	2
11	c	5 Id.	3
12	d	4 Id.	4
13	e	3 Id.	5
14	f	Pr. Id.	2 Thes. 1
15	g	Idus	2
16	A	17 Cal. Aug.	3
17	b	16 Cal.	Jerem. 1
18	c	15 Cal.	Jerem. 2
19	d	14 Cal.	Jerem. 3
20	e	13 Cal.	Marg. V. & M. Antioch
21	f	12 Cal.	S. Mary Magdalene
22	g	11 Cal.	S. James, A. and M.
23	A	10 Cal.	S. Anne, Mother to the Bl.
24	b	9 Cal.	[Virg. Mary.
25	c	8 Cal.	Fast.
26	d	7 Cal.	S. James, A. and M.
27	e	6 Cal.	S. Anne, Mother to the Bl.
28	f	5 Cal.	[Virg. Mary.
29	g	4 Cal.	Fast.
30	A	3 Cal.	S. James, A. and M.
31	b	Pr. Cal.	S. Anne, Mother to the Bl.

The Calendar, with the Table of Lessons.			
AUGUST hath XXXI Days.			
		Morning Prayer.	
		Evening Prayer.	
		1 Lesson.	2 Lesson.
1	c	Calendæ	Jerem. 29
2	d	4 Non.	John 20
3	e	3 Non.	Jerem. 30
4	f	Pr. Non.	Heb. 4
5	g	Nonæ	Heb. 5
6	A	8 Id.	Heb. 6
7	b	7 Id.	Heb. 7
8	c	6 Id.	Heb. 8
9	d	5 Id.	Heb. 9
10	e	4 Id.	Heb. 10
11	f	3 Id.	Heb. 11
12	g	Pr. Id.	Heb. 12
13	A	Idus	Heb. 13
14	b	19 Cal. Sept.	James 1
15	c	18 Cal.	Lam. 1
16	d	17 Cal.	Lam. 2
17	e	16 Cal.	Ezek. 2
18	f	15 Cal.	Ezek. 3
19	g	14 Cal.	Ezek. 4
20	A	13 Cal.	Ezek. 5
21	b	12 Cal.	Ezek. 6
22	c	11 Cal.	Ezek. 7
23	d	10 Cal.	Ezek. 8
24	e	9 Cal.	Ezek. 9
25	f	8 Cal.	Ezek. 10
26	g	7 Cal.	Ezek. 11
27	A	6 Cal.	Ezek. 12
28	b	5 Cal.	Ezek. 13
29	c	4 Cal.	Ezek. 14
30	d	3 Cal.	Ezek. 15
31	e	Pr. Cal.	Ezek. 16

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The Calendar, with the Table of Lessons.				Morning Prayer.		Evening Prayer.	
SEPTEMBER hath XXX Days.							
1	f	Calendæ	Giles, Abbot, and Conf. . . .	1 Lesson.	2 Lesson.	1 Lesson.	2 Lesson.
2	g	4 Non.	.....	Hosea 14	Matt. 2	Joel 1	Rom. 2
3	A	3 Non.	.....	Joel 2	3	3	3
4	b	Pr. Non.	.....	Amos 1	4	Amos 2	4
5	c	Nonæ	.....	3	5	4	5
6	d	8 Id.	.....	5	6	6	6
7	e	7 Id.	Enurchus, B. of Orleans . .	7	7	8	7
8	f	6 Id.	Nativity of the B. V. M. . . .	9	8	Obadiah	8
9	g	5 Id.	.....	Jonah 1	9	Jon. 2, 3	9
10	A	4 Id.	.....	4	10	Micah 1	10
11	b	3 Id.	.....	Micah 2	11	3	11
12	c	Pr. Id.	.....	4	12	5	12
13	d	Idus	.....	6	13	7	13
14	e	13 Cal. Oct.	Holy Cross Day	Nahum 1	14	Nahum 2	14
15	f	17 Cal.	.....	3	15	Hab. 1	15
16	g	16 Cal.	.....	Hab. 2	16	3	16
17	A	15 Cal.	Lambert, Bish. & M.	Zeph. 1	17	Zeph. 2	1 Cor. 1
18	b	14 Cal.	.....	3	18	Haggai 1	2
19	c	13 Cal.	.....	Haggai 2	19	Zech. 1	3
20	d	12 Cal.	.....	Zech. 2, 3	20	4, 5	4
21	e	11 Cal.	<i>S. Matthew, A. E. and M. . .</i>	6	21	7	5
22	f	10 Cal.	.....	8	22	.....	6
23	g	9 Cal.	.....	10	23	9	7
24	A	8 Cal.	.....	12	24	11	8
25	b	7 Cal.	.....	14	25	13	9
26	c	6 Cal.	S. Cyprian, Archb. of Carth. .	14	26	Mal. 1	10
27	d	5 Cal.	..... [ & Mar.	Mal. 2	27	3	11
28	e	4 Cal.	.....	4	28	Tobit 1	12
29	f	3 Cal.	<i>S. Mich. and all An.</i>	Tobit 2	Mark 1	3	13
30	g	Pr. Cal.	St. Jer. Pr. Conf. & Doct. .	.....	2	.....	14
				4	3	6	15

The Calendar, with the Table of Lessons.				Morning Prayer.		Evening Prayer.	
OCTOBER hath XXXI Days.							
1	A	Calendæ	Remig. B. of Rhemes. . . .	1 Lesson.	2 Lesson.	1 Lesson.	2 Lesson.
2	b	6 Non.	.....	Tobit 7	Mark 4	Tobit 8	1 Cor. 16
3	c	5 Non.	.....	9	5	10	2 Cor. 1
4	d	4 Non.	.....	11	6	12	2
5	e	3 Non.	.....	13	7	14	3
6	f	Pr. Non.	Faith, Virgin & Mart. . . .	Judith 1	8	Judith 2	4
7	g	Nonæ	.....	3	9	4	5
8	A	8 Id.	.....	5	10	6	6
9	b	7 Id.	S. Denys Areop. B. & M. . .	7	11	8	7
10	c	6 Id.	.....	9	12	10	8
11	d	5 Id.	.....	11	13	12	9
12	e	4 Id.	.....	13	14	14	10
13	f	3 Id.	Transl. of K. Ed. Conf. . . .	15	15	16	11
14	g	Pr. Id.	.....	Wisd. 1	16	Wisd. 2	12
15	A	Idus	.....	3	L. 1 to 39	4	13
16	b	17 Cal. Nov.	.....	5	1, 39	6	Galat. 1
17	c	16 Cal.	Ethelred, Virg.	7	2	8	2
18	d	15 Cal.	<i>S. Luke, Evan.</i>	9	3	10	3
19	e	14 Cal.	.....	11	4	.....	4
20	f	13 Cal.	.....	13	5	12	5
21	g	12 Cal.	.....	15	6	14	6
22	A	11 Cal.	.....	17	7	16	Ephes. 1
23	b	10 Cal.	.....	19	8	18	2
24	c	9 Cal.	.....	Ecclus. 2	9	Ecclus. 1	3
25	d	8 Cal.	.....	4	10	3	4
26	e	7 Cal.	Crispin, Mart.	6	11	5	5
27	f	6 Cal.	.....	8	12	7	6
28	g	5 Cal.	.....	10	13	9	Philip. 1
29	A	4 Cal.	<i>S. Sim. and S. Ju. A. and M. .</i>	12	14	2
30	b	3 Cal.	14	15	11	3
31	c	Pr. Cal.	12	16	13	4
			14	17	15	Colos. 1

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The Calendar, with the Table of Lessons.

NOVEMBER hath XXX Days.				Morning Prayer.		Evening Prayer.	
				1 Lesson.	2 Lesson.	1 Lesson.	2 Lesson.
1	d	Calendæ	<i>All Saints' Day</i>	Ecclus 16	Luke 18	Ecclus 17	Coloss. 2
2	e	4 Non.	.....	— 18	— 19	— 19	— 4
3	f	3 Non.	.....	— 20	— 20	— 21	— 1
4	g	Pr. Non.	.....	— 22	— 21	— 23	1 Thes. 1
5	A	Nonæ	<i>Papists' Conspiracy</i>	— 24	— 22	— (a) 25	— 2
6	b	8 Id.	Leonard Confessor	— 27	— 23	— 28	— 3
7	c	7 Id.	.....	— 29	— 24	— (b) 30	— 4
8	d	6 Id.	.....	— 31	John 1	— 32	— 5
9	e	5 Id.	.....	— 33	— 2	— 34	2 Thes. 1
10	f	4 Id.	.....	— 35	— 3	— 36	— 2
11	g	3 Id.	S. Martin, Bish. and Conf. ..	— 37	— 4	— 38	— 3
12	A	Pr. Id.	.....	— 39	— 5	— 40	1 Tim. 1
13	b	Idus	Britius, Bishop	— 41	— 6	— 42	— 2, 3
14	c	18 Cal. Dec.	.....	— 43	— 7	— 44	— 4
15	d	17 Cal.	Machutus, Bishop	— 45	— 8	— (c) 46	— 5
16	e	16 Cal.	.....	— 47	— 9	— 48	— 6
17	f	15 Cal.	Hugh, Bish. of Linc.	— 49	— 10	— 50	2 Tim. 1
18	g	14 Cal.	.....	— 61	— 11	Baruch 1	— 2
19	A	13 Cal.	.....	Baruch 2	— 12	— 3	— 3
20	b	12 Cal.	Edmund, King and Mart. ..	— 4	— 13	— 5	— 4
21	c	11 Cal.	.....	— 6	— 14	History of Susannah.	Titus 1
22	d	10 Cal.	Cecilia, Virg. and Mart. ...	Bell & the Dragon.	— 15	Isaiah 1	— 2, 3
23	e	9 Cal.	S. Clem. I. B. of R. & M. ..	Isaiah 2	— 16	— 3	Philem.
24	f	8 Cal.	.....	— 4	— 17	— 5	Heb. 1
25	g	7 Cal.	Catherine, Vir. & Mart. ...	— 6	— 18	— 7	— 2
26	A	6 Cal.	.....	— 8	— 19	— 9	— 3
27	b	5 Cal.	.....	— 10	— 20	— 11	— 4
28	c	4 Cal.	.....	— 12	— 21	— 13	— 5
29	d	3 Cal.	..... <i>Fast.</i>	.....	Acts 1	.....	— 6
30	e	Pr. Cal.	S. Andrew, A. and M. ....	.....	.....	.....	.....

Note. That (a) Ecclus. 25, is to be read only to ver. 13; and (b) Ecclus. 30, only to ver. 18; and (c) Ecclus. 46, only to ver. 20.

The Calendar, with the Table of Lessons.

DECEMBER hath XXXI Days.		Morning Prayer.	Evening Prayer.
1	f	Calendæ	1 Lesson.
2	g	4 Non.	2 Lesson.
3	A	3 Non.	1 Lesson.
4	b	Pr. Non.	2 Lesson.
5	c	Nonæ	Isaiah 14
6	d	8 Id.	Acts 2
7	e	7 Id.	Isaiah 15
8	f	6 Id.	Isaiah 16
9	g	5 Id.	Isaiah 17
10	A	4 Id.	Isaiah 18
11	b	3 Id.	Isaiah 19
12	c	Pr. Id.	Isaiah 20
13	d	Idus	Isaiah 21
14	e	19 Cal. Jan.	Isaiah 22
15	f	18 Cal.	Isaiah 23
16	g	17 Cal.	Isaiah 24
17	A	16 Cal.	Isaiah 25
18	b	15 Cal.	Isaiah 26
19	c	14 Cal.	Isaiah 27
20	d	13 Cal.	Isaiah 28
21	e	12 Cal.	Isaiah 29
22	f	11 Cal.	Isaiah 30
23	g	10 Cal.	Isaiah 31
24	A	9 Cal.	Isaiah 32
25	b	8 Cal.	Isaiah 33
26	c	7 Cal.	Isaiah 34
27	d	6 Cal.	Isaiah 35
28	e	5 Cal.	Isaiah 36
29	f	4 Cal.	Isaiah 37
30	g	3 Cal.	Isaiah 38
31	A	Pr. Cal.	Isaiah 39

STAT. 24 GEO.
2, c. 23.

Tables and Rules for the Movable and Immovable Feasts; together with the Days of Fasting and Abstinence through the whole Year.

Rules to know when the Movable Feasts and Holy-days begin.

Easter Day, on which the rest depend, is always the first Sunday after the Full Moon which happens upon or next after the twenty-first day of *March*; and if the Full Moon happens upon a Sunday, *Easter Day* is the Sunday after.

Advent Sunday is always the nearest Sunday to the Feast of *S. Andrew*, whether before or after.

<i>Septuagesima</i>	} Sunday	{	Nine	Weeks	|	<i>Rogation Sunday</i>	} is	{	5 Weeks	} after
<i>Sextagesima</i>						<i>Ascension Day</i>				
<i>Quinquagesima</i>						<i>Whitsunday</i>				
<i>Quadragesima</i>						<i>Trinity Sunday</i>				
										<i>Easter.</i>

A Table of all the Feasts that are to be observed in the Church of *England* throughout the Year.

The Days of the Feasts of	All Sundays in the Year.	The Days of the Feasts of	<i>S. James</i> the Apostle.
	The Circumcision of our Lord JESUS CHRIST.		<i>S. Bartholomew</i> the Apostle.
	The Epiphany.		<i>S. Matthew</i> the Apostle.
	The Conversion of <i>S. Paul</i> .		<i>S. Michael</i> and All Angels.
	The Purification of the Blessed Virgin.		<i>S. Luke</i> the Evangelist.
	<i>S. Matthias</i> the Apostle.		<i>S. Simon</i> and <i>S. Jude</i> the Apostles.
	The Annunciation of the Blessed Virgin.		All Saints.
	<i>S. Mark</i> the Evangelist.		<i>S. Andrew</i> the Apostle.
	<i>S. Philip</i> and <i>S. James</i> the Apostles.		<i>S. Thomas</i> the Apostle.
	The Ascension of our Lord JESUS CHRIST.		The Nativity of our Lord.
	<i>S. Barnabas</i> .		<i>S. Stephen</i> the Martyr.
	The Nativity of <i>S. John Baptist</i> .		<i>S. John</i> the Evangelist.
	<i>S. Peter</i> the Apostle.		The Holy Innocents.

Monday and Tuesday in *Easter* week.

Monday and Tuesday in *Whitsun* week.

A Table of the Vigils, Fasts, and Days of Abstinence, to be observed in the Year.

The Evens or Vigils before	The Nativity of our Lord.	The Evens or Vigils before	<i>S. John Baptist</i> .
	The Purification of the Blessed Virgin <i>Mary</i> .		<i>S. Peter</i> .
	The Annunciation of the Blessed Virgin.		<i>S. James</i> .
	<i>Easter Day</i> .		<i>S. Bartholomew</i> .
	<i>Ascension Day</i> .		<i>S. Matthew</i> .
	<i>Pentecost</i> .		<i>S. Simon</i> and <i>Jude</i> .
	<i>S. Matthias</i>		<i>S. Andrew</i> .
			<i>S. Thomas</i> .
			All Saints.

Note. That if any of these Feast days fall upon a Monday, then the Vigil or Fast day shall be kept upon the Saturday, and not upon the Sunday, next before it.

Days of Fasting, or Abstinence.

I. The Forty Days of Lent.

- II. The Ember days at the four Seasons, being } after {
1. The first Sunday in Lent.
 2. The Feast of Pentecost.
 3. *September 14*.
 4. *December 13*.

III. The three Rogation Days, being the Monday, Tuesday, and Wednesday before Holy Thursday, or the Ascension of our Lord.

IV. All the Fridays in the Year, except *Christmas Day*.

Certain Solemn Days for which Particular Services are appointed.

- I. The Fifth Day of *November*, being the Day kept in Memory of the Papists' Conspiracy
- II. The Thirtieth Day of *January*, being the Day kept in Memory of the Martyrdom of King *Charles the First*.
- III. The Nine and twentieth Day of *May*, being the Day kept in Memory of the Birth and Return of King *Charles the Second*.

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Table to find Easter Day, from the present Time till the Year 1899 inclusive, according to the foregoing Calendar.

Golden Number.	Day of the Month.	Sunday Letter.															
14	March 21	C	<p>This Table contains so much of the Calendar as is necessary for the determining of <i>Easter</i>; to find which, look for the Golden Number of the Year in the first Column of the Table, against which stands the Day of the Paschal Full Moon; then look in the third Column for the Sunday Letter, next after the Day of the Full Moon; and the Day of the Month standing against that Sunday Letter is <i>Easter Day</i>. If the Full Moon happens upon a Sunday, then (according to the first Rule) the next Sunday after is <i>Easter Day</i>.</p> <p>To find the Golden Number, or Prime, add one to the Year of our Lord, and then divide by 19; the Remainder, if any, is the Golden Number; but if nothing remaineth, then 19 is the Golden Number.</p> <p>To find the Dominical, or Sunday Letter, according to the Calendar, until the Year 1799 inclusive, add to the Year of our Lord its fourth Part, omitting Fractions, and also the Number 1: divide the Sum by 7; and if there is no Remainder, then A is the Sunday Letter; but if any Number remaineth, then the Letter standing against that Number, in the small annexed Table, is the Sunday Letter.</p> <p>For the next Century, that is, from the Year 1800 till the Year 1899 inclusive, add to the current Year only its fourth Part, and then divide by 7, and proceed as in the last Rule.</p> <p>Note, That in all Bisextile or Leap Years, the Letter found, as above, will be the Sunday Letter from the intercalated Day exclusive, to the end of the Year.</p> <table><tr><td>0</td><td>A</td></tr><tr><td>1</td><td>G</td></tr><tr><td>2</td><td>F</td></tr><tr><td>3</td><td>E</td></tr><tr><td>4</td><td>D</td></tr><tr><td>5</td><td>C</td></tr><tr><td>6</td><td>B</td></tr></table>	0	A	1	G	2	F	3	E	4	D	5	C	6	B
0	A																
1	G																
2	F																
3	E																
4	D																
5	C																
6	B																
3	— 22	D															
	— 23	E															
11	— 24	F															
	— 25	G															
19	— 26	A															
8	— 27	B															
	— 28	C															
16	— 29	D															
5	— 30	E															
	— 31	F															
13	April 1	G															
2	— 2	A															
	— 3	B															
10	— 4	C															
	— 5	D															
18	— 6	E															
7	— 7	F															
	— 8	G															
15	— 9	A															
4	— 10	B															
	— 11	C															
12	— 12	D															
1	— 13	E															
	— 14	F															
9	— 15	G															
	— 16	A															
17	— 17	B															
6	— 18	C															
	— 19	D															
	— 20	E															
	— 21	F															
	— 22	G															
	— 23	A															
	— 24	B															
	— 25	C															

Another Table to find Easter till the Year 1899 inclusive.

SUNDAY LETTERS.							
Golden Number.	A	B	C	D	E	F	G
I	April 16	— 17	— 18	— 19	— 20	— 14	— 15
II	April 9	— 3	— 4	— 5	— 6	— 7	— 8
III	March 26	— 27	— 28	— 29	— 23	— 24	— 25
IV	April 16	— 17	— 11	— 12	— 13	— 14	— 15
V	April 2	— 3	— 4	— 5	— 6	March 31	April 1
VI	April 23	— 24	— 25	— 19	— 20	— 21	— 22
VII	April 9	— 10	— 11	— 12	— 13	— 14	— 8
VIII	April 2	— 3	March 28	— 29	— 30	— 31	April 1
IX	April 16	— 17	— 18	— 19	— 20	— 21	— 22
X	April 9	— 10	— 11	— 5	— 6	— 7	— 8
XI	March 26	— 27	— 28	— 29	— 30	— 31	— 25
XII	April 16	— 17	— 18	— 19	— 13	— 14	— 15
XIII	April 2	— 3	— 4	— 5	— 6	— 7	— 8
XIV	March 26	— 27	— 28	— 22	— 23	— 24	— 25
XV	April 16	— 10	— 11	— 12	— 13	— 14	— 15
XVI	April 2	— 3	— 4	— 5	March 30	— 31	April 1
XVII	April 23	— 24	— 18	— 19	— 20	— 21	— 22
XVIII	April 9	— 10	— 11	— 12	— 13	— 7	— 8
XIX	April 2	March 27	— 28	— 29	— 30	— 31	April 1

To make use of the preceding Table, find the Sunday Letter for the Year in the uppermost Line, and the Golden Number, or Prime, in the Column of Golden Numbers; and against the Prime, in the same Line under the Sunday Letter, you have the Day of the Month on which *Easter* falleth that Year. But Note, That the Day of the Month is set on the Left Hand, or just with the Figure, and followeth not, as in other Tables, by Descent, but Collateral.

STAT. 24 GEO.
2, c. 23.A Table of the Movable Feasts for Fifty-two Years,
according to the foregoing Calendar.

Year of our LORD.	The Golden Number.	The Epact.	Sunday Letter.	Sundays after Epiphany.	Septuagesima Sunday.	The first Day of Lent.	Easter Day.	Rogation Sunday.	Ascension Day.	Whit Sunday.	Sundays after Trinity.	Advent Sunday.
1752	5											Dec. 3
1753	6	25	G	6	Feb. 18	March 7	April 22	May 27	May 31	June 10	23	Dec. 2
1754	7	6	F	4	— 10	Feb. 27	— 14	— 19	— 23	— 2	24	— 1
1755	8	17	E	2	Jan. 26	— 12	March 30	— 4	— 8	May 18	26	Nov. 30
1756	9	28	D C	5	Feb. 15	March 3	April 18	— 23	— 27	June 6	23	— 28
1757	10	9	B	4	— 6	Feb. 23	— 10	— 15	— 19	May 29	24	— 27
1758	11	20	A	2	Jan. 22	— 8	March 26	April 30	— 4	— 14	27	Dec. 3
1759	12	1	G	5	Feb. 11	— 28	April 15	May 20	— 24	June 3	24	— 2
1760	13	12	F E	3	— 3	— 20	— 6	— 11	— 15	May 25	25	Nov. 30
1761	14	23	D	1	Jan. 18	— 4	March 22	April 16	April 30	— 10	27	— 29
1762	15	4	C	4	Feb. 7	— 24	April 11	May 16	May 26	— 30	24	— 28
1763	16	15	B	3	Jan. 30	— 16	— 3	— 8	— 12	— 22	25	— 27
1764	17	26	A G	6	Feb. 19	March 7	— 22	— 27	— 31	June 10	23	Dec. 2
1765	18	7	F	3	— 3	Feb. 20	— 7	— 12	— 16	May 26	25	— 1
1766	19	18	E	2	Jan. 26	— 12	March 30	— 4	— 8	— 18	26	Nov. 30
1767	1	0	D	5	Feb. 15	March 4	April 19	— 24	— 28	June 7	23	— 29
1768	2	11	C B	3	Jan. 31	Feb. 17	— 3	— 8	— 12	May 22	25	— 27
1769	3	22	A	2	— 22	— 8	March 26	April 30	— 4	— 14	27	Dec. 3
1770	4	3	G	5	Feb. 11	— 28	April 15	May 20	— 24	June 3	24	— 2
1771	5	14	F	2	Jan. 27	— 13	March 31	— 2	— 9	May 19	26	— 1
1772	6	25	E D	5	Feb. 16	March 4	April 19	— 24	— 28	June 7	23	Nov. 29
1773	7	6	C	4	— 7	Feb. 24	— 11	— 16	— 20	May 30	24	— 28
1774	8	17	B	3	Jan. 30	— 16	— 3	— 8	— 12	— 22	25	— 27
1775	9	28	A	5	Feb. 12	March 1	— 16	— 21	— 25	June 4	24	Dec. 3
1776	10	9	G F	4	— 4	Feb. 21	— 7	— 12	— 16	May 26	25	— 1
1777	11	20	E	2	Jan. 26	— 12	March 30	— 4	— 8	— 18	16	Nov. 30
1778	12	1	D	5	Feb. 15	March 4	April 19	— 24	— 28	June 7	23	— 29
1779	13	12	C	3	Jan. 31	Feb. 17	— 4	— 9	— 13	May 13	25	— 28
1780	14	23	B A	2	— 23	— 9	March 26	April 30	— 4	— 14	27	Dec. 3
1781	15	4	G	5	Feb. 11	— 28	April 15	May 20	— 24	June 3	24	— 2
1782	16	15	F	2	Jan. 27	— 13	March 31	— 5	— 9	May 19	26	— 1
1783	17	26	E	5	Feb. 16	March 9	April 20	— 25	— 29	June 8	23	Nov. 30
1784	18	7	D C	4	— 8	Feb. 25	— 11	— 16	— 20	May 30	24	— 28
1785	19	18	B	2	Jan. 23	— 9	March 27	— 1	— 5	— 15	26	— 27
1786	1	0	A	5	Feb. 12	March 1	April 16	— 21	— 25	June 4	24	Dec. 3
1787	2	11	G	4	— 4	Feb. 21	— 8	— 13	— 17	May 27	25	— 2
1788	3	22	F E	1	Jan. 20	— 6	March 23	April 27	— 1	— 11	27	Nov. 30
1789	4	3	D	4	Feb. 8	— 25	April 12	May 17	— 21	— 31	24	— 29
1790	5	14	C	3	Jan. 31	— 17	— 4	— 9	— 13	— 23	25	— 28
1791	6	25	B	6	Feb. 20	March 9	— 24	— 29	June 2	June 12	22	— 27
1792	7	6	A G	4	— 5	Feb. 22	— 8	— 13	May 17	May 27	25	Dec. 2
1793	8	17	F	2	Jan. 27	— 13	March 31	— 5	— 9	— 19	26	— 1
1794	9	28	E	5	Feb. 16	March 5	April 20	— 25	— 29	June 8	23	Nov. 30
1795	10	9	D	3	— 1	Feb. 18	— 5	— 10	— 14	May 24	25	— 29
1796	11	20	C B	2	Jan. 24	— 16	March 27	— 1	— 5	— 15	26	— 27
1797	12	1	A	5	Feb. 12	March 1	April 16	— 21	— 25	June 4	24	Dec. 3
1798	13	12	G	4	— 4	Feb. 21	— 8	— 13	— 17	May 27	25	— 2
1799	14	23	F	1	Jan. 20	— 6	March 24	April 28	— 2	— 12	27	— 1
1800	15	4	E	4	Feb. 9	— 26	April 13	May 18	— 22	June 1	24	Nov. 30
1801	16	15	D	3	— 1	— 18	— 5	— 10	— 14	May 24	25	— 29
1802	17	26	C	5	— 14	March 3	— 11	— 23	— 27	June 6	23	— 28
1803	18	7	B	4	— 6	Feb. 23	— 10	— 15	— 19	May 29	24	— 27
1804	19	18	A G	3	Jan. 29	— 15	— 1	— 6	— 10	— 20	26	Dec. 2

STAT. 24 GEO.
2, c. 23.

A Table of the Movable Feasts, according to the several Days
that Easter can possibly fall upon.

Easter Day.	Sundays after Epiphany.	Septuagesima Sunday.	The first Day of Lent.	Rogation Sunday.	Ascension Day.	Whit Sunday.	Sundays after Trinity.	Advent Sunday.
March 22	1	Jan. 18	Feb. 4	April 26	April 30	May 10	27	Nov. 29
— 23	1	— 19	— 5	— 27	May 1	— 11	27	— 30
— 24	1	— 20	— 6	— 28	— 2	— 12	27	Dec. 1
— 25	2	— 21	— 7	— 29	— 3	— 13	27	— 2
— 26	2	— 22	— 8	— 30	— 4	— 14	27	— 3
— 27	2	— 23	— 9	May 1	— 5	— 15	26	Nov. 27
— 28	2	— 24	— 10	— 2	— 6	— 16	26	— 28
— 29	2	— 25	— 11	— 3	— 7	— 17	26	— 29
— 30	2	— 26	— 12	— 4	— 8	— 18	26	— 30
— 31	2	— 27	— 13	— 5	— 9	— 19	26	Dec. 1
April 1	3	— 28	— 14	— 6	— 10	— 20	26	— 2
— 2	3	— 29	— 15	— 7	— 11	— 21	26	— 3
— 3	3	— 30	— 16	— 8	— 12	— 22	25	Nov. 27
— 4	3	— 31	— 17	— 9	— 13	— 23	25	— 28
— 5	3	Feb. 1	— 18	— 10	— 14	— 24	25	— 29
— 6	3	— 2	— 19	— 11	— 15	— 25	25	— 30
— 7	3	— 3	— 20	— 12	— 16	— 26	25	Dec. 1
— 8	4	— 4	— 21	— 13	— 17	— 27	25	— 2
— 9	4	— 5	— 22	— 14	— 18	— 28	25	— 3
— 10	4	— 6	— 23	— 15	— 19	— 29	24	Nov. 27
— 11	4	— 7	— 24	— 16	— 20	— 30	24	— 28
— 12	4	— 8	— 25	— 17	— 21	— 31	24	— 29
— 13	4	— 9	— 26	— 18	— 22	June 1	24	— 30
— 14	4	— 10	— 27	— 19	— 23	— 2	24	Dec. 1
— 15	5	— 11	— 28	— 20	— 24	— 3	24	— 2
— 16	5	— 12	March 1	— 21	— 25	— 4	24	— 3
— 17	5	— 13	— 2	— 22	— 26	— 5	23	Nov. 27
— 18	5	— 14	— 3	— 23	— 27	— 6	23	— 28
— 19	5	— 15	— 4	— 24	— 28	— 7	23	— 29
— 20	5	— 16	— 5	— 25	— 29	— 8	23	— 30
— 21	5	— 17	— 6	— 26	— 30	— 9	23	Dec. 1
— 22	6	— 18	— 7	— 27	— 31	— 10	23	— 2
— 23	6	— 19	— 8	— 28	June 1	— 11	23	— 3
— 24	6	— 20	— 9	— 29	— 2	— 12	22	Nov. 27
— 25	6	— 21	— 10	— 30	— 3	— 13	22	— 28

Note. That in a Bissextile or Leap Year, the Number of Sundays after *Epiphany* will be the same, as if *Easter Day* had fallen one day later than it really does. And for the same reason one day must in every Leap Year be added to the Day of the Month given by the Table for *Septuagesima Sunday*: and the like must be done for the first day of *Lent*, (commonly called *Ash Wednesday*.) unless the Table gives some day in the Month of *March* for it; for in that case the day given by the Table is the right day.

STAT. 24 GEO.
2, c. 23.

Table to find Easter Day from the Year 1900 to the Year 2199 inclusive.

Golden Numbers.	Day of the Month.	Sunday Letters.	Golden Numbers.	Day of the Month.	Sunday Letters.
14	March 22	D		April 9	A
3	— 23	E	15	— 10	B
	— 24	F	4	— 11	C
11	— 25	G		— 12	D
	— 26	A	12	— 13	E
19	— 27	B	1	— 14	F
8	— 28	C		— 15	G
	— 29	D	9	— 16	A
16	— 30	E	17	— 17	B
5	— 31	F	6	— 18	C
	April 1	G		— 19	D
13	— 2	A		— 20	E
2	— 3	B		— 21	F
	— 4	C		— 22	G
10	— 5	D		— 23	A
	— 6	E		— 24	B
18	— 7	F		— 25	C
7	— 8	G			

The Golden Numbers in the foregoing Calendar will point out the Days of the Paschal Full Moons, till the Year of our Lord 1900; at which time, in order that the Ecclesiastical Full Moons may fall nearly on the same Days with the real Full Moons, the Golden Numbers must be removed to different Days of the Calendar, as is done in the annexed Table, which contains so much of the Calendar then to be used, as is necessary for finding the Paschal Full Moons, and the Feast of *Easter*, from the Year 1900 to the Year 2199 inclusive. This Table is to be made use of, in all respects, as the first Table before inserted, for finding *Easter* till the Year 1899.

General Tables for finding the Dominical or Sunday Letter, and the Places of the Golden Numbers in the Calendar.

TABLE I.

6	5	4	3	2	1	0
B	C	D	E	F	G	A
				1600	1700	1800
1900	2100	2200	2300	2500	2600	2700
2000			2400			2800
2900	3000	3100	3300	3400	3500	3700
		3200			3600	
3800	3900	4100	4200	4300	4500	4600
	4000			4400		
4700	4900	5000	5100	5300	5400	5500
4800			5200			5600
5700	5800	5900	6100	6200	6300	6500
		6000			6400	
6600	6700	6900	7000	7100	7300	7400
	6800			7200		
7500	7700	7800	7900	8100	8200	8300
7600			8000			8400
8500	&c.					

To find the Dominical or Sunday Letter for any given Year of our Lord, add to the Year its fourth Part, omitting Fractions, and also the Number, which in Table I. standeth at the Top of the Column, wherein the Number of Hundreds contained in that given Year is found: divide the Sum is 7, and if there is no Remainder, then A is the Sunday Letter; but if any Number remaineth, then the Letter which standeth under that Number at the Top of the Table, is the Sunday Letter.

STAT. 24 GEO.
2, c. 23.

TABLE II.

1	2	3	1	2	3	1	2	3	
	Years of our Lord.			Years of our Lord.			Years of our Lord.		
B	1600	0	B	4000	10	B	6400	20	<p>To find the Month and Days of the Month, to which the Golden Numbers ought to be prefixed in the Calendar in any given Year of our Lord, consisting of entire hundred Years, and in all the intermediate Years betwixt that and the next hundredth Year following, look in the second Column of Table II. for the given Year, consisting of entire Hundreds, and note the Number or Cypher which stands against it in the third Column; then, in Table III. look for the same Number in the Column under any given Golden Number, which, when you have found, guide your eye sideways to the Left Hand, and in the first Column you will find the Month and Day, to which that Golden Number ought to be prefixed in the Calendar during that Period of one hundred Years.</p> <p>The Letter B prefixed to certain hundredth Years in Table II. denotes those Years which are still to be accounted Bisextile or Leap Years in the new Calendar; whereas all the other hundredth Years are to be accounted only common Years.</p>
	1700	1		4100	11		6500	21	
	1800	1		4200	12		6600	22	
	1900	2		4300	12		6700	23	
B	2000	2	B	4400	12	B	6800	22	
	2100	2		4500	13		6900	23	
	2200	3		4600	13		7000	24	
	2300	4		4700	14		7100	24	
B	2400	3	B	4800	14	B	7200	24	
	2500	4		4900	14		7300	25	
	2600	5		5000	15		7400	25	
	2700	5		5100	16		7500	26	
B	2800	5	B	5200	15	B	7600	26	
	2900	6		5300	16		7700	26	
	3000	6		5400	17		7800	27	
	3100	7		5500	17		7900	28	
B	3200	7	B	5600	17	B	8000	27	
	3300	7		5700	18		8100	28	
	3400	8		5800	18		8200	29	
	3500	9		5900	19		8300	29	
B	3600	8	B	6000	19	B	8400	29	
	3700	9		6100	19		8500	0	
	3800	10		6200	20		&c.		
	3900	10		6300	21				

TABLE III.

Paschal Full Moon.	Sunday Letters.	THE GOLDEN NUMBERS.																		
		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
March 21	C	8	19	0	11	22	3	14	25	6	17	28	9	20	1	12	23	4	15	26
March 22	D	9	20	1	12	23	4	15	26	7	18	29	10	21	2	13	24	5	16	27
March 23	E	10	21	2	13	24	5	16	27	8	19	0	11	22	3	14	25	6	17	28
March 24	F	11	22	3	14	25	6	17	28	9	20	1	12	23	4	15	26	7	18	29
March 25	G	12	23	4	15	26	7	18	29	10	21	2	13	24	5	16	27	8	19	0
March 26	A	13	24	5	16	27	8	19	0	11	22	3	14	25	6	17	28	9	20	1
March 27	B	14	25	6	17	28	9	20	1	12	23	4	15	26	7	18	29	10	21	2
March 28	C	15	26	7	18	29	10	21	2	13	24	5	16	27	8	19	0	11	22	3
March 29	D	16	27	8	19	0	11	22	3	14	25	6	17	28	9	20	1	12	23	4
March 30	E	17	28	9	20	1	12	23	4	15	26	7	18	29	10	21	2	13	24	5
March 31	F	18	29	10	21	2	13	24	5	16	27	8	19	0	11	22	3	14	25	6
April 1	G	19	0	11	22	3	14	25	6	17	28	9	20	1	12	23	4	15	26	7
April 2	A	20	1	12	23	4	15	26	7	18	29	10	21	2	13	24	5	16	27	8
April 3	B	21	2	13	24	5	16	27	8	19	0	11	22	3	14	25	6	17	28	9
April 4	C	22	3	14	25	6	17	28	9	20	1	12	23	4	15	26	7	18	29	10
April 5	D	23	4	15	26	7	18	29	10	21	2	13	24	5	16	27	8	19	0	11
April 6	E	24	5	16	27	8	19	0	11	22	3	14	25	6	17	28	9	20	1	12
April 7	F	25	6	17	28	9	20	1	12	23	4	15	26	7	18	29	10	21	2	13
April 8	G	26	7	18	29	10	21	2	13	24	5	16	27	8	19	0	11	22	3	14
April 9	A	27	8	19	0	11	22	3	14	25	6	17	28	9	20	1	12	23	4	15
April 10	B	28	9	20	1	12	23	4	15	26	7	18	29	10	21	2	13	24	5	16
April 11	C	29	10	21	2	13	24	5	16	27	8	19	0	11	22	3	14	25	6	17
April 12	D	0	11	22	3	14	25	6	17	28	9	20	1	12	23	4	15	26	7	18
April 13	E	1	12	23	4	15	26	7	18	29	10	21	2	13	24	5	16	27	8	19
April 14	F	2	13	24	5	16	27	8	19	0	11	22	3	14	25	6	17	28	9	20
April 15	G	3	14	25	6	17	28	9	20	1	12	23	4	15	26	7	18	29	10	21
April 16	A	4	15	26	7	18	29	10	21	2	13	24	5	16	27	8	19	0	11	22
April 17	B	5	16	27	8	19	0	11	22	3	14	25	6	17	28	9	20	1	12	23
April 17	B												7	18	29	10	21	2	13	24
April 18	C	6	17	28	9	20	1	12	23	4	15	26								
April 18	C	7	18	29	10	21	12	13	24	5	16	27	8	19	0	11	22	3	14	25

XC. STAT. 24 GEORGII 2, c. 37. A.D. 1751.

STAT. 24 GEO.
2, c. 37.

"An Act for dividing the Parish of Saint Philip and Jacob in the County of Gloucester and in the City and County of Bristol; and for erecting a Church in the new intended Parish."

XCI. STAT. 25 GEORGII 2, c. 4. A.D. 1752.

STAT. 25 GEO.
2, c. 4.

"An Act for appointing a Deputy or Secondary of the Chief Clerk, to enrol Pleas in the King's Bench, called, The Master of the King's Bench Office, one of the Registers or Masters for the Enrolment of Deeds, Wills, and other Conveyances, in the County of Middlesex, in the Place and Stead of such Chief Clerk."

XCII. STAT. 25 GEORGII 2, c. 6(1). A.D. 1752.

STAT. 25 GEO.
2, c. 6.

"An Act for avoiding and putting an end to certain Doubts and Questions relating to the Attestation of Wills and Codicils concerning real Estates, in that part of Great Britain called England, and in His Majesty's Colonies and Plantations in America."

XCIII. STAT. 25 GEORGII 2, c. 11. A.D. 1752.

STAT. 25 GEO.
2, c. 11.

"An Act to enable the Parishioners of the Parish of East Greenwich, in the County of Kent, to deposit Corpse in the Vaults or Arches under the Church in the said Parish, and to ascertain the Fees that shall be paid for the same."

XCIV. STAT. 25 GEORGII 2, c. 11(2). [IRELAND.] A.D. 1751.

STAT. 25 GEO.
2, c. 11. [IR.]

"An Act for avoiding and putting an End to certain Doubts and Questions relating to the Attestation of Wills and Codicils concerning real Estates."

XCV. STAT. 25 GEORGII 2, c. 30. A.D. 1752.

STAT. 25 GEO.
2, c. 30.

"An Act to amend an Act made in the last Session of Parliament, intituled, 'An Act for regulating the Commencement of the Year, and for correcting the Calendar now in Use.'"

"Whereas by an act of parliament made in the twenty-fourth year of the reign of his present majesty, intituled, 'An Act for regulating the Commencement of the Year, and for correcting the Calendar now in Use,' it is among other things enacted, that the natural day next immediately following the second day of September, which shall be in the year of our Lord one thousand seven hundred and fifty-two, shall be reckoned and accounted to be the fourteenth day of September, omitting for that time only, the eleven intermediate nominal days of the common calendar, and that the days immediately succeeding shall be called, reckoned, and numbered forwards in numerical order, from the said fourteenth day of September, and that all meetings and assemblies of any bodies politic or corporate, either for the election of any officers or members thereof, or for any such officers entering upon the execution of their respective offices, or for any other purpose which by law, charter, custom, or usage, are to be holden on any fixed or certain day of any month, shall, from and after the said second day of September, be holden and kept upon or according to the same respective nominal days and times whereon the same are then to be holden; but which should be computed according to the new method of numbering and reckoning the days of the calendar as therein mentioned, as by the said act may more fully appear: and whereas by the charters, customs, or usage of some cities, boroughs, towns, or other communities or bodies politic or corporate, the election of officers, or the entrance of officers on the execution of their offices, or the doing of some other corporate acts, may be fixed or required to be on some

24 Geo. 2,
c. 23.

(1) Repealed, except as to the colonies (2) Repealed by Stat. 7 Gul. 4 & 1 Vict. and plantations in America, by Stat. 7 Gul. c. 26, s. 2.
4 & 1 Vict. c. 26, s. 2.

STAT. 25 GEO. 2, c. 30. certain nominal day or days of the said month of September, falling between the second and the fourteenth days of the same month; which said nominal days are by the said act required to be dropped or omitted for this present year, so that there will not in fact be any nominal days between the said second and fourteenth days of the said month of September for this present year, whereon such corporate acts can be done; and doubts have arisen whether such corporate acts may be done at all without a special provision for that purpose by authority of parliament; and inconveniences may possibly ensue for want thereof: be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same; that it shall and may be lawful to and for all such bodies politic and corporate as aforesaid, and all and every the officers and members thereof, and they and every of them are hereby required to do all such acts, as by any law, charter, or usage are appointed or required to be done on any of the nominal days of or in the said month of September, which by the said recited act are directed to be dropped or omitted for this present year, upon the same natural day or days of this year only as such acts would, might, or ought to be done, in case the said recited act had not been made; and that all acts so done in pursuance hereof shall be deemed, and are hereby declared and enacted to be as good and effectual to all intents and purposes, as if the same were done on any of the nominal days so dropped or omitted as aforesaid; any law, statute, charter, custom, or usage to the contrary in any wise notwithstanding.

The election of officers, &c. to be done upon the same natural days of this year only, as before.

“II. And whereas in divers parts of this kingdom, by custom, prescription, or usage, or by virtue of some law or contract, certain lands and grounds are to be opened and used for common of pasture or other purposes, and the same lands and ground are again inclosed and shut up, and certain rents or other payments are due and payable, and some other matters and things may be to be done upon some of the movable feasts, or upon certain days or times depending upon, or to be computed from the same: and whereas the said movable feasts are hereafter to take place, and to be observed according to the new calendar by the said act directed to be used, whereby some doubts have already arisen, or may hereafter arise, about the time for opening and using, inclosing and shutting up such lands and grounds, the paying of such rents or other payments, and the doing such other matters or things as aforesaid: for remedy thereof be it further enacted by the authority aforesaid, that from and after the said second day of September, in the said year of our Lord one thousand seven hundred and fifty-two, the respective times for opening, using, inclosing, and shutting up all such lands and grounds as aforesaid, for the paying of such rents or other payments, and for the doing of such other matters or things as aforesaid, if such times are depending on any movable feast or feasts, shall be computed and take place according to the said new calendar, and the tables and rules in the said recited act directed to be used, and not according to the method of supputation heretofore used, or to the tables heretofore commonly affixed to the Book of Common Prayer; and the temporary and distinct property and right of all persons, bodies politic and corporate, of, to, and in all such lands and grounds, shall commence and be enjoyed, and all such rents and payments shall become and be due and payable, and all such matters and things shall be transacted and done accordingly; any law, custom, prescription, or usage to the contrary notwithstanding.

The times for opening and inclosing grounds for common, and for payment of rents, &c. if the same depend on any movable feast, are to be according to the new calendar.

The title to such lands not altered.

“III. Provided always, and it is hereby further declared and enacted by the authority aforesaid, that nothing in this act contained shall extend, or be construed to extend, to the abridging, enlarging, confirming, or altering the title of any person, body politic or corporate whatsoever, of, in, or to any such lands or grounds, but the same shall remain and continue the same in all respects (except as to the new computation of time when such respective right, or the enjoyment thereof, shall commence, or be put in use).

“IV. And whereas within the city of London the usual and accustomed time of the annual meeting and assembly of the citizens of the said city, for the admission and swearing of the mayor of the same city in the Guildhall there, hath been

on the feast day of Saint Simon and Jude, being the twenty-eighth day of October in every year; and the usual and accustomed solemnity of presenting and swearing the mayor of the same city in the court of Exchequer at Westminster, hath been on the day next following the said feast of Saint Simon and Jude, to wit, on the twenty-ninth day of October in every year: and whereas by the said in part recited act it was enacted, that all meetings and assemblies of any bodies politic or corporate, either for the election of any officers or members thereof, or for any such officers entering upon the execution of their respective offices, or for any other purpose whatsoever, which by any law, statute, charter, custom, or usage within this kingdom, were to be holden and kept on any fixed or certain day of any month, should, from and after the second day of September one thousand seven hundred and fifty-two now next ensuing, be holden and kept upon or according to the same respective nominal days and times whereon or according to which the same were, at the time of making the said act, to be holden: and whereas by another act of parliament made in the same twenty-fourth year of the reign of his present majesty, intituled, 'An Act for the Abbreviation of Michaelmas Term,' it was enacted, that the said solemnity of presenting and swearing the mayors of the said city of London, before the king or queen of England, in their court of Exchequer at Westminster, or before the barons of the said court, after every annual election into the said office, in the manner and form heretofore used, on the twenty-ninth day of October, should, from and after the feast of Saint Michael, in the year of our Lord one thousand seven hundred and fifty-two, be kept and observed on the ninth day of November in every year: be it therefore enacted by the authority aforesaid, that the said annual admission and swearing of the mayor of the said city of London, at the Guildhall there, shall not at any time hereafter be had and performed on the said twenty-eighth day of October; but the same, and all annual meetings and assemblies for that purpose, shall at all times hereafter be had, done, and holden in the usual and accustomed manner on the eighth day of November in every year, being the day next preceding the said ninth day of November, whereon the said solemnity of presenting and swearing the mayor of the said city in the court of Exchequer is appointed for the future to be kept and observed as aforesaid, and not before; anything in the said first recited act of parliament, or any law, custom, or usage to the contrary thereof in any wise notwithstanding."

STAT. 25 GEO.
2, c. 30.24 Geo. 2,
c. 48.The annual
admission and
swearing of
the Mayor of
London to be
on 8th No-
vember.

XCVI. STAT. 25 GEORGII 2, c. 42. A.D. 1752.

"An Act to render valid and effectual all Contracts and Agreements which shall be made by the Commissioners or Governors of the Royal Hospital for Seamen at Greenwich, for the Purchase of Lands, Tenements, and Hereditaments, for the finishing and completing the said Hospital; and for ascertaining the Recompense that shall be made for the same."

STAT. 25 GEO.
2, c. 42.

XCVII. STAT. 26 GEORGII 2, c. 26 (1). A.D. 1753.

"An Act to permit Persons professing the Jewish Religion to be naturalized by Parliament; and for other Purposes therein mentioned."

STAT. 26 GEO.
2, c. 26.

XCVIII. STAT. 26 GEORGII 2, c. 33 (2). A.D. 1753.

"An Act for the better preventing of clandestine Marriages (3)."

STAT. 26 GEO.
2, c. 33.

"Whereas great mischiefs and inconveniences have arisen from clandestine marriages; for preventing thereof for the future, be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the author-

(1) Repealed by Stat. 27 Geo. 2, c. 1.

7 Gul. 4, c. 85. *Cope v. Burt*, 1 Phill. 228.

(2) This statute was repealed by Stat. 52 Geo. 3, c. 146; Stat. 3 Geo. 4, c. 75; and Stat. 4 Geo. 4, c. 76: but it has been deemed expedient to print its enactments.

Farquharson v. Farquharson, 3 Add. 282. *Pertreis v. Tondear*, 1 Consist. 136. *Blyth v. Blyth*, 1 Add. 312. *Bridgewater v. Crutchley*, Ibid. 473.(3) *Vide* Stat. 5 Geo. 4, c. 32. Stat. 6 &

STAT. 26 GEO.
2, c. 33.

See 2 Bur.
898.

Doug. 634,
and 21 Geo. 3,
c. 53.

Minister to
sign publica-
tion;

and marriage to
be solemnized,
&c.

Notice of the
names, &c. of
the parties to
be given to the
minister seven
days before,
&c.

Minister not
punishable,
where parents
or guardians
give no notice
of dissent; but
where given,
publication
void.

Licences to be
granted in the
church of such

ity of the same, that from and after the twenty-fifth day of March, in the year of our Lord one thousand seven hundred and fifty-four, all banns of matrimony shall be *published* (1) in an audible manner in the parish church, or in some public chapel, in which public chapel banns of matrimony have been usually published, or of belonging to such parish or chapelry wherein the persons to be married shall dwell, according to the form of words prescribed by the rubric prefixed to the office of matrimony in the Book of Common Prayer, upon *three* (2) Sundays preceding the solemnization of marriage, during the time of morning service, or of evening service, (if there be no morning service in such church or chapel upon any of those Sundays,) immediately after the second lesson; and whensoever it shall happen that the persons to be married shall dwell in divers parishes or chapelries, the banns shall in like manner be published in the church or chapel belonging to such parish or chapelry wherein *each* (3) of the said persons shall dwell; and where both or either of the persons to be married shall dwell in any extra-parochial place, (having no church or chapel wherein banns have been usually published,) then the banns shall in like manner be published in the parish church or chapel belonging to some parish or chapelry adjoining to such extra-parochial place; and where banns shall be published in any church or chapel belonging to any parish adjoining to such extra-parochial place, the parson, vicar, minister, or curate, publishing such banns, shall, in writing under his hand, certify the publication thereof in such manner as if either of the persons to be married dwelt in such adjoining parish; and that all other the rules prescribed by the said rubric concerning the publication of banns, and the solemnization of matrimony, and not hereby altered, shall be duly observed; and that in all cases where banns shall have been published, the marriage shall be solemnized in one of the parish churches or chapels where such banns have been published, and in no other place whatsoever.

“II. Provided always, and it is hereby further enacted, that no parson, vicar, minister, or curate, shall be obliged to publish the banns of matrimony between any persons whatsoever, unless the persons to be married shall, seven days at the least before the time required for the first publication of such banns respectively, deliver or cause to be delivered to such parson, vicar, minister, or curate, a notice in writing of their true Christian and *surnames* (4), and of the house or houses of their respective abodes within such parish, chapelry, or extra-parochial place as aforesaid, and of the time during which they have dwelt, inhabited, or lodged, in such house or houses *respectively* (5).

“III. Provided always, and be it enacted by the authority aforesaid, that no parson, minister, vicar, or curate, solemnizing marriages after the twenty-fifth day of March, one thousand seven hundred and fifty-four, between persons, both or one of whom shall be under the age of twenty-one years, after banns published, shall be punishable by ecclesiastical censures for solemnizing such marriages without consent of parents or guardians, whose consent is required by law, unless such parson, minister, vicar, or curate, shall have notice of the dissent of such parents or guardians; and in case such parents or guardians, or one of them, shall openly and publicly declare, or cause to be declared, in the church or chapel where the banns shall be so published, at the time of such publication, his, her, or their dissent to such marriage, such publication of banns shall be absolutely void.

“IV. And it is hereby further enacted, that no licence of marriage shall, from and after the said twenty-fifth day of March, in the year one thousand seven hundred and fifty-four, be granted by any archbishop, bishop, or other ordinary or

(1) *Published*:—Vide *Taunton v. Wyborn*, 2 Camp. 297. *Rex v. Northfield* (Inhab. of), Doug. 658.

(2) *Three*:—Vide *Standen v. Standen*, Peake, N. P. C. 45.

(3) *Each*:—Vide *Robinson v. Grant*, 18 Ves. 289; *Nicholson v. Squire*, 16 Ibid. 259.

(4) *Surnames*:—Vide *Diddear v. Faucit*, 3 Phill. 580. *Wyatt v. Henry*, 2 Consist.

219. *Wakefield v. Wakefield*, 1 Ibid. 399. *Mayhew v. Mayhew*, 2 Phill. 11. *Pouget v. Tomkins*, 1 Ibid. 502. *Stanhope v. Baldwin*, 1 Add. 93. *Tree v. Quin*, 2 Phill. 14. *Green v. Dalton*, 1 Add. 289.

(5) *Respectively*:—Vide *Nicholson v. Squire*, 16 Ves. 259; *Priestly v. Lamb*, 6 Ibid. 423. *Pouget v. Tomkins* 2 Phill. 502.

person having authority to grant such licenses, to solemnize any marriage in any other church or chapel, than in the parish church or public chapel of or belonging to the parish or chapelry, within which the usual place of abode of one of the persons to be married shall have been for the space of four weeks immediately before the granting of such licence; or where both or either of the parties to be married shall dwell in any extra-parochial place, having no church or chapel wherein banns have been usually published, then in the parish church or chapel belonging to some parish or chapelry adjoining to such extra-parochial place, and in no other place whatsoever.

“V. Provided always, and be it enacted by the authority aforesaid, that all parishes where there shall be no parish church or chapel belonging thereto, or none wherein divine service shall be usually celebrated every Sunday, may be deemed extra-parochial places for the purposes of this act, but not for any other purpose.

“VI. Provided always, that nothing herein-before contained shall be construed to extend to deprive the Archbishop of Canterbury and his successors, and his and their proper officers, of the right which hath hitherto been used, in virtue of a certain statute made in the twenty-fifth year of the reign of the late King Henry the Eighth, intituled, ‘An Act concerning Peter Pence and Dispensations;’ of granting special licences to marry at any convenient time or place.

“VII. Provided always, and be it enacted, that from and after the twenty-fifth day of March, in the year one thousand seven hundred and fifty-four, no surrogate deputed by any ecclesiastical judge, who hath power to grant licences of marriage, shall grant any such licence before he hath taken an oath before the said judge faithfully to execute his office, according to law, to the best of his knowledge, and hath given security by his bond in the sum of one hundred pounds, to the bishop of the diocese, for the due and faithful execution of his said office.

“VIII. And whereas many persons do solemnize matrimony in prisons and other places, without publication of banns, or licence of marriage first had and obtained; therefore, for the prevention thereof, be it enacted, that if any person shall, from and after the said twenty-fifth day of March, in the year one thousand seven hundred and fifty-four, solemnize matrimony in any other place than a church or public chapel, where banns have been usually published, unless by special licence from the Archbishop of Canterbury; or shall solemnize matrimony without publication of banns, unless licence of marriage be first had and obtained from some person or persons having authority to grant the same, every person knowingly and wilfully so offending, and being lawfully convicted thereof, shall be deemed and adjudged to be guilty of felony, and shall be transported to some of his majesty’s plantations in America, for the space of fourteen years, according to the laws in force for transportation of felons; and all marriages solemnized from and after the twenty-fifth day of March, in the year one thousand seven hundred and fifty-four, in any other place than a church or such public chapel, unless by special licence as aforesaid, or that shall be solemnized without publication of banns, or licence of marriage from a person or persons having authority to grant the same, first had and obtained, shall be null and void to all intents and purposes whatsoever.

“IX. Provided, that all prosecutions for such felony shall be commenced within the space of three years after the offence committed.

“X. Provided always, that after the solemnization of any marriage, under a publication of banns, it shall not be necessary, in support of such marriage, to give any proof of the actual dwelling of the parties in the respective parishes or chapelries wherein the banns of matrimony were published; or where the marriage is by licence, it shall not be necessary to give any proof that the usual place of abode of one of the parties, for the space of four weeks as aforesaid, was in the parish or chapelry where the marriage was solemnized; nor shall any evidence in either of the said cases be received to prove the contrary in any suit touching the validity of such marriage.

“XI. And it is hereby further enacted, that all marriages solemnized by

STAT. 26 GEO.
2. c. 33.

parish only,
where one of
the parties
shall have
resided, &c.

Places which
may be deemed,
&c.

Archbishop of
Canterbury’s
right.

Surrogate to
take an oath of
office, &c.

Persons con-
victed of so-
lemnizing ma-
trimony with-
out, &c. except
by special
licence,

to be trans-
ported,
and the mar-
riages null.

Prosecutions
within three
years.
Proof of par-
ties dwelling
in the parishes,
&c. not neces-
sary to the
validity of such
marriage.

Marriages by

STAT. 26 GEO.
2, c. 33.

licence without
consent, &c.
Parties not
being a widow-
er or widow,
but under age,
void.

licence, after the said twenty-fifth day of March, one thousand seven hundred and fifty-four, where either of the parties, not being a widower or widow, shall be under the age of twenty-one years, which shall be had without the consent of the father of such of the parties so under age (if then living), first had and obtained, or if dead, of the guardian or guardians of the person of the party so under age, lawfully appointed, or one of them; and in case there shall be no such guardian or guardians, then of the mother, (if living and married,) or if there shall be no mother living and unmarried, then of a guardian or guardians of the person appointed by the court of Chancery, shall be absolutely null and void to all intents and purposes *whatsoever* (1).

See 2 Bur.
898.

“XII. And whereas it may happen, that the guardian or guardians, mother or mothers, of the parties to be married, or one of them, so under age as aforesaid, may be *non compos mentis*, or may be in parts beyond the seas, or may be induced unreasonably and by undue motives, to abuse the trust reposed in him, her, or them, by refusing or withholding his, her, or their consent to a proper marriage; be it therefore enacted, that in case any such guardian or guardians, mother or mothers, or any of them, whose consent is made necessary as aforesaid, shall be *non compos mentis*, or in parts beyond the seas, or shall refuse or withhold his, her, or their consent to the marriage of any person, it shall and may be lawful for any person desirous of marrying, in any of the before-mentioned cases, to apply by petition to the lord chancellor, lord keeper, or the lords commissioners of the great seal of Great Britain for the time being, who is and are hereby empowered to proceed upon such petition, in a summary way; and in case the marriage proposed shall upon examination appear to be proper, the said lord chancellor, lord keeper, or lords commissioners of the great seal for the time being, shall judicially declare the same to be so by an order of court, and such order shall be deemed and taken to be as good and effectual to all intents and purposes, as if the guardian or guardians, or mother of the person so petitioning, had consented to such marriage.

Parties may
apply to the
lord chancellor,
&c.

No suit in
ecclesiastical
court to compel
marriage in
facie ecclesie,
&c.

“XIII. And it is hereby further enacted, that in no case *whatsoever* shall any suit or proceeding be had in any ecclesiastical court, in order to compel a celebration of any marriage in *facie ecclesie*, by reason of any contract of matrimony *whatsoever*, whether *per verba de presenti*, or *per verba de futuro*, which shall be entered into after the twenty-fifth day of March, in the year one thousand seven hundred and fifty-four; any law or usage to the contrary notwithstanding.

Churchwar-
dens to provide
books;

“XIV. And for preventing undue entries and abuses in registers of marriages; be it enacted by the authority aforesaid, that on or before the twenty-fifth day of March, in the year one thousand seven hundred and fifty-four, and from time to time afterwards as there shall be occasion, the churchwardens and chapelwardens of every parish or chapelry shall provide proper books of vellum, or good and durable paper, in which all marriages and banns of marriages respectively, there published or solemnized, shall be registered, and every page thereof shall be marked at the top, with the figure of the number of every such page, beginning at the second leaf with number one; and every leaf or page so numbered, shall be ruled with lines at proper and equal distances from each other, or as near as may be; and all banns and marriages published or celebrated in any church or chapel, or within any such parish or chapelry, shall be respectively entered, registered, printed, or written upon or as near as conveniently may be to such ruled lines, and shall be signed by the parson, vicar, minister, or curate, or by some other person in his presence, and by his direction; and such entries shall be made as aforesaid, on or near such lines in successive order, where the paper is not damaged or decayed, by accident or length of time, until a new book shall be thought proper or necessary to be provided for the same purposes, and then the directions aforesaid shall be observed in every such new book; and all books provided as aforesaid shall be deemed to belong to every such parish or chapel respectively, and shall be carefully kept and preserved for public use.

to be signed
by the minister;

and kept for
public use.

(1) *Whatsoever*:—*Priestly v. Hughes*, 11 Croke. *Bridgwater v. Crutchley*, 1 Add. East, 1. *Case of Horner v. Liddiard*, per 479.

“XV. And in order to preserve the evidence of marriages, and to make the proof thereof more certain and easy, and for the direction of ministers in the celebration of marriages and registering thereof, be it enacted, that from and after the twenty-fifth day of March, in the year one thousand seven hundred and fifty-four, all marriages shall be solemnized in the presence of two or more credible witnesses, besides the minister who shall celebrate the same; and that immediately after the celebration of every marriage, an entry thereof shall be made in such register to be kept as aforesaid; in which entry or register it shall be expressed, that the said marriage was celebrated by banns or licence; and if both or either of the parties married by licence, be under age, with consent of the parents or guardians, as the case shall be; and shall be signed by the minister with his proper addition, and also by the parties married, and attested by such two witnesses; which entry shall be made in the form or to the effect following; that is to say,

A. B. of $\left\{ \begin{smallmatrix} \text{the} \\ \text{this} \end{smallmatrix} \right\}$ parish and *C. D.* of $\left\{ \begin{smallmatrix} \text{the} \\ \text{this} \end{smallmatrix} \right\}$ parish Form.
 were married in this $\left\{ \begin{smallmatrix} \text{church} \\ \text{chapel} \end{smallmatrix} \right\}$ by $\left\{ \begin{smallmatrix} \text{banns} \\ \text{licence} \end{smallmatrix} \right\}$ with consent of $\left\{ \begin{smallmatrix} \text{parents} \\ \text{guardians} \end{smallmatrix} \right\}$ this
 day of in the year by me *J. J.* $\left\{ \begin{smallmatrix} \text{rector} \\ \text{vicar} \\ \text{curate} \end{smallmatrix} \right\}$

This marriage was solemnized between us $\begin{smallmatrix} A. B. \\ C. D. \end{smallmatrix}$ in the presence of $\begin{smallmatrix} E. F. \\ G. H. \end{smallmatrix}$

“XVI. And be it further enacted by the authority aforesaid, that if any person shall, from and after the twenty-fifth day of March, in the year one thousand seven hundred and fifty-four, with intent to elude the force of this act, knowingly and wilfully insert, or cause to be inserted in the register book of such parish or chapelry as aforesaid, any false entry of any matter or thing relating to any marriage; or falsely make, alter, forge, or counterfeit, or cause or procure to be falsely made, altered, forged, or counterfeited, or act or assist in falsely making, altering, forging, or counterfeiting, any such entry in such register; or falsely make, alter, forge or counterfeit, or cause or procure to be falsely made, altered, forged, or counterfeited, or assist in falsely making, altering, forging or counterfeiting, any such licence of marriage as aforesaid; or utter or publish as true any such false, altered, forged or counterfeited register as aforesaid, or a copy thereof, or any such false, altered, forged, or counterfeited licence of marriage, knowing such register or licence of marriage respectively to be false, altered, forged, or counterfeited; or if any person shall, from and after the said twenty-fifth day of March, wilfully destroy, or cause or procure to be destroyed, any register book of marriages, or any part of such register book, with intent to avoid any marriage, or to subject any person to any of the penalties of this act; every person so offending, and being thereof lawfully convicted, shall be deemed and adjudged to be guilty of felony, and shall suffer death as a felon, without benefit of clergy.

“XVII. Provided always, that this act, or anything therein contained, shall not extend to the marriages of any of the royal family.

“XVIII. Provided likewise, that nothing in this act contained shall extend to that part of Great Britain called Scotland, nor to any marriages amongst the people called Quakers, or amongst the persons professing the Jewish religion, where both the parties to any such marriage shall be of the people called quakers, or persons professing the Jewish religion respectively, nor to any marriages solemnized beyond the *seas*(1).

“XIX. And be it further enacted by the authority aforesaid, that this act shall be publicly read in all parish churches and public chapels, by the parson, vicar, minister, or curate, of the respective parishes or chapeltries, on some Sunday immediately after morning prayer, or immediately after evening prayer, if

STAT. 26 GEO.
2, c. 33.

Marriages to be in the presence of two witnesses, and be registered, and signed, &c.

Form.

Persons convicted of making a false entry,

or of forging,
&c. any such
entry,

or of forging,
&c. any
licence,

or of destroying
such register,

to suffer death.

This act to be read in all parish churches and public chapels.

(1) *Seas*:—*Rex v. Brampton* (*Inhab. of*), 10 East, 285. *Dalrymple v. Dalrymple*, 2 Consist. 137.

STAT. 26 GEO. 2, c. 33. there shall be no morning service on that day, in each of the months of September, October, November, and December, in the year of our Lord one thousand seven hundred and fifty-three, and afterwards at the same times, on four several Sundays in each year, (that is to say,) the Sundays next before the twenty-fifth day of March, the twenty-fourth day of June, twenty-ninth day of September, and twenty-fifth day of December respectively, for two years, to be computed from and immediately after the first day of January, in the said year one thousand seven hundred and fifty-four."

STAT. 26 GEO. 2, c. 38. XCIX. STAT. 26 GEORGII 2, c. 38. A.D. 1753.
"An Act to enable the Parishioners of the Parish of Stone, in the County of Stafford, to rebuild the Church of the said Parish."

STAT. 26 GEO. 2, c. 43. C. STAT. 26 GEORGII 2, c. 43. A.D. 1753.
"An Act for enlarging the Churchyard of the Parish of Paddington, in the County of Middlesex."

STAT. 26 GEO. 2, c. 45. CI. STAT. 26 GEORGII 2, c. 45. A.D. 1753.
"An Act for building a new Church within the Town of Manchester, in the County Palatine of Lancaster."

STAT. 26 GEO. 2, c. 58. CII. STAT. 26 GEORGII 2, c. 58. A.D. 1753.
"An Act for building a Chapel on the Common, in the Parish of Portsea, in the County of Southampton, and for vesting Power in certain Trustees for the Regulation thereof."

STAT. 26 GEO. 2, c. 94. CIII. STAT. 26 GEORGII 2, c. 94. A.D. 1753.
"An Act to enable the Owners of Houses and Lands in the Parish of Saint Botolph Without, Aldersgate, and the Inhabitants thereof, to repair the Church and Steeple belonging to the said Parish."

STAT. 27 GEO. 2, c. 1. CIV. STAT. 27 GEORGII 2, c. 1. A.D. 1754.
"An Act to repeal an Act of the twenty-sixth year of His Majesty's Reign, intituled, An Act to permit Persons professing the Jewish Religion to be naturalized by Parliament; and for other Purposes therein mentioned."

STAT. 28 GEO. 2, c. 1. CV. STAT. 28 GEORGII 2, c. 1. A.D. 1755.
"An Act for the Relief of the Out-Pensioners of the Royal Hospital at Chelsea."

STAT. 28 GEO. 2, c. 6. CVI. STAT. 28 GEORGII 2, c. 6. A.D. 1755.
"An Act for taking away Mortuaries in the Archdeaconry of Chester, and giving a Recompence therefore to the Bishop of Chester, . . . who holds and enjoys the said Archdeaconry in right of his See."

"Upon the first vacancy or avoidance of the living of Waverton, the payment of mortuaries in the archdeaconry of Chester to cease, and no compensation to be paid or demanded in lieu thereof. Upon the extinction of mortuaries, the rectory of Waverton to be annexed to the see of Chester. Bishop to nominate a curate to hold the said living, with a yearly salary of 60*l*."

STAT. 28 GEO. 2, c. 34. CVII. STAT. 28 GEORGII 2, c. 34. A.D. 1755.
"An Act for erecting and building a new Chapel in the Town of Wolverhampton in the County of Stafford."

CVIII. STAT. 29 GEORGII 2, c. 7. [IRELAND.] A.D. 1755.

STAT. 29 GEO.
2, c. 7. [IR.]

"An Act for amending an Act passed in the twelfth year of the Reign of His late Majesty King George the First (1), intituled, An Act for the more effectual erecting and better regulating of Free Schools, and for rebuilding and repairing of Churches."

"Whereas by an act of parliament made in the twelfth year of his late majesty King George the First, intituled, 'An Act for the more effectual erecting and better regulating of Free Schools, and for rebuilding and repairing of Churches,' it is among other things enacted, that 'from and after appointment of a place for a free school within any diocese it shall and may be lawful for the grand jury of each county from time to time to present such sum or sums of money, as they shall find reasonable, to be levied for their respective proportion towards the rebuilding or repairing such diocese school; which sum and sums so presented, the presentment being confirmed by the court, shall be levied upon the whole or such part of the said county, as shall be situate in each respective diocese, in such manner as other public money is levied upon presentments made by grand juries;' and whereas several dioceses in this kingdom consist of parts of several counties; and it is found by experience impracticable, when the sum is small, to levy such proportionable presentments as are required by the said recited act: and whereas the repairs annually amount to an inconsiderable sum, and the whole county receives benefit from having the diocese school situate within it: be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal and commons in this present parliament assembled, and by the authority of the same, that from and after the first day of February, which will be in the year one thousand seven hundred and fifty-seven, the grand jury of each county, wherein a diocese school is situate, may from time to time at the assizes to be held for said county present such sum or sums of money, as they shall find reasonable, for the repairs of the said school; which sum or sums so presented, (the presentment being confirmed by the court,) shall be levied upon the county at large, in such manner as other public money is levied upon presentments made by grand juries."

12 Geo. 1, c. 9, whereby grand juries empowered to present for diocesan school, to be levied on such part of the county as in each diocese. Several dioceses consist of parts of counties, and impracticable to levy proportionably, when the sum small.

Annual repairs inconsiderable; a benefit to the whole county. Grand jury of each county, where diocesan schools situated, may present for repairs thereof; to be levied, being confirmed, on the county at large.

CIX. STAT. 29 GEORGII 2, c. 12 (2). [IRELAND.] A.D. 1755.

STAT. 29 GEO.
2, c. 12. [IR.]

"An Act to prevent Unlawful Combinations. . . ."

[Persons obstructing rector, vicar, lay impropriator, or tithe farmer, in drawing or setting tithes, to be fined 5*l.*, or imprisoned with hard labour for three months.]

CX. STAT. 29 GEORGII 2, c. 18 (3). [IRELAND.] A.D. 1755.

STAT. 29 GEO.
2, c. 18. [IR.]

"An Act for amending and making more effectual the several Laws relating to the First-fruits, payable out of the Ecclesiastical Benefices in this Kingdom; and for the better Regulation and Management of the Charitable Bequest of Doctor Hugh Boulter, late Lord Archbishop of Armagh, for augmenting the Maintenance of poor Clergy in this Kingdom."

CXI. STAT. 29 GEORGII 2, c. 42. A.D. 1756.

STAT. 29 GEO.
2, c. 42.

"An Act for enlarging the Cemetery or Churchyard of the Parish of Saint Mary, Newington Butts, in the County of Surrey."

CXII. STAT. 29 GEORGII 2, c. 62. A.D. 1756.

STAT. 29 GEO.
2, c. 62.

"An Act to enable the Dean and Chapter of the Collegiate Church of Saint Peter at Westminster, and their Successors, to make and grant unto James Mallors a Lease or Leases of certain pieces of Ground, Messuages, Tenements, and Hereditaments, comprised within certain Limits, for a longer Term of Years than they are at present enabled to grant."

(1) *Vide ante* 753, n. (3).(3) *Vide* Stat. 46 Geo. 3, c. 60. Repealed

(2) Partly repealed by Stat. 9 Geo. 4, c. 53. by Stat. 3 & 4 Gul. 4, c. 37.

STAT. 29 GEO.
2, c. 75.

CXIII. STAT. 29 GEORGII 2, c. 75. A.D. 1756.

"An Act for completing and finishing a new Church, and laying out and inclosing a Cemetery thereto, in the Island of Portland."

STAT. 29 GEO.
2, c. 89.

CXIV. STAT. 29 GEORGII 2, c. 89. A.D. 1756.

"An Act for rebuilding the Parish Church, and enlarging the Churchyard, of Saint John of Wapping, in the County of Middlesex."

STAT. 31 GEO.
2, c. 5. [IR.]

CXV. STAT. 31 GEORGII 2, c. 5. [IRELAND.] A.D. 1757.

"An Act for dissolving the Union of the Parishes of Clonuff and Drumgath, in the Diocese of Dromore."

STAT. 31 GEO.
2, c. 11. [IR.]

CXVI. STAT. 31 GEORGII 2, c. 11. [IRELAND.] A.D. 1757.

"An Act more effectually to enable the Clergy, having cure of Souls, to reside upon their respective Benefices, and to build upon their respective Glebe Lands."

1 Geo. 2, c. 15.

"Whereas by an act made in the first year of the reign of his present majesty King George the Second, intituled, 'An Act for rendering more effectual an Act, intituled, An Act for the better enabling the Clergy having Cure of Souls, to reside upon their respective Benefices, and for the Encouragement of Protestant Schools within this Kingdom of Ireland;' it is enacted, 'that every rector, vicar, curate, or other ecclesiastical person, who shall from and after the commencement of the said act be admitted into any ecclesiastical benefice of the yearly value of one hundred and fifty pounds, or upwards, having no house fit for the residence of the incumbent thereof, and being endowed with glebe lands lying near his parish church, and being fit and convenient for building, shall within a certain time, to be limited and appointed by the archbishop or bishop of the diocese, after he has been two years in possession of such benefice, build and improve upon such glebe land, in such manner as in the said recited act is mentioned:' and some doubts having arisen on the said act, and the residence of the clergy being a duty incumbent upon them, and highly necessary to the advancement of true religion, and to the furtherance of the conversion of the papists of this kingdom: be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal and commons in this present parliament assembled, and by the authority of the same, that all persons, who are already possessed of, or shall hereafter accept of, any deanery, archdeaconry, dignity, prebend, or of one or more rectories having no vicarage endowed, vicarages perpetual, curacies, or other ecclesiastical preferments, with cure of souls belonging thereto, which either singly, or jointly, or together with what he at this time hath, or at the time of the acceptance thereof shall enjoy in the same diocese, shall make up the sum of one hundred pounds sterling per annum, every such dean, archdeacon, dignitary, prebendary, rector, vicar, curate, or other ecclesiastical person, having cure of souls, after he hath been three years in possession thereof, to be computed from the time of the commencement of this act, or from the time of his admission, and having no house thereon fit and convenient for his residence, and any one of such benefices being endowed with such portion of glebe land as the archbishop or bishop of the diocese shall judge fit and convenient for building thereon, shall within a time certain, to be limited and appointed by the archbishop or bishop of the diocese, build and improve on such glebe land, in such manner, with such consent, under such rules and limitations, and with such benefits and advantages, and be entitled to such proportion of the money laid out in building and improving on such glebe land, as by the said recited act is mentioned and expressed.

"II. And be it further enacted by the authority aforesaid, that every archbishop and bishop shall have the like power and authority to oblige the said before-mentioned persons to build and improve upon their respective glebe lands, as in and by the said recited act is given and granted to the said archbishops and bishops, in respect of the persons therein mentioned, in as full and ample manner as if the person herein described had been mentioned in the said recited act.

Doubts thereon. Residence of clergy necessary.

Ecclesiastics, having preferments with cure of 100l. per annum, after three years possession, without a house fit for residence, but endowed with glebe by the bishop, judged fit for building, shall, in a time by bishop limited, build and improve, as by 1 Geo. 2, c. 15.

Like power to bishops, as by said act, to oblige them thereto.

“III. Provided, that no such dignitary, or other incumbent, shall be obliged by this act to build a house upon the glebe belonging to any benefice, the value of which shall not *communibus annis* amount to the sum of fifty pounds to such incumbent; unless such incumbent shall previously obtain from the trustees of the first-fruits a grant of a sum not less than fifty pounds to enable him the better to carry on the building of such house; which sum so granted the trustees of the first-fruits shall be enabled to give, before the house is begun to be built, and in such manner as they shall think proper.

“IV. And whereas many parishes in this kingdom continue without glebe of any kind, and many more have glebes so small and inconsiderable as to be in no sort convenient for building on them, or any of them, notwithstanding the several acts from time to time passed in this kingdom, and now in force, enabling the persons in the said acts respectively named to endow churches with glebes; and it is apprehended, that one great reason why so few endowments have been made in consequence of the said acts or any of them, has been, that the powers in each and every of the said acts extend only to grants in fee simple or in fee farm: be it therefore enacted by the authority aforesaid, that it shall and may be lawful for all and every person and persons whatsoever, who are or shall be seised of an estate in fee, or of an estate tail in possession, or of an estate for life with a remainder over to his, her, or their own issue, in any lands, by his, her, or their deed or deeds, duly executed under his, her, or their hand and seal, to grant and demise such lands, or part of them, as a glebe for the incumbent or minister of any parish, having actual cure of souls, for one or more life or lives renewable for ever, reserving such rent or rents out of such lands, and in the same manner, and under such restrictions, as to the number of acres, and every other condition, as each and every of the said persons, seized of such respective estates in such lands, could or might by the said acts now in force, or any of them, have granted such lands respectively in fee simple or fee farm.

“V. And whereas by several acts passed in the reign of her late majesty Queen Anne, his late majesty King George the First, and his present majesty, all now of force in this kingdom, power is given to archbishops, bishops, deans, deans and chapters, dignitaries, or prebendaries, having land belonging to them as such respectively near any church, and convenient for a glebe to it, to grant such land, or part thereof, as a glebe to the incumbent of such church, or in trust for any resident curate, officiating in any appropriate or inappropriate benefice, and his or their successors, with such consent, and under such rules and limitations, as are in the said acts respectively mentioned: and whereas the said archbishops, bishops, deans, deans and chapters, dignitaries, or prebendaries, or some of them, though not possessed as such of lands near any church and convenient for a glebe, may yet be and are possessed of lands at a distance, which, being granted for glebe, may afterwards be exchanged for other lands, which may be near and convenient, pursuant to an act passed in the second year of her late majesty Queen Anne, intituled, ‘An Act for the Exchange of Glebes;’ which act, being temporary, has been by subsequent acts continued, and is now of force in this kingdom: and whereas a doubt has arisen, whether the said archbishops, bishops, deans, deans and chapters, dignitaries, or prebendaries, or any of them, can grant such lands for glebes, on account of their distance, and not lying conveniently for the residence of any incumbent, or curate of any appropriate or inappropriate benefice; for the clearing of the said doubt and to the intent that the several persons hereinbefore named and their successors, possessed of the higher stations in the church and of the advantages and profits annexed to them, may have fuller and more extensive powers to provide glebes in such parishes, in which they are much wanting, and thereby to promote the residence of the clergy, which by the blessing of God may be a means to extend the protestant religion, and facilitate the conversion of the papists in this kingdom: be it enacted by the authority aforesaid, that it shall and may be lawful to and for every archbishop, bishop, dean, dean and chapter, dignitary, or prebendary, to grant any land to their archbishopric, bishopric, deanery, capitular body, dignity, or prebend belonging, for a

STAT. 31 GEO.
2, c. 11. [1r.]

Not obliged to build on the glebe of a benefice not worth 50*l.* *communibus annis*, unless trustees of first-fruits previously grant 50*l.* to carry it on.

Several parishes without any, or with small, glebes, notwithstanding acts enabling to endow, the powers therein extending only to grants in fee or fee-farm; Tenant in fee or tail in possession, or for life with remainder to issue, may demise, &c.

Power by several acts to bishops, &c. to grant land near a church for a glebe.
2 Ann. c. 10.
8 Geo. 1, cc. 11 & 12.
1 Geo. 2, c. 15.
3 Geo. 2, c. 12.
5 Geo. 2, c. 6; and lands at a distance, which may be exchanged for lands near and convenient, pursuant to 2 Ann. c. 10, continued by 10 Geo. 1, c. 4, 5 Geo. 2, c. 6, 23 Geo. 2, c. 8; and 29 Geo. 2 c. 8.

Doubt whether they can grant lands for glebes on account of their distance and situation.

Bishoprics, dignitaries, &c. may grant land of the see

STAT. 31 GEO.
2, c. 11. [IR.]

glebe to any parish, at whatsoever distance it may lie from the same, with such consents, and under such restrictions, as in the said acts respectively are mentioned, to the intent that such land, so granted, may be afterwards exchanged for other lands lying near the church, and more convenient for the residence of an incumbent or curate as aforesaid.

“VI. Provided always, that all and every grant, so made of lands at a distance for glebe, shall be absolutely null and void to all intents and purposes whatsoever, unless an exchange for other lands, lying nearer and more convenient, be made and perfected, pursuant to the said acts within the space of two years after the making such grant.

Lands demise
or exchanged,
adjudged glebe
or demesne of
each parish.

10 Gul. 3, c. 6.

12 Geo. 1, c.

10.

9 Geo. 2, c. 13.

15 Geo. 2, c. 5.

17 Geo. 2, c. 8.

Several unions
of small benefices,
in which
one church
only remains,
wherein service
celebrated;
every clerk
collated, &c.
to benefices
united, may
perform requisites
for further
entitling himself
to each in
such church
remaining, as
effectual as if
performed in
every church,
site, or ruins
therein;

but not to restore a clerk
already incurring penalties by non-performance.

“VII. And be it further enacted by the authority aforesaid, that all lands granted or demised for lives renewable for ever, or exchanged in manner hereinbefore mentioned, shall from thenceforth be adjudged to be glebe or demesne lands belonging to each parish respectively, and shall be subject to, and regulated, by, all clauses and limitations in all laws made for the endowing of churches with glebes, and for the encouraging the building of houses, and making other improvements on church lands, and to prevent dilapidations, and for the better enabling the clergy, having cure of souls, to reside on their respective benefices.

“VIII. And whereas many benefices with cure of souls within this kingdom are of so small yearly value, that for the support of a resident minister for the cure and service of the same many unions have been and may hereafter be made by act of council, or otherwise, of two or more such benefices; and within many such unions there now remaineth, or may remain, but one church only, wherein divine service is usually celebrated, or not a church to each and every benefice within the same: be it enacted by the authority aforesaid, that from the twenty-fourth day of June next it shall and may be lawful for every clerk collated, instituted, and inducted to two or more benefices so united, to perform all things requisite for further qualifying or entitling himself in full right to all and every benefice within such union, in such church or churches as are remaining within the same, wherein divine service is usually celebrated; and that his having performed all such requisites in such church or churches then remaining shall be as good and effectual to all intents and purposes for qualifying and entitling in full right such clerk to all and every benefice within such union, as if the same had been performed in each and every church, or in each and every site or ruins of a church, within the same.

“IX. Provided always, that nothing in this act shall be construed to entitle, qualify, or restore any clerk, who by non-performance of all or any such requisites hath already incurred the penalties, forfeitures, or avoidances of any former acts.”

STAT. 31 GEO.
2, c. 12.

CXVII. STAT. 31 GEORGII 2, c. 12 (1). A.D. 1757.

“An Act to encourage the Growth and Cultivation of Madder in that part of Great Britain called England, by ascertaining the Tithe thereof there.”

STAT. 33 GEO.
2, c. 11.

CXVIII. STAT. 33 GEORGII 2, c. 11. [IRELAND.] A.D. 1759.

“An Act for reviving and amending an Act passed in the twenty-third year of His present Majesty's Reign, intituled, ‘An Act for amending, continuing, and making more effectual the several Acts now in force in this Kingdom for the more easy Recovery of Tithes (2), and other Ecclesiastical Dues of small value, and also for the more easy providing a Maintenance for Parish Clerks,’ so far only as the same relates to the more easy providing a Maintenance for Parish Clerks (3), and to encourage the building of new Churches.”

(1) Expired.

(3) Parish Clerks:—Repealed by Stat. 7

(2) Tithes:—Virtually repealed by Stat. Geo. 4, c. 72.

1 & 2 Vict. c. 109.

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STAT. 1 GEO.
3, c. 8. [Ir.]*"An Act to enable Tenants for Life to make Perpetual Leases of Grounds, whereon to erect public Hospitals (1)."*

"Be it enacted . . . that it shall and may be lawful to and for any tenant for life of lands near any city or town corporate, fit for the purpose of building an hospital for sick or maimed persons, by deed indented to demise to any person or persons, for erecting such hospital, any such lands, not exceeding in the whole by the demise of any one such lessor an acre of ground, plantation measure, for any term of years, or with covenants for perpetual renewal, reserving a rent according to the full improved value, payable to those who are or shall be entitled to the freehold and inheritance; and such lease and leases shall be good and valid against all persons in remainder after such tenants for life, or claiming under such remainder-men.

Tenant for life near a city or town corporate may demise one acre by indenture for an hospital, for any term of years, or for perpetual renewal, reserving rent at full improved value.

"II. Provided that it shall and may be in the power of the person or persons, entitled to the first estate of inheritance in remainder after the determination of the estate of such tenant for life, to appoint and allot such particular acre, part of such lands, as he, she, or they shall think most convenient to be demised.

"III. Provided also, that such hospital be erected on such lands within the space of three years next after the execution of such lease; otherwise such lease shall not be binding upon any of the persons in remainder after such tenant for life."

III. STAT. 1 GEORGII 3, c. 13(2). [IRELAND.] A.D. 1761.

STAT. 1 GEO.
3, c. 13. [Ir.]*"An Act for quieting the Possessions of Protestants, deriving under Converts from the Popish Religion."*

IV. STAT. 1 GEORGII 3, c. 38. A.D. 1760.

STAT. 1 GEO.
3, c. 38.*"An Act for repairing the Parish Church of Croydon, in the County of Surrey."*

(1) *Hospitals*.—Enactments were likewise made for the erection and regulation of hospitals and infirmaries in Ireland by Stat. 5 Geo. 3, c. 20. (I.) Stat. 7 Geo. 3, c. 8. (I.) Stat. 13 & 14 Geo. 3, c. 43. (I.) Stat. 15 & 16 Geo. 3, c. 31. (I.) Stat. 17 & 18 Geo. 3, c. 15. (I.) Stat. 21 & 22 Geo. 3, c. 13. (I.) Stat. 25 Geo. 3, c. 40. (I.) Stat. 25 Geo. 3, c. 50. (I.) Stat. 36 Geo. 3, c. 9. (I.) Stat. 38 Geo. 3, c. 35. (I.) Stat. 39 Geo. 3, c. 17. (I.) Stat. 39 Geo. 3, c. 38.

(I.) Stat. 40 Geo. 3, c. 33. (I.) Stat. 46 Geo. 3, c. 40. (I.) Stat. 45 Geo. 3, c. 111. (I.) Stat. 46 Geo. 3, c. 95. (I.) Stat. 47 Geo. 3, Sess. 1, c. 44. (I.) Stat. 47 Geo. 3, Sess. 2, c. 50. (I.) Stat. 48 Geo. 3, c. 113. (I.) Stat. 49 Geo. 3, c. 36. (I.) Stat. 54 Geo. 3, c. 62. (I.) Stat. 54 Geo. 3, c. 112. (I.) Stat. 54 Geo. 3, c. 128. (I.) Stat. 58 Geo. 3, c. 47. (I.) Stat. 59 Geo. 3, c. 41. (I.)
(2) *Obsolete*.

STAT. 2 GEO.
3, c. 15.

V. STAT. 2 GEORGII 3, c. 15. A.D. 1761.

"An Act for better supplying the Cities of London and Westminster with Fish."
[All fish-carriages to be allowed to pass on Sundays or Holydays.]

STAT. 2 GEO.
3, c. 22.

VI. STAT. 2 GEORGII 3, c. 22. A.D. 1761.

"An Act for the keeping regular, uniform, and annual Registers of all Parish Poor Infants under a certain Age, within the Bills of Mortality."

STAT. 2 GEO.
3, c. 26.

VII. STAT. 2 GEORGII 3, c. 26. A.D. 1761.

"An Act for allowing further time for Inrolments of Deeds and Wills made by Papists; and for Relief of Protestant Purchasers (1)."

STAT. 2 GEO.
3, c. 58.

VIII. STAT. 2 GEORGII 3, c. 58. A.D. 1761.

An Act for . . . enlarging the Churchyard belonging to the Parish of Saint James, within the Liberty of Westminster."

STAT. 3 GEO.
3, c. 16. [IR.]

IX. STAT. 3 GEORGII 3, c. 16. [IRELAND.] A.D. 1763.

"An Act for continuing and amending several temporary [Charity] Statutes."

STAT. 3 GEO.
3, c. 18. [IR.]

X. STAT. 3 GEORGII 3, c. 18. [IRELAND.] A.D. 1763.

"An Act for the better Discovery of Charitable Donations and Bequests."

Vicar general or surrogate and register of prerogative shall return at annual visitation, or between 25th March and 24th June yearly, all charities in wills entered in the office, with name of testator and person to whom probate, and the dates.

"Whereas the pious intentions of many charitable persons are frequently defeated by the concealment or misapplication of their donations or bequests to public or private charities in this kingdom: be it enacted . . . that the vicar-general, or his surrogate, and the register of the prerogative, shall make a return to the bishop of the diocese, or to his grace the Archbishop of Armagh, respectively, on or in every year at the annual visitation, or between the twenty-fifth day of March and the twenty-fourth day of June, in every year, of every charitable donation or bequest contained in any will, which shall be entered in the office of such vicar-general, surrogate, or register, which return shall likewise contain the name of the testator, the name or names of the person or persons to whom a probate of any such will or letters of administration with such will annexed, shall be granted, with the date of such will, probate, or administration; and copies of such returns upon oath shall be lodged the beginning of the succeeding session of parliament with the clerk of each house; and every such officer as aforesaid, who shall neglect to make such return as aforesaid, shall forfeit the sum of five pounds sterling, to be recovered by any person who shall sue for the same, by civil bill before any of the judges of assize in their respective circuits, or before the recorder of the city or Dublin: and the person or persons to whom the probate of any such will or letters of administration as aforesaid shall be granted, shall within three calendar months next after the obtaining the same, publish in the Dublin Gazette, three times successively, every charitable donation or bequest contained in such will, the name of the testator, the date of such will or codicil, and the name of the person or persons to whom such charitable donation and bequest is given and bequeathed, and the name of the person or persons appointed by the testator for the management and direction thereof; and the expense of such publication shall be paid by the said executors or administrators out of the said respective charities; and every such person or persons who shall neglect to publish the same in manner herein required, shall forfeit for every such neglect the sum of fifty pounds sterling, to be recovered by any person that shall sue for the same, by action of debt, bill, plaint, or information in any of his majesty's courts of record, in which no essoin or wager of law shall be allowed, or more than one imparlance."

Persons to whom probate, shall in three months publish thrice in Gazette every charity, date of the will, name of testator, donees, and trustees.

(1) Provisions of a similar nature are embodied in Stat. 4 Geo. 3, c. 38. Stat. 12 Geo. 3, c. 10. Stat. 17 Geo. 3, c. 45. Stat. 21 Geo. 3, c. 51. Stat. 22 Geo. 3, c. 23. Stat. 23 Geo. 3, c. 22.

XI. STAT. 3 GEORGII 3, c. 25(1). [IRELAND.] A.D. 1763.

STAT. 3 GEO.
3, c. 25. [IR.]

"An Act to amend and explain an Act made in the thirty-third year of the Reign of Henry the Eighth, intituled, an Act for Tithes, and for other Purposes therein mentioned."

XII. STAT. 3 GEORGII 3, c. 49. A.D. 1762.

STAT. 3 GEO.
3, c. 49.

"An Act for taking down the Parish Church of Saint Andrew, in the City of Canterbury; and for building a new Church in a more convenient place."

XIII. STAT. 3 GEORGII 3, c. 50. A.D. 1762.

STAT. 3 GEO.
3, c. 50.

"An Act for vesting certain Parcels of Land in Paddington, in the County of Middlesex, in the Rector and Churchwardens of the Parish of Saint George, Hanover Square, in the said County; and appropriating the same for a Burial Ground for the said Parish."

XIV. STAT. 5 GEORGII 3, c. 10. [IRELAND.] A.D. 1765.

STAT. 5 GEO.
3, c. 10. [IR.]

"An Act for the more effectually carrying into execution the Laws heretofore made to prevent the pernicious practice of burning Land."

"III. And be it further enacted by the authority aforesaid, that all bishops, deans and chapters, and other corporate bodies, who may under their respective corporate rights be possessed of landed estates, shall and may have and enjoy all the same remedies conferred by the above recited laws, in such manner as if they were to be deemed heirs to their predecessors in such estates and lands."

Like remedies to bishops and bodies corporate as if heirs to predecessors.

XV. STAT. 5 GEORGII 3, c. 17(2). A.D. 1765.

STAT. 5 GEO.
3, c. 17.

"An Act to confirm all Leases already made by Archbishops and Bishops, and other Ecclesiastical Persons, of Tithes and other Incorporeal Hereditaments, for one, two, or three Life or Lives, or Twenty-one Years; and to enable them to grant such Leases, and to bring Actions of Debt for Recovery of Rents reserved and in Arrear on Leases for Life or Lives."

"Whereas it may be doubtful whether, by the laws now in being, archbishops, or bishops, masters and fellows, or any other head and members of colleges or halls, deans and chapters, precentors, prebendaries, masters and guardians of hospitals, or any other person or persons having any spiritual or ecclesiastical promotions, heretofore had, or now have, any power to make or grant any lease or leases of tithes, or other incorporeal hereditaments only, which lie in grant and not in livery, for one, two, or three lives, or for any term or terms of years not exceeding twenty-one years, although the ancient rent or yearly sum is thereby mentioned to be reserved, and all other requisites prescribed by the acts of parliament now in being to that end, or any of them, were or are justly and truly observed and performed, by reason that there is generally no place wherein a distress can be had or taken for such rent or yearly sum; and it may be also doubtful whether, in cases of such leases for life or lives, there is any remedy in law for such ecclesiastical or other persons by action of debt or otherwise, for recovering the rent or yearly sum due and in arrear which is mentioned to be reserved on such leases for life or lives: therefore, for obviating all doubts touching the same, and enabling the said archbishops and bishops, masters and fellows, or other heads and members of colleges or halls, deans and chapters, precentors, prebendaries, masters and guardians of hospitals, and other ecclesiastical persons, to make valid leases of such their incorporeal hereditaments, and to recover the rents or yearly sum mentioned to be reserved on any leases by them already granted, or to be granted, for one, two, or three lives, as aforesaid; and also to make good and effectual all such leases as have already been granted by them, or any of them:

(1) This statute was perpetuated by Stat. 11 & 12 Geo. 3, c. 19 (I.), *sed vide* Stat. 1 & 2 Vict. c. 109. (2) *Vide* Stat. 5 & 6 Vict. cc. 27 & 108. Stephens on Clerical Law, tit. LEASES.

STAT. 5 GEO.
3, c. 17.

Leases made
by ecclesiastical persons,
of incorporeal
hereditaments
for life, or
years, declared
to be good.

may it please your majesty, that it may be enacted, and be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that all leases for one, two, or three life or lives, or any term not exceeding twenty-one years, already made and granted, or which shall at any time from and after the passing this act be made or granted, of any tithes, tolls, or other incorporeal hereditaments, solely, and without any lands or corporeal hereditaments, by any archbishop or bishop, master and fellows, or other head and members of colleges or halls, deans and chapters, precentors, prebendaries, masters and guardians of hospitals, and every other person and persons, who are enabled by the several statutes now in being, or any of them, to make any lease or leases for one, two, or three life or lives, or any term or number of years not exceeding twenty-one years, of any lands, tenements or other corporeal hereditaments, shall be and are hereby deemed and declared to be, as good and effectual in law against such archbishop, bishop, masters and fellows, or other heads and members of colleges or halls, deans and chapters, precentors, prebendaries, masters and guardians of hospitals, and other persons so granting the same, and their successors, and every of them, to all intents and purposes, as any lease or leases already made or to be made by any such archbishop or bishop, master and fellows, or other heads and members of colleges or halls, deans and chapters, precentors, prebendaries, masters and guardians of hospitals, and other persons having spiritual promotion, of any lands or other corporeal hereditaments now are, by virtue of the statute of the thirty-second year of King Henry the Eighth, or any other statute now in being; any law, custom, or usage to the contrary thereof in any wise notwithstanding.

32 Hen. 8,
c. 28.

“II. Provided always, that nothing herein contained shall extend, or be construed to extend, to enable any master and fellows, or other head and members of colleges or halls, deans and chapters, precentors, prebendaries, masters and guardians of hospitals, or other ecclesiastical persons as aforesaid, to grant leases for any longer or other terms than by the local statutes of their several foundations, they are now respectively enabled to do.

Actions may
be brought for
rents in arrear,
&c.

“III. And be it further enacted and declared by the authority aforesaid, that in case the rent or rents, or yearly sum or sums, reserved or made payable in or by any lease or leases already made or to be made by any archbishop or bishop, master and fellows, or other head and members of colleges or halls, deans and chapters, precentors, prebendaries, masters and guardians of hospitals, and every other person and persons so enabled to make leases as aforesaid, for one, two, or three life or lives, or years, in pursuance of the several acts of parliament already in being, or by this present act, or any part thereof shall be behind or unpaid by the space of twenty-eight days next over or after any of the days whereon the same, by such lease or leases, now are or hereafter shall or may be reserved and made payable; then, and so often, and from time to time, as it shall so happen, it shall and may be lawful for such archbishop or bishops, master and fellows, or other head and members of colleges or halls, deans and chapters, prebendaries, precentors, masters and guardians of hospitals, and other persons so making or granting, or having made or granted, such leases as aforesaid, or their executors, administrators, and successors, respectively, to bring an action or actions of debt against the lessee or lessees to whom any such lease or leases for life or lives, or years, now are or hereafter shall be made and granted, his, her, or their heirs, executors, administrators, or assigns, for recovering the rent or rents which shall be then due and in arrear to any such archbishop or bishops, masters and fellows, or other heads and members of colleges or halls, deans, chapters, precentors, prebendaries, master and guardians of hospitals, and other person or persons before mentioned, his or their executors, administrators, or successors, in such and the same manner, and as fully and effectually to all intents and purposes, as any landlord or lessor, or other person or persons, could or might do for recovering of arrears of rent due on any lease or leases for life or lives, or years, by the laws now in being; any law, statute, usage, or custom to the contrary notwithstanding.

“IV. And it is hereby further enacted and declared by the authority aforesaid, that this act shall be deemed and taken to be a public act; and shall be judicially taken notice of as such, in all courts of law and equity, without specially pleading the same.”

STAT. 5 GEO.
3, c. 17.
Public act.

XVI. STAT. 5 GEORGII 3, c. 20 (1). [IRELAND.] A.D. 1765.

“An Act for erecting and establishing Public Infirmaries or Hospitals in this Kingdom.”

STAT. 5 GEO.
3, c. 20. [IR.]

“III. And be it further enacted by the authority aforesaid, that all tenants for life, with remainders to the first and other sons in tail shall be and are hereby empowered to make fee-farm grants or leases in perpetuity to the respective governors or governesses of each county, infirmary, or hospital, of any quantity of ground not exceeding two acres, or of one or more houses contiguous with each other, at the full improved rent; which fee-farm grants and leases the said governors shall, and are hereby empowered to take respectively for building and erecting an *infirmary or hospital* (2) for each respective county on such ground, or for converting such house or houses into an infirmary or hospital for such respective county.”

Tenants for life, remainder to issue in tail, may grant or lease in perpetuity at full improved rent, two acres, or house or houses contiguous. Governors empowered to take for an infirmary.

XVII. STAT. 5 GEORGII 3, c. 65. A.D. 1765.

“An Act for rebuilding the Parish Church of Allhallows on the Wall, in the City of London, and for rebuilding the House belonging to the Rector of the said Parish; and for purchasing several Pieces of Ground and Tenements thereon, to render the Passages to and from the said Church and House more commodious.”

STAT. 5 GEO.
3, c. 65.

XVIII. STAT. 6 GEORGII 3, c. 53 (3). A.D. 1766.

“An Act for altering the Oath of Abjuration and the Assurance; and for amending so much of an Act of the seventh year of Her late Majesty Queen Anne, intituled, *An Act for the Improvement of the Union of the two Kingdoms*, as, after the Time therein limited, requires the Delivery of certain Lists and Copies therein mentioned to Persons indicted of High Treason, or Misprision of Treason.”

STAT. 6 GEO.
3, c. 53.

“Whereas, by an act passed in the first year of the reign of his late majesty King George the First, intituled, ‘An Act for the further Security of His Majesty’s Person and Government, and the Succession of the Crown in the Heirs of the late Princess Sophia, being Protestants; and for extinguishing the Hopes of the pretended Prince of Wales, and his open and secret Abettors;’ it is, amongst other things, enacted, that all and every person and persons therein mentioned, within Great Britain, and the several islands of Jersey and Guernsey, should take and subscribe the oath of abjuration therein mentioned; and all and every person and persons therein mentioned within Scotland, should also subscribe the assurance therein mentioned; in the manner, at the times and places, and under the pains and penalties, in the said act expressed: and whereas, by an act passed in the fifth year of the reign of his said late majesty, intituled, ‘An Act for making more effectual the Laws appointing the Oaths, for Security of the Government, to be taken by the Ministers and Preachers in Churches and Meeting-houses in Scotland,’ it is enacted, that all and every person and persons therein mentioned in Scotland, should subscribe the assurance in the above-mentioned act contained, and also take and subscribe the oath of abjuration therein directed to be taken, in lieu of the oath of abjuration formerly required by law, in the manner, at the times and places, and under the penalties and disabilities, in the said act provided: and whereas, by the death of the person who pretended to be Prince of Wales, during the life of the late King James, and, since his decease, pretended to be, and took upon himself the style and title of King of England, by the name of James

1 Geo. 1,
St. II. c. 13.

5 Geo. 1, c. 29.

(1) Amended by Stat. 1 & 2 Gul. 4, c. 48.
Stat. 3 & 4 Gul. 4, c. 92.

(3) *Vide* Stat. 6 Geo. 4, c. 50. Stat. 1
Gul. 4, c. 26. Stat. 3 & 4 Gul. 4, c. 49.

(2) *Infirmary or hospital*:—*Vide antè* Stat. 3 & 4 Vict. c. 52, s. 3.
861, n. (2).

STAT. 6 GEO.
3, c. 53.

Oath of abjuration required to be taken by the recited acts, to be administered in the following form.

the Third, or of Scotland, by the name of James the Eighth, or the style and title of King of Great Britain, it is become necessary to make some alteration in the oath of abjuration, and the assurance, contained in the said acts above-mentioned: be it therefore declared and enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the fourth day of June, one thousand seven hundred and sixty-six, the oath of abjuration in the said act above-mentioned, be administered in such manner and form as is hereinafter set down and prescribed; that is to say,

“I, *A. B.*, do truly and sincerely acknowledge, profess, testify, and declare, in my conscience, before God and the world, that our sovereign lord King George is lawful and rightful king of this realm, and all other his majesty's dominions and countries thereunto belonging. And I do solemnly and sincerely declare, that I do believe, in my conscience, that not any of the descendants of the person who pretended to be Prince of Wales during the life of the late King James the Second, and, since his decease, pretended to be, and took upon himself the style and title of, King of England, by the name of James the Third, or of Scotland, by the name of James the Eighth, or the style and title of King of Great Britain, hath any right or title whatsoever to the crown of this realm, or any other the dominions thereunto belonging: and I do renounce, refuse, and abjure, any allegiance or obedience to any of them. And I do swear, that I will bear faith and true allegiance to his majesty King George, and him will defend to the utmost of my power, against all traitorous conspiracies and attempts whatsoever, which shall be made against his person, crown, or dignity. And I will do my utmost endeavour to disclose and make known to his majesty, and his successors, all treasons and traitorous conspiracies which I shall know to be against him, or any of them. And I do faithfully promise, to the utmost of my power, to support, maintain, and defend, the succession of the crown, against the descendants of the said James, and against all other persons whatsoever, which succession, by an act, intitled, “An Act for the further Limitation of the Crown, and better securing the Rights and Liberties of the Subject,” is and stands limited to the Princess Sophia, electress and duchess dowager of Hanover, and the heirs of her body, being Protestants. And all these things I do plainly and sincerely acknowledge and swear, according to these express words by me spoken, and according to the plain common sense and understanding of the same words, without any equivocation, mental evasion, or secret reservation whatsoever. And I do make this recognition, acknowledgment, abjuration, renunciation, and promise, heartily, willingly, and truly, upon the true faith of a Christian.”

Assurance in first recited act to be administered in the following form.

“And that from and after the twenty-fourth day of June, one thousand seven hundred and sixty-six, the assurance, in the said first mentioned act contained, be administered in such manner and form as is hereinafter set down and prescribed; that is to say,

“I, *A. B.*, do, in the sincerity of my heart, assert, acknowledge, and declare, that his majesty King George is the only lawful and undoubted sovereign of this realm, as well *de jure*, that is, of right king, as *de facto*, that is, in the possession and exercise of the government. And therefore I do promise and swear, that I will with heart and hand, life and goods, maintain and defend his right, title, and government, against the descendants of the person who pretended to be Prince of Wales during the life of the late King James, and, since his decease, pretended to be, and took upon himself the style and title of King of England, by the name of James the Third, or of Scotland, by the name of James the Eighth, or the style and title of King of Great Britain, and their adherents, and all other enemies who, either by open or secret attempts, shall disturb or disquiet his majesty in the possession and exercise thereof.”

To be administered, &c. within the time, and in the manner, &c.

“And that all and every person and persons who are enjoined and required to administer, take, or subscribe, the oath of abjuration, and the assurance, in the said above-mentioned acts contained, shall respectively administer, take, and subscribe, the oath of abjuration, and subscribe the assurance, according to the form

herein set down and prescribed, in such courts, within such time limited, in such manner, and with due observance of the same requisites, and with benefit of the same savings, provisoes, and indemnities, as by the said acts above-mentioned, or by any other acts, or any part of them, now subsisting, are directed and enacted; and in case of neglect or refusal, he or they shall be subject and liable to the same penalties and disabilities as, by the laws and statutes aforesaid, are enacted. STAT. 6 GEO. 3, c. 53.

“II. And be it further enacted by the authority aforesaid, that from and after the first day of August, one thousand seven hundred and sixty-six, the same oath of abjuration by this act appointed to be taken in Great Britain, shall be the oath of abjuration to be taken in the kingdom of Ireland, and the rest of his majesty’s dominions, and no other; and that the benefit of the indemnities given by the said first-mentioned act of the first year of the reign of his late majesty King George the First, shall continue and be in force, as to the said kingdom of Ireland, in like manner as if this act had never been made; anything herein contained to the contrary in any wise notwithstanding. Oath of abjuration to be taken in Ireland, &c.

“III. And whereas, by an act passed in the seventh year of the reign of her late majesty Queen Anne, intituled, ‘An Act for improving the Union of the two Kingdoms,’ it is enacted, that from and after the decease of the person who pretended to be Prince of Wales during the life of the late King James, and, since his decease, pretended to be King of Great Britain, and, at the end of the term of three years after the immediate succession to the crown upon the demise of her said late majesty, should take effect, when any person is indicted for high treason, or misprision of treason, a list of the witnesses that shall be produced on the trial for proving the said indictment, and of the jury, mentioning the names, profession, and place of abode, of the said witnesses and jurors, be also given, at the same time that the copy of the indictment is delivered, to the party indicted; and that copies of all indictments for the offences aforesaid, with such lists, shall be delivered to the party indicted ten days before the trial, and in the presence of two or more credible witnesses; be it further enacted by the authority aforesaid, that nothing contained in the said recited act, shall any ways extend to any indictment of high treason for counterfeiting his majesty’s coin, the great seal or privy seal, his sign manual or privy signet, or to any indictment of high treason, or to any proceedings thereupon against any offender or offenders who by any act or acts now in force, is and are to be indicted, arraigned, tried, and convicted, by such like evidence, and in such manner, as is used and allowed against offenders for counterfeiting his majesty’s coin.” 7 Ann. c. 21.

Not to extend to indictments for counterfeiting the coin, &c.

XIX. STAT. 6 GEORGII 3, c. 63. A.D. 1766.

“An Act for the Support and Preservation of the Parish Church of Folkestone, and the lower part of the Town of Folkestone, in the County of Kent.”

STAT. 6 GEO. 3 c. 63.

XX. STAT. 6 GEORGII 3, c. 75. A.D. 1766.

“An Act to render more effectual an Act passed in the last Session of Parliament, for rebuilding the Parish Church of Allhallows on the Wall, in the City of London; and for rebuilding the House belonging to the Rector of the said Parish; and for purchasing several Pieces of Ground and Tenements thereon, to render the Passages to and from the said Church and House more commodious.”

STAT. 6 GEO. 3, c. 75.

XXI. STAT. 7 GEORGII 3, c. 7. [IRELAND.] A.D. 1767.

“An Act for further amending an Act passed in the thirty-first year of the Reign of His late Majesty King George the Second, intituled, An Act for making a wide and convenient Way, Street, and Passage, from Essex Bridge to the Castle of Dublin, and for other Purposes therein mentioned.”

STAT. 7 GEO. 3, c. 7. [IR.]

“Whereas by an act passed in the thirty-first year of the reign of his late majesty King George the Second, for making a wide and convenient way, street, and passage from Essex Bridge to the castle of Dublin, and for other purposes therein mentioned, (which act was afterwards amended by another act passed in 31 Geo. 2, c. 19, amended by 33 Geo. 2, c. 15.

STAT. 7 GEO.
3. c. 7. [I.R.]

the thirty-third year of the reign of his said late majesty,) it is amongst other things enacted, that it shall and may be lawful to and for all bodies politic, corporate, or collegiate, corporations aggregate or sole, trustees, guardians, and committees to lunatics and idiots, not only for or on behalf of themselves, their heirs and successors, but also for or on behalf of cestuique trusts, whether infants or issue unborn, lunatics, idiots, feme coverts, or other persons whatsoever who are or shall be seised or possessed of, or interested in, any houses, buildings, or ground, which by the commissioners named in the said act, shall be thought necessary to be purchased for any of the purposes of the said act, to sell and convey all or any such houses, buildings, and ground, or any part thereof, to the said commissioners, or the survivors of them: and whereas neither of the said acts hath directed to whom the money arising from the purchases of houses, buildings, or ground belonging to ecclesiastical persons, shall be paid by the said commissioners, nor by what means the fee simple may be conveyed to the said commissioners of such houses, buildings, or ground, in which any infant under the age of twenty-one years shall be seised of or entitled to an estate tail; and whereas it is reasonable to make provision in such cases so far as sole ecclesiastical corporations, or infants seised of or entitled to estates tail may be affected by the said act; be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that in all purchases made or to be made by the said commissioners or their successors, or any five or more of them, from any dean, chapter, chancellor, treasurer, prebendary, or other dignitary, parson, vicar, or other incumbent of a parish, of any houses, building, or ground to them respectively belonging in right of their respective dignities or parishes, such purchase money shall be lodged in the hands of one or more trustee or trustees, to be appointed by such dignitary, with the consent of the dean and chapter of which he shall be a member, or by such parson, vicar, or other incumbent, with the consent of the patron or patrons of such parish, in trust, after deducting all reasonable costs and expenses which shall attend the execution of such trusts, to be laid out by him or them respectively, or his or their executors or administrators, in the purchase of lands, tenements, hereditaments, in fee simple for the use of such dignitary, parson, vicar, or other incumbent, from whom such purchases shall be respectively made, and his and their respective successors; any statute of mortmain, or any other law, statute, or usage to the contrary notwithstanding.

On purchase by commissioners from any dignitary or incumbent, the money lodged with trustees appointed by them respectively, with consent of the dean and chapter or patron, laid out in purchase of lands, &c. in fee for use of such dignitary or incumbent, and successors.

Such dignitary or incumbent empowered, with like consent, to lease forty years, and to renew,

so as no less rent reserved,

and on registering as other leases by ecclesiastics.

“II. Provided always, and be it further enacted by the authority aforesaid, that after any such purchase shall be made by any such trustee or trustees, or his or their executors or administrators, it shall and may be lawful to and for every such dignitary, in trust for whom such purchase shall be made, and his successors, with the consent of the dean and chapter of which he shall be a member, and to and for every such parson, vicar, or other incumbent, with a consent of the patron or patrons of such parish, to make one or more lease or leases of any of the lands, tenements, or hereditaments, which shall be so purchased, for any term of years not exceeding forty years from the time of making thereof, and to renew the same from time to time in like manner, and for the like term of years; so as that no less rent be reserved to such dignitary or incumbent, or his or their successors, out of such lands, tenements, hereditaments, so to be purchased by such trustee or trustees, than was reserved out of the houses, buildings, or ground so to be purchased by the said commissioners as aforesaid; and so as that every such lease and renewal be registered, in like manner as other the like leases made by ecclesiastical persons ought to be registered.”

STAT. 7 GEO.
3. c. 8. [I.R.]

XXII. STAT. 7 GEORGII 3, c. 8. [IRELAND.] A.D. 1767.

“An Act to amend an Act, made the last Session of Parliament, for the enacting and establishing Public Infirmaries or Hospitals in this Kingdom.”

5 Geo. 3, c. 20,
s. 3, amended
by 13 & 14
Geo. 3, c. 43;

“Whereas by the said act tenants for life are empowered to make fee-farm grants or leases in perpetuity of any quantity of ground not exceeding two acres, for the purpose of erecting a county infirmary or hospital, but no provision is

made by the said act to enable archbishops, bishops, governors of charities, or other corporate bodies, to make leases in perpetuity for the same purpose, which has prevented the erecting of infirmaries in several places proper for them; be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that it shall and may be lawful for every archbishop, bishop, dignitary, prebendary, having lands belonging to such archbishop, bishop, dignitary, prebendary, near any town, and convenient for the site of any county infirmary, with the consent of his dean and chapter under the common seal, and for the governors of any charity, being a corporate body, and for all other corporate bodies having lands so situated, to make leases under their corporate seals in perpetuity and in reversion on the expiration of any subsisting lease to the respective governors of any county infirmary or hospital, of any quantity of ground not exceeding two acres, or of one or more houses contiguous with each other, at a reasonable rent; which leases the said governors are hereby empowered to take respectively for the erecting an infirmary or hospital for any county, and for converting such house or houses into an infirmary or hospital for any county."

STAT. 7 GEO.
3, c. 8. [IR.]
15 & 16 Geo.
3, c. 31, s. 2;
17 & 18 Geo.
3, c. 15.

Dignitary,
with consent of
dean and chapter,
and corporate
bodies, may lease
in perpetuity and
in reversion
for county
hospital two
acres, or one
or more houses
contiguous.

XXIII. STAT. 7 GEORGII 3, c. 9(1). [IRELAND.] A.D. 1767.

"An Act for explaining and amending an Act passed in the second year of His Majesty King George the First, intituled, An Act for the real Union and Division of Parishes, and for other Purposes therein mentioned."

STAT. 7 GEO.
3, c. 9. [IR.]

"Whereas by an act passed in the second year of the reign of King George the First, 'For the real Union and Division of Parishes,' it is enacted that it shall be lawful for the chief governor or governors, and the major part of the privy council of this kingdom, six at least consenting, and with the approbation of the archbishop of the province and the bishop of the diocese, certified under their hands and archiepiscopal and episcopal seals, and with the consent of the patrons and incumbents, certified under their hands and seals, attested by two credible witnesses subscribing thereunto, to divide old parishes, and to separate any parish, or part of a parish of late united, and to erect such divided parishes into new parishes, with all parochial rights; and whereas several large parishes, which ought to be divided, have had glebe houses and other improvements made thereon, for which the incumbents have obtained, or are entitled to obtain certificates, and receive payment of a certain proportion of the money expended in building such houses, or making such improvements, according to the laws now in being for that purpose made; provided, that the whole sum to be certified shall not exceed two years' income of the benefice on which such buildings and improvements shall be erected and made; and whereas it may be expedient to divide some large parishes, where houses have been built, or other improvements made, for which certificates have been obtained or payments made by the incumbent, and it would be unjust to deprive the incumbent of the right which he may have to be repaid such part of the money expended in such buildings or improvements, or the payments by him on that account made, pursuant to the laws now in being for the encouragement of building houses and making improvements on glebe lands belonging to the clergy; be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that where any large parishes shall be divided in manner as in the said act mentioned, and that the incumbent of such divided parishes shall be entitled to receive any sum of money from his next successor in such parish, in case the same had not been divided, on account of any buildings or improvements made on the glebe of such parish, or any money paid by him to his predecessor on such account, such incumbent shall have and be entitled to receive from his next successor in that part of such divided parish, on

2 Geo. 1, c. 14.

Incumbent of
large parish
divided entitled
to receive from
successor in
that part where
buildings and
improvements
as if no division,
although
above one year

(1) So much of Stat. 7 Geo. 3, c. 9, as relates to the payment of money for buildings or improvements made in glebes in the case of real union and division of parishes, was repealed by Stat. 7 & 8 Geo. 4, c. 43.

STAT. 7 GEO.
3, c. 9. [I.R.]

and a half of
the income.

So of a propor-
tion of money
paid.

Wherever con-
sent of mini-
ster in vestry
required, acts
of vestry held
by the curate
or licensed mi-
nister, in ab-
sence of the in-
cumbent, effec-
tual.

12 Geo. 1,
c. 10, s. 9.
10 Gul. 3, c. 6.

Chief govern-
ors and bishops
may empower
one or more
persons, named
in commis-
sions, to exa-
mine improve-
ments on
church lands,
pursuant to
12 Geo. 1,
c. 10, s. 9, to
administer
oath to com-
missioners.

Dilapidations.

On complaint
of dilapidations
by successors,
chargeable with

which such buildings and improvements shall have been made, as if the said parish had not been divided, although the sum so to be paid should exceed one year and a half of the income of that part of the parish; and such incumbent, having paid such proportion of the said money, shall be entitled to receive such proportion of the money so to be paid from his successors according to the laws now in being for that purpose, in such manner as he ought, in case such parish had not been divided.

“II. And whereas by several acts of parliament the consent of the incumbent or minister, the churchwardens and protestant parishioners in vestry assembled, is required to be had for the several purposes in such acts mentioned; and whereas the incumbents or ministers may often through infirmities or other causes be absent, and not attend at such vestries; and a doubt may arise, whether the consent of the curate assistant, or other licensed minister, who shall be present at such vestry, and officiate thereat in the place and stead of such incumbent, is sufficient within the intent and meaning of the said acts; be it enacted by the authority aforesaid, that in all cases where the consent of the incumbent or minister, churchwardens and protestant inhabitants, in vestry assembled, or the major part of them, is or shall be required by any law heretofore made, or that shall hereafter be made, in the absence of the incumbent where such vestry has been held, or shall be held, by the curate assistant, or other licensed minister, who shall officiate, and hold such vestry, in the place and stead of such absent incumbent, such acts of vestry shall be as good and effectual in law, as if the incumbent had been present at such act of vestry.

“III. And whereas by one other act passed in this kingdom in the twelfth year of the reign of his said late majesty King George the First, intituled, ‘An Act to encourage building of Houses, and making other Improvements on Church Lands, and to prevent Dilapidations,’ it is amongst other things enacted, that it shall and may be lawful for the chief governor or governors of this kingdom, and for every archbishop and bishop respectively, to grant any commission to two or more persons to view and examine the houses and improvements made on church lands, to be made by virtue of this or the former act, and to administer an oath to the commissioners so to be appointed to return a faithful account and estimate of the said buildings and improvements according to the best of their skill and knowledge; and whereas the usual practice has been to insert a clause in such commissions, authorizing a person or persons therein named to administer such oath to such commissioners; and a doubt has arisen, whether such oaths, administered by the persons so authorized by the said commissions, can be or have been duly and legally administered by virtue of the said act; to remove which doubt be it enacted by the authority aforesaid, that it shall and may be lawful for the chief governor or governors of this kingdom, and for every archbishop and bishop respectively, to authorize and empower one or more persons to be named in such commissions, or any one of them, to administer such oath as in and by the said act is required, to the commissioners so to be appointed; and all such oaths as shall be so administered, and also such oaths as have been heretofore administered by any persons heretofore authorized and appointed by any such commission, shall be deemed and adjudged to be and to have been duly administered.

“IV. And whereas it is further provided by the said statute, that where any archbishop, bishop, or other ecclesiastical person, shall demand payment for any buildings or other improvements by virtue of any certificate granted, that upon complaint of the successors of dilapidations in the houses, outhouses, or improvements, a commission shall be granted in the manner and with the powers before mentioned, and the commissioners shall return a just report of the same to the chief governor or governors, archbishop or bishop, respectively, who upon hearing the allegations of each party shall ascertain such sums, as they shall judge reasonable to be allowed for such dilapidations: and whereas the said provision extends only to the cases where the person who has obtained such certificate suffers such dilapidations; and it would contribute much to the preservation of the buildings and other improvements on demesne lands and the glebes of the clergy, if the said provisions

were extended to all cases where any archbishop, bishop, or other ecclesiastical person shall have a right to charge his successors, by virtue of the said act, or any former act, with the payment of any money on account of any payments made by him to his predecessors, for buildings or other improvements, certified as is before mentioned; be it enacted by the authority aforesaid, that upon any complaint made of dilapidations to the said chief governor or governors, or any archbishop or bishop, by the successor chargeable with such payments, it shall and may be lawful for the said chief governor or governors, or such archbishop or bishop, to issue such commission or commissions, with such powers and authorities as in the said act are mentioned; and upon the return of such commissions and hearing the allegations of each party, to ascertain such sum as they shall adjudge reasonable to be allowed for such dilapidations; which shall be deducted out of the sum payable by such successor, and shall by them be laid out in repairing such buildings and improvements as in and by the said former act is directed.

“V. And be it further enacted by the authority aforesaid, that in all cases whatsoever where any bishop or other ecclesiastical person shall suffer any dilapidations in the buildings or improvements on their demesne or glebe lands, it shall be lawful for the archbishop of the province in the case of a bishop, or for the bishop in the case of any other ecclesiastical person in his diocese, to issue such commissions, with such powers and authorities, and to ascertain such sums as shall be judged reasonable to be expended or allowed for the repair of such dilapidations, in such manner as is prescribed by the said act, and to enforce the payment of such sums as shall be so ascertained, in such manner, as by the laws now in being the sums adjudged to be paid or allowed for dilapidations are recoverable.”

STAT. 7 GEO. 3, c. 9. [IR.] payments to predecessors, such commissions as in 12 Geo. 1, c. 10, s. 9, may issue, and the sum ascertained, deducted, and laid out in improvements, as by said act. The archbishop in case of a bishop, or the bishop in case of other ecclesiastical, may issue commission, and ascertain sums for repair of dilapidation, as by 12 Geo. 1, c. 10, and enforce payment as by the laws now in being.

XXIV. STAT. 7 GEORGII 3, c. 17(1). [IRELAND.] A.D. 1767.

“An Act for erecting new Chapels of Ease in the Parish of Armagh, and making such Chapels, and those that are already erected in the said Parish, Perpetual Cures; and for making a proper Provision for the Maintenance of Perpetual Curates to officiate in the same.”

STAT. 7 GEO. 3, c. 17. [IR.]

XXV. STAT. 7 GEORGII 3, c. 21. [IRELAND.] A.D. 1767.

“An Act to continue and amend an Act passed in the third year of His Majesty's Reign, intituled, An Act to amend and explain an Act made in the thirty-third year of the Reign of Henry the Eighth, intituled, An Act for Tithes, and for other Purposes therein mentioned.”

STAT. 7 GEO. 3, c. 21. [IR.]

[Owner of corn, hay, peas, or beans, save in gardens, to give forty-eight hours' written notice of time of setting out tithe, to person entitled, or his proctor or manager, or, if neither at house in parish, to some one there above sixteen; and truly to set out and deliver same, without fraud or delay; and receiver may make it on the field, in stacks or otherwise, there to remain and be preserved while any of the rest undrawn. s. 1. If neither reside in parish or union, forty-eight hours' notice fixed on church-door, and kept there from ten to one, sufficient. s. 2. In suit of subtraction of predial, sufficient to prove promovent, incumbent or impropiator by reputation, and that he acted as such when the tithe accrued, or before, unless title controverted, and “not true and legal incumbent or impropiator” pleaded. s. 3. Before citation issues for subtraction of predial, a petition to be lodged in court's registry, containing all such then due, and attested copy thereof to be served with copy of citation. Citation to give at least thirty days after date, for appearance, and to intimate, that, appear or not, judge will then proceed; and to be served, as usual, in three days after date. On return thereof, and proof of service of both, by oath before the judge, endorsed or annexed, he may proceed summarily by witnesses, *viva voce*, and other proofs, and give final sentence, either

(1) Altered and amended by Stat. 11 & 12 Geo. 3, c. 16, s. 16. (I.) Stat. 13 & 14 Geo. 3, c. 27. (I.)

STAT. 7 GEO. 2, c. 21. [1R.] in presence, &c., or in pain of contumacy, with costs not above 1*l.* 6*s.* 8*d.* s. 4. No subscription of advocate or proctor necessary to such petition; nor any exception for form; and either party may appear without proctor. Judges and registrars required to receive such appearances, and such proofs; and to determine in the most summary manner, not regarding form, but justice only. No fee to judge or registrar; but ordinary may recompense them discretionally out of proxies at visitation. s. 5. But if party condemned for predial tithe or costs, neglect payment fifteen days after due service of monition, he may, if not above 20*l.*, be sued by civil bill at next assizes, or wherever civil bills may be brought; and proof of such service, and a copy under court's seal, conclusive evidence. Execution and costs as on other civil bills. s. 6. But appeal from the sentence of the spiritual court, may still be made. s. 7. If judge of assize think the matter was of ecclesiastical cognizance, defendant to the civil bill may give in evidence any legal or equitable discharge in whole or part, subsequent to the sentence; and may examine plaintiff or his proctor, or manager, on oath, on giving them reasonable notice to attend. ss. 8, 9. None to have right hereunder to any kind of tithe to which not already entitled by law or equity. s. 10. Quaker refusing great or small tithes or dues, two justices, not patron, nor interested, shall, on complaint, summon; and, on appearance, or proof of service, examine summarily, ascertain, and order payment, so as sum ordered exceed not 10*l.*, (extended to 50*l.* 54 Geo. 3, c. 68,) and on refusal to pay, levy by distress, and sell by public cant, at next market town, on four days' notice, posted. Appeal to next assizes. Costs on affirmance. No warrant of distress till appeal determined. And no remedy thereby, where not already entitled by law and custom. s. 11, &c. No proctor to act as tithe farmer, or take any tithe except his own. s. 16.]

STAT. 7 GEO.
3, cap. xxviii.

XXVI. STAT. 7 GEORGII 3, cap. xxviii. A.D. 1767.

"An Act for vesting in the Dean and Chapter of Durham a certain Piece of Ground, adjoining to the Town of South Shields, in the County Palatine of Durham; and for making an adequate Compensation to the Curate of the Chapel of Saint Hilds, in the said County, and his Successors, for the same; and for enabling the said Dean and Chapter to remove the Fairs and Markets out of the Town of South Shields, and to cause the same to be held on the said Piece of Ground."

STAT. 7 GEO.
3, c. 69.

XXVII. STAT. 7 GEORGII 3, c. 69. A.D. 1767.

"An Act for rebuilding the Parish Church of Saint Martin, within the City of Worcester."

STAT. 7 GEO.
3, c. 74.

XXVIII. STAT. 7 GEORGII 3, c. 74. A.D. 1767.

"An Act for enlarging the Term and Powers granted by two Acts of Parliament of the third of King George the First, and the eleventh of His late Majesty, for enabling the Parishioners of Saint Mary, Rotherhithe, in the County of Surrey, by certain Funeral Rates therein mentioned, to finish the said Parish Church, and for purchasing an additional Burial Ground, and to enable them to raise Money for purchasing the present Parsonage House, and converting the Site thereof into a Burial Ground, and for providing a new Parsonage House."

STAT. 7 GEO.
3, c. 80.

XXIX. STAT. 7 GEORGII 3, c. 80. A.D. 1767.

An Act for enlarging the Term and Powers granted by an Act of the second year of the Reign of His present Majesty, for erecting and building two new Churches, and providing Burial Places, in the Town and Parish of Liverpool, in the County Palatine of Lancaster."

STAT. 7 GEO.
3, c. 99.

XXX. STAT. 7 GEORGII 3, c. 99. A.D. 1767.

"An Act for establishing and well-governing a General Hospital, to be called Addenbrooke's Hospital, in the Town of Cambridge."

- XXXI. STAT. 8 GEORGII 3, cap. xxxvi. A.D. 1768. STAT. 8 GEO.
3, cap. xxxvi.
An Act for making a Building, intended for a Chapel, lately erected by William Wright, Esquire, in the Township of Stockport, and County and Diocese of Chester, a perpetual Cure and Benefice; and for endowing the same."
- XXXII. STAT. 9 GEORGII 3, SESS. 2, c. 16(1). A.D. 1769. STAT. 9 GEO.
3, SESS. 2,
c. 16.
"An Act to amend and render more effectual an Act made in the twenty-first year of the Reign of King James the First, intituled, An Act for the general Quiet of the Subjects against all Pretences of Concealment whatsoever."
- XXXIII. STAT. 9 GEORGII 3, SESS. 2, c. 31. A.D. 1769. STAT. 9 GEO.
3, SESS. 2,
c. 31.
"An Act for the establishing and well-governing an Hospital for the Reception, Maintenance, and Employment of Penitent Prostitutes . . ."
- XXXIV. STAT. 9 GEORGII 3, SESS. 2, c. 60. A.D. 1769. STAT. 9 GEO.
3, SESS. 2,
c. 60.
"An Act to enable Edward Byrom, Esquire, to complete a Building intended for a new Church, in the Town of Manchester, and for making the same a perpetual Cure and Benefice; and for other Purposes."
- XXXV. STAT. 9 GEORGII 3, SESS. 2, c. 61. A.D. 1769. STAT. 9 GEO.
3, SESS. 2, c.
61.
An Act for raising Money to discharge Debts contracted for rebuilding the Parish Church and Tower of Saint Nicholas, in the City of Bristol; and to rebuild the Spire, and complete the said Church; and for other Purposes."
- XXXVI. STAT. 9 GEORGII 3, SESS. 2, cap. lxxv. A.D. 1769. STAT. 9 GEO.
3, SESS. 2,
cap. lxxv.
"An Act for dividing the Vicarage of Kingston upon Thames, in the County of Surrey, with the several Chapelries or Curacies thereunto belonging, or thereon dependent, into two separate Vicarages, and two separate perpetual Curacies, in such manner as is therein mentioned."
- XXXVII. STAT. 9 GEORGII 3, SESS. 2, c. 85. A.D. 1769. STAT. 9 GEO.
3, SESS. 2,
c. 85.
"An Act for building a Chapel at Plymouth Dock, in the Parish of Stoke Damerell, in the County of Devon."
- XXXVIII. STAT. 10 GEORGII 3, cap. v. A.D. 1770. STAT. 10 GEO.
3, cap. v.
"An Act to enable the Bishop of Bristol to grant a Lease or Leases of a Close of Ground, commonly called The Bishop's Park, in the Parish of Saint Augustine, otherwise called Saint Augustine the Less, within the City of Bristol, or the Suburbs thereof;"
- XXXIX. STAT. 10 GEORGII 3, c. 112. A.D. 1770. STAT. 10 GEO.
3, c. 112.
"An Act for building a new Parish Church, and declaring the present Parish Church a Chapel; for making a Cemetery or Churchyard; and for building an House for the use of the Minister of the Parish of Saint Mary le Bone, in the County of Middlesex."
- XL. STAT. 11 GEORGII 3, c. 17. A.D. 1771. STAT. 11 GEO.
3, c. 17.
"An Act to explain and amend so much of an Act of the sixth year of His present Majesty, for Paving the Town and Borough of Southwark, in the County of Surrey, as relates to the Commissioners of Sewers; and for regulating the manner of taxing Churches, and other Public Buildings, within the limits of the said Act."
- XLI. STAT. 11 GEORGII 3, cap. xxxii. A.D. 1771. STAT. 11 GEO.
3, cap. xxxii
"An Act for rendering effectual an Exchange of certain Lands, Parcel of the Glebe of the Rectory of Avington, in the County of Southampton, for certain other Lands in the said Parish of Avington, belonging to the most honourable the Marquis of Carnarvon."

(1) In *Gibson v. Clark*, (1 J. & W. 159,) it was doubted, whether this statute applied to adrowsons.

STAT. 11 & 12
GEO. 3, c. 16.
[Ir.]

XLII. STAT. 11 & 12 GEORGII 3, c. 16 (1). [IRELAND.] A.D. 1771-2.

"An Act for erecting Parochial Chapels of Ease in Parishes of large extent, and making such Chapels, and those that are already erected, perpetual Cures, and for making a proper Provision for the Maintenance of perpetual Curates to officiate in the same; and also in like manner for making appropriate Parishes perpetual Cures."

STAT. 11 & 12
GEO. 3, c. 17.
[Ir.]

XLIII. STAT. 11 & 12 GEORGII 3, c. 17 (2). [IRELAND.] A.D. 1771-2.

"An Act for rendering more effectual the several Laws for the better enabling the Clergy, having Cure of Souls, to reside upon their Benefices, and to build on their respective Glebe Lands, and to prevent Dilapidations; and for the Encouragement of Protestant Schools within this Kingdom of Ireland."

To remove
doubts on 10
Gul. 3, c. 6.

"Whereas doubts have been conceived, whether if any archbishop or bishop or other ecclesiastical person, shall purchase houses ready built, or lands fit for such buildings, in pursuance of an act passed in the tenth year of King William the Third, intituled, 'An Act to encourage building of Houses, and making of other Improvements on Church Lands, and to prevent Dilapidations,' such archbishop, bishop, or other ecclesiastical persons, are entitled to receive such proportions of the expenses attending such purchase and improvements, as they would be entitled to under an act passed in the twelfth year of his majesty King George the First, intituled, 'An Act to explain and amend the aforesaid Act,' in case they had built houses upon their demesne, glebes, or mensal land: to remove which doubts, be it enacted by the king's most excellent majesty by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, in all cases hereafter where any archbishop, bishop, or other ecclesiastical person, shall purchase to them and their successors respectively houses already built with conveniences thereto belonging, or lands fit for such buildings, with the consents and for the purposes mentioned in the foresaid act of the tenth year of King William the Third, that the purchase money for the same, and the expense of buildings, additions, and repairs being ascertained, and a certificate granted in the manner directed by the foresaid act of the twelfth of George the First, shall be repaid by the successors of such archbishop, bishop, and other ecclesiastical person respectively, in the proportions, at the times, and in the manner directed by the last mentioned act.

Ecclesiastics
purchasing
houses, or
lands fit for
building, as in
10 Gul. 3, c. 6,
on certificate,
as by 12 Geo.
1, c. 10,
repaid by
successors, as
therein di-
rected.

Fee-farm lease,
or for ever,
deemed pur-
chase; ground
rent may be
reserved.

"II. And be it enacted by the authority aforesaid, that a fee-farm lease, or a lease of lives with a covenant of renewal for ever, shall be deemed and taken to be a purchase within the intention and meaning of this act; and that a ground rent may be reserved out of the premises so purchased.

"III. And whereas by an act of parliament, made in this kingdom in the twelfth year of the reign of King George the First, intituled, 'An Act to explain and amend an Act, intituled, An Act to encourage building of Houses, and making other Improvements on Church Lands, and to prevent Dilapidations,' it is amongst other things enacted, that every archbishop, bishop, and other ecclesiastical person whatsoever, who should from and after the first day of May in the year of our Lord one thousand seven hundred and twenty-six make, build, add to, erect, or repair any house, outhouses, garden, or other necessary improvement on his demesne, glebe, or mensal lands, in the manner therein directed, for which a certificate should be obtained, as by the said act is appointed, such archbishop, bishop, or other ecclesiastical person, his executors or administrators respectively,

(1) So much of Stat. 11 & 12 Geo. 3, c. 16, as relates to the uniting or disappropriating appropriate parishes, was repealed by Stat. 7 & 8 Geo. 4, c. 43; and Stat. 7 Geo. 4, c. 72, repealed so much of Stat. 11 & 12 Geo. 3, c. 16, whereby it is enacted, that occupiers of land within every parish shall, as to every cess or tax for the repairing of any church or chapel, or for other necessary

charges belonging to such church or chapel, be and be construed to be inhabitants within every such parish, whether such parish be a parish of itself, or be united to any other parish by episcopal union, or otherwise, or whether such occupiers do or do not reside or dwell within such parish.

(2) Vide Stat. 5 Geo. 4, c. 91.

should from his next and immediate successor have and receive three fourths of the sum or sums so certified for; provided that no certificate be granted for a greater sum than two years' clear income of the benefice: and whereas the first improvers, who erect buildings and make other improvements on their demesne, glebe, or mensal lands, are often contrary to their intention induced by the great uncertainty of estimates, however carefully made, to lay out sums of money greatly exceeding two years' income of their benefice, and must be liable to all losses, that may happen by any failure or misconduct in the artificers or conductors of such works, whereby they become greater losers by their buildings and improvements, than the law intends they should be, and are also at great trouble in carrying on such buildings and improvements, and are put to an expense, to which their successors are not subject, in providing proper places of habitation for their residence, before the intended buildings are completed and fit for their reception; and are also necessarily obliged to advance greater sums of money than any of their successors: be it therefore enacted by the authority aforesaid, that in all cases where any archbishop, bishop, or other ecclesiastical person, shall from and after the passing of this act obtain a certificate for erecting new buildings, or for making other necessary improvements, on a new site within his demesne, glebe, or mensal lands, in such manner as is by the said in part recited act directed, such archbishop, bishop, or other ecclesiastical person, his executors or administrators respectively, shall from his next and immediate successor instead of three fourths of such sum have and receive the full sum comprised and specified in such certificate: provided always that such sum shall not exceed the clear value of two years' income.

“IV. Provided also, and it is hereby expressly declared, that this act shall not extend, nor be construed to extend, to any repairs, additions, or improvements, which shall be made to any buildings or other improvements, which have been formerly made; but every such archbishop, bishop, and other ecclesiastical person, making such repairs, additions, and improvements as aforesaid, shall receive the same proportion of the money expended, to which they were entitled before the making of this act; and such successor, having paid the sum so certified as aforesaid, he, or his executors or administrators respectively, shall be entitled to and receive three fourths thereof from his next successor; which successor having paid the said three fourths of the said first sum, he, or his executors or administrators respectively, shall be entitled to and receive two thirds thereof, that is, one moiety of the sum first certified from his next successor, which successor having paid the said moiety of the said first sum, he, or his executors or administrators shall be entitled to and receive from his next successor one half thereof, that is, one fourth part of the sum or sums in the first certificate mentioned; all which sums, so to be paid and received, shall and may be paid and recovered within the times, and in the same manner, as is appointed by the several laws now in being relative to the payment and recovery of money laid out in buildings and improvements, made on the demesne or mensal lands and glebes of archbishops, bishops, or other ecclesiastical persons.

“V. Provided always, and be it enacted by the authority aforesaid, that such successor to the person, who obtained the said certificate, shall pay the three fourths of the sums so certified in the proportions, at the times, and in the manner, as is directed by the said in part recited act, but shall not be compellable to pay the last remaining fourth part of the sum, so certified and made payable by this act, until the end of two years, to be computed from the time he became chargeable with the payment of the whole sum of money certified as aforesaid.

“VI. And whereas by the said last mentioned and in part recited act it is enacted, that when any certificate shall be given or made out for any sum or sums of money to be charged on any archbishopric, bishopric, or other ecclesiastical living, for any buildings or improvements, such certificate shall contain a true account of the true yearly value or income of the said archbishopric, bishopric, or ecclesiastical living, as the same shall be proved to be before such persons respectively, who shall grant such certificate, whose judgment therein shall be final;

STAT. 11 & 12
Geo. 3, c. 17.
[1r.]

On certificate for new buildings, or necessary improvements on new site, in demesne, glebe, or mensal lands, as by 12 Geo. 1, c. 10, instead of three fourths, the full sum in certificate received from next successor, not exceeding two years' income, if completed, 13 & 14 Geo. 3, c. 27, s. 6. Extended to free schools, s. 7.

Not extended to repairs or improvements to buildings formerly made. The same proportion of money expended as before; three fourths from next successor;

two thirds the next;

the next one fourth;

paid as by the several laws in being.

The three fourths paid as by 12 Geo. 1, c. 10; the remaining fourth by this act, not till two years.

By 12 Geo. 1, c. 10, s. 1, in the certificate the value of the particular living only computed, unless a real

STAT. 11 & 12
GEOR. 3, c. 17.
[IR.]

parliamentary
union.

On improve-
ment on lands
of dignities or
livings conso-
lidated thereto
immemorially,
or by royal
charter, though
the evidence
lost, the whole
value of such
dignities and
livings united
inserted in the
valuation and
certificate.

and that the said yearly value or income shall be computed of that particular ecclesiastical living only, whereon such buildings or improvements are made, and no other, unless there be a real union by or pursuant to any act of parliament of the said living with other livings, from which it is inseparable: and whereas several livings or benefices have for time immemorial been appropriated to or annexed to deaneries, archdeaconries, or prebends, or for the consolidation and appropriation whereof royal charters have been granted: be it further enacted by the authority aforesaid, that where any buildings and improvements have been or shall be made on any glebe or mensal lands belonging to any dean, archdeacon, prebendary, or other dignitary, or on the lands belonging to any benefice, rectory, or vicarage, which have been united or consolidated to such dignities from time immemorial, or for the consolidation and appropriation whereof royal charters have been granted, though the evidence of such consolidations and appropriations is now lost by the length of time, and the troubles of this kingdom, that then and in all such cases the whole value of all such dignities, and the several livings thereto united, annexed, or appropriated, shall be included and inserted in the valuation, and in the certificate granted or to be granted for such buildings and improvements.

“VII. And whereas several of the glebe houses formerly erected in this kingdom have been built of bad materials, and are so ill contrived and situated, as that they require to be rebuilt, which in many places cannot conveniently be done by reason of the bad situation thereof; and a doubt hath arisen, whether the site of such old houses may be changed, and a new house built in any other place, within the intent and meaning of the former laws for building and improving on glebe lands, so as to entitle the incumbent, that shall build such new houses, to the encouragement given in the said acts: for clearing of which doubts, and for the further encouragement of building new houses on new sites, and the better execution of the said acts, be it further declared and enacted by the authority aforesaid, that it shall and may be lawful for any ecclesiastical person, having any benefice with cure of souls, with the consent and approbation of the archbishop or bishop of the diocese, signified by writing under his hand and seal, to change the site of the glebe house to such benefice belonging, and to make, build, or erect a new glebe house, outhouses, orchards, gardens, and other necessary improvements on any other part of his glebe land belonging to his benefice, that shall be more fit and convenient for the residence of him and his successors; and that such ecclesiastical persons, who shall build and improve in manner aforesaid, or have already built and improved, on a new site, and have procured or shall procure such certificate, as is directed by the said former acts, shall be entitled to all the encouragements, and shall and may have, take, receive, and recover all such sum and sums of money, as he or they would or might be entitled to have and receive for the building such house, and making such improvements by the said former acts and by this present act; and that the immediate successors of such incumbents, and their successors respectively, and their respective executors or administrators, shall be entitled to and shall and may have and receive such proportions of the sum and sums of money, laid out and expended in erecting such new house and making other improvements, as they would be respectively entitled to by virtue of the said former acts or this act; the said several and respective sums, to be received and recovered at such times, and in such manner, and by such ways and methods, as ecclesiastical persons are enabled by the said former acts and by this act to recover any sum or sums of money laid out in building and making other improvements on their glebe lands.

“VIII. Provided that no ecclesiastical person, who at the time of his building or improving on such new site shall have a mansion house on his glebe, shall be entitled to or have any certificate for such new building or improvements, until he shall execute and perfect a good and sufficient release and discharge of all demands whatsoever, that he, his executors, or administrators might or could have had, or be entitled unto, for or on account of the building or improving of that house, whereof the site shall be changed pursuant to this act.

Site of glebe
house, may,
with diocesan's
consent, be
changed;
a new one,
with necessary
improvements,
erected on
more conven-
ient part;
and, on certi-
cate, entitled
to all encour-
agement, and
to receive such
sums as by the
former and
this act.

All demands
for building or
improving the
house changed
released.

“IX. Provided also, that no ecclesiastical person, that has changed or shall change the site of his glebe house, and make new buildings and improvements, shall, from the time he shall so build and improve, be obliged to keep the former glebe house or outhouses thereunto belonging in repair, or be chargeable with dilapidations for not repairing thereof.

“X. And for the more effectual prevention of dilapidations of glebe houses and other improvements, made upon church lands, be it further enacted by the authority aforesaid, that in all cases whatsoever where any dilapidations have happened either by neglect of the incumbent, or any of his predecessors, and that the glebe houses or other improvements are out of repair, or in a ruinous or decayed condition for want of the proper, annual, and necessary repairs, that then and in all such cases it shall and may be lawful to and for the several archbishops and bishops within their respective dioceses, (after such commission has issued, and such steps have been taken to ascertain such sums as shall be adjudged reasonable to be expended for the repair of such dilapidations, as by an act made in the eighth year of his present majesty, intituled, ‘An Act for explaining and amending an Act passed in the second year of His Majesty King George the First, intituled, An Act for the real Union and Division of Parishes, and for other Purposes therein mentioned,’ and the laws now in force in this kingdom are directed,) to issue a monition under their archiepiscopal or episcopal seals to the incumbent of any such benefice or other ecclesiastical preferment, where such dilapidation hath so happened, admonishing such incumbent within a certain time to be specified in said monition effectually to repair all such defects, as have so happened by means of such dilapidations as aforesaid, and to restore the same, and put the said house and other improvements in such staunch and habitable order and condition, as that the same may be fit and proper for the residence of the incumbent and his successors; and in case the incumbent after being duly served with said monition shall refuse or neglect to obey the same, that then and in all such cases it shall and may be lawful to and for the several archbishops and bishops within their respective dioceses, and they are hereby specially required, to put one moiety of the rents and profits of such benefice or other ecclesiastical preferments under sequestration, until a sum shall be received sufficient to answer the purposes of said monition, and to put such house or other improvements in staunch and habitable order and condition, so as to be fit and proper for the residence of the incumbent and his successors; and every such incumbent, or, in case a vacancy shall happen, every successor of such incumbent shall effectually repair all such defects, as were specified in the said monition, and shall receive from time to time from such sequestrator such sums of money, as shall be necessary to complete such repairs, and in the space of twelve months shall produce proper vouchers to the archbishop or bishop of the diocese respectively, that the sum of money, raised in manner aforesaid, has been justly laid out in such repairs.

“XI. Provided always, that nothing in this act contained shall extend, or be construed to extend, to take away from the force of any law or statute now in being in this kingdom to prevent dilapidations; but that the same shall continue in full force, as if this act had never been made, unless where the same are altered or amended by this present act.

“XII. And whereas by an act of parliament made in the twelfth year of the reign of King George the First, intituled, ‘An Act for the more effectual erecting and better regulating of Free Schools, and for rebuilding and repairing of Churches,’ after reciting that most of the lands, that were granted by King Charles the First to James, then lord archbishop of Armagh, and his successors, in trust for the masters of several free schools for the time being, did to the great disadvantage of the country continue unimproved, because the tenants holding such lands could not have a certain interest therein for any term of years; it is among other things for the reasons aforesaid enacted, that it should and might be lawful to and for the Archbishop of Armagh and his successors by and with the consent of the respective schoolmasters, testified by their being parties and signing such lease or leases, to demise, set, and to farm let, all or any part of the said lands for

STAT. 11 & 12
Geo. 3, c. 17.
[I.R.]

Not obliged to repair the former glebe house.
On dilapidation by neglect of incumbent or predecessors, after a commission, and ascertaining as by 8 Geo. 3, c. 9, a monition issued to repair.

On neglect, a moiety sequestered, till sufficient received.

Incumbent, or, on vacancy, successor, shall effectually repair defects in the monition, receive money from sequestrators, and, in twelve months, vouch to diocesan.

Former laws against dilapidation in force, save as altered.

STAT. 11 & 12
GEO. 3, c. 17.
[IR.]

Archbishop of
Armagh, with
consent of
schoolmasters,
parties, may
lease not above
twenty-one
years from
making, re-
serving rent,
at peril of
lessees, three
fourths of true
value,
ascertained by
verdict pe-
remptory to
both parties.

No power to
lessees to
waste.

Renewal fines
paid to arch-
bishop for
building or
repairing
school houses,
or otherwise
for the schools.

any term not exceeding twenty-one years, and for no longer term, from the making thereof, at and under the best and most improved rent that could be got for the same, to be reserved to the said archbishop and his successors in trust for the masters of the said respective schools for the time being, so as there be no other lease in being, which should not expire within one year from the making such lease or leases: and whereas there are not fit and convenient houses for the residence of such masters, and for the reception and accommodation of scholars, or persons to be instructed by them, owing in a great measure to the want of power in such archbishop with the like consent from time to time to renew the leases, or to make new leases of the said lands: for remedy whereof be it enacted by the authority aforesaid, that it shall and may be lawful to and for Richard archbishop of Armagh and his successors in trust as aforesaid from time to time, and at all times, by and with the consent of the respective schoolmasters, testified by their being parties and signing such lease or leases, to demise, set, and to farm let, all or any part of the said lands for any term not exceeding twenty-one years, and for no longer term, from the making thereof; upon which lease and leases shall be reserved and continued due and payable unto the said archbishop and his successors during the said term of twenty-one years so much yearly rent or profits, at the peril of the lessees who shall take the same, as the three fourths of the true value of the said lands at the time of making such lease shall amount unto, as the same shall or may hereafter appear upon a legal trial between the successors of such lessor or lessors, if they shall question the same, and the said lessees or their assignees, by verdict of twelve indifferent persons at the common law, which verdict shall be peremptory to both parties and their respective successors and assigns during said term; in which leases shall be contained no power, liberty, or privilege for such lessees or their assignees to commit waste, or to be punishable of waste.

“XIII. Provided, that whatsoever fine or sum of money shall be given for or on account of every or any lease, or renewal of a lease, of any of said lands, shall be paid to the said archbishop and his successors, to be laid out by him and them with the consent of the respective masters of such schools in building and repairing houses for the residence of such masters, and for the reception and accommodation of scholars, or persons to be instructed by them, or otherwise for the use and benefit of such schools.”

STAT. 11 & 12
GEO. 3, c. 19.
[IR.]

XLIV. STAT. 11 & 12 GEORGII 3, c. 19. [IRELAND.] A.D. 1771-2.

“An Act for reviving and continuing several temporary Statutes that have lately expired, and for continuing others that are near expiring.”

[Stat. 7 Geo. 3, c. 21, made perpetual.]

STAT. 11 & 12
GEO. 3, c. 21.
[IR.]

XLV. STAT. 11 & 12 GEORGII 3, c. 21. [IRELAND.] A.D. 1771-2.

“An Act to encourage the reclaiming of unprofitable Bogs.”

Like lease by
tenants for
life, bishops,
body corpo-
rate, for re-
claiming bog,
not above fifty
acres to one;
and from the
determination,
no longer lease
by ecclesiastic
or body corpo-
rate than as by
10 & 11 Car.
1, c. 3.

“II. And be it further enacted by the authority aforesaid, that it shall be lawful for every tenant for life, archbishop, bishop, and body corporate, ecclesiastical, or civil, to make leases of any unprofitable bog for the purpose of reclaiming the same, and also of any quantity of arable land, not exceeding one half of an acre, as a site for an house, or for the purpose of delving for gravel or limestone for manure, next adjoining to such bog, for any term not exceeding sixty-one years, at such rent as shall be agreed upon: provided, that no greater quantity of such bog shall be so set to any one person than fifty acres, plantation measure: and provided, that from the expiration, surrender, or other determination of such lease no longer lease of such bog, so to be reclaimed, shall be made by any ecclesiastical person or body corporate, than such lease as is prescribed by an act made in the eleventh year of King Charles the First, intituled, ‘An Act for the Preservation of the Inheritance, Rights, and Profits of Lands belonging to the Church and Persons Ecclesiastical.’

“III. Provided also, that if the bog so to be demised, or one half part thereof, shall not be reclaimed within twenty-one years from the commencement of the lease to be made thereof, that in such case the said lease shall at the expiration of twenty-one years be null and void to all intents and purposes.”

STAT. 11 & 12
GEO. 3, c. 21.
[Ir.]
Void, if half
not reclaimed in twenty-one years.

XLVI. STAT. 11 & 12 GEORGII 3, c. 22. [IRELAND.] A.D. 1771-2.

“*An Act to prevent burying Dead Bodies in Churches.*”

STAT. 11 & 12
GEO. 3, c. 22.
[Ir.]

“Whereas the burying of dead bodies in churches is a practice very injurious to health: be it enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal and commons in this present parliament assembled, and by the authority of the same, that from and after the first day of August one thousand seven hundred and seventy-two no person or persons shall bury any dead body, or break up any floor, ground, or pavement within the walls of any church or chapel, or chancel, aisle, room, or place thereunto belonging, under the same roof with such church or chapel, or within twelve feet on the outside of the walls of any church or chapel, for the purpose of burying any dead body; and that no ecclesiastical person shall perform that part of the burial service, appointed to be said at the grave of any dead person, within the walls of any church or chapel, chancel, aisle, room, or place thereunto belonging, or within twelve feet on the outside of the walls of any church or chapel; and that every person, who shall offend herein, shall forfeit for every such offence the sum of ten pounds, to be recovered by civil bill, by the churchwardens, or either of them, or by any parishioner of the parish wherein such offence shall be committed, to be accounted for at the next vestry after the same shall be received, and laid out in the repairs of such church or chapel.

No burial, nor
the service
performed,
within a
church, chapel,
or under same
roof, or twelve
feet on outside.

Penalty 10l.
by civil bill,

for repairing
the church.

“II. Provided always, that nothing herein contained shall extend or be construed to extend to prohibit or prevent the burying in any arched vault under any church, chapel, chancel, or aisle, room, or place thereunto belonging, where the only door to such vault opens on the outside of the walls of such church or chapel, chancel, aisle, room, or place.

Arched vaults,
the only door
on the outside,
excepted.

“III. And be it further enacted by the authority aforesaid, that this act shall be read in every cathedral and parish church in this kingdom after morning prayer on every first Sunday in May, first Sunday in August, first Sunday in November, and first Sunday in February, in every year.”

Read in
churches four
times a year.

XLVII. STAT. 11 & 12 GEORGII 3, c. 27(1). [IRELAND.] A.D. 1771-2.

“*An Act for explaining and amending an Act made in the eighth year of the Reign of Her late Majesty Queen Anne, intituled, An Act for explaining and amending an Act, intituled, An Act to prevent the further Growth of Popery, so far only as the same makes a Provision for the Maintenance of Popish Priests converted to the Protestant Religion.*”

STAT. 11 & 12
GEO. 3, c. 27.
[Ir.]

XLVIII. STAT. 11 & 12 GEORGII 3, c. 30. [IRELAND.] A.D. 1771-2.

“*An Act for badging such Poor as shall be found unable to support themselves by Labour, and otherwise providing for them, and for restraining such as shall be found able to support themselves by Labour or Industry from begging.*”

STAT. 11 & 12
GEO. 3, c. 30.
[Ir.]

“IV. And be it further enacted by the authority aforesaid, that every archbishop and bishop of this kingdom may and are hereby authorized and empowered to grant such portions of ground or land as aforesaid out of the estates of their sees respectively to the said corporations respectively for the sites of such houses as aforesaid for such estate or estates, whether in fee, for lives renewable or not renewable, or for years, at such rent and fines as such archbishop or bishop shall think fit, or without any rent or fine, if such archbishop or bishop shall think fit; and that every such grant and lease shall be good and valid against such arch-

Bishops may
grant such
land out of
their sees for
sites of houses,
in fee, for lives
renewable or
not, or years,
with or without

STAT. 11 & 12
GEO. 3, c. 30.
[1r.]

rent or fine,
notwithstand-
ing 10 & 11
Car. 1, c. 1, or
other law.
Badges to the
poor resident
one year, and
licence to beg,
specifying
name, birth,
character, and
cause of
poverty.
Justices
licensed to
deliver them.

bishop and bishop and their successors respectively without the concurrence of any other person or body of men, notwithstanding an act of parliament passed in this kingdom in the reign of the late King Charles the First, intituled, 'An Act for the Preservation of the Inheritance, Rights, and Profits of Lands belonging to the Church and Persons Ecclesiastical,' or any other law or usage that is or has been of force in this kingdom; and the said corporations respectively are hereby authorized and required to grant to the helpless poor, who have resided for one year within their respective counties, cities, or towns, badges or marks of such materials and of such a stamp or impression, as they shall think fit; and to grant to such helpless poor a licence to beg in such barony, city, town, or parish, within the counties of the said corporations respectively, as they shall think fit, for such a time or term as they shall think fit, specifying the names and places of birth and the characters of the persons so licensed, and the causes, as nearly as may be collected of the poverty of the person so licensed, and whether reduced to that state by sickness or misfortune; and the said corporations respectively are hereby authorized to license so many justices of the peace within their respective counties, as they shall think fit, to deliver such badges, and to grant such licences."

STAT. 12 GEO.
3, c. 11.

XLIX. STAT. 12 GEORGII 3, c. 11 (1). A.D. 1772.

"An Act for the better regulating the future Marriages of the Royal Family."

"Most Gracious Sovereign,

"Whereas your majesty, from your paternal affection to your own family, and from your royal concern for the future welfare of your people, and the honour and

(1) The effect of this statute has, upon two occasions, been discussed, *viz.* in *Heseltine v. Murray (Lady Augusta)*; and before the House of Lords, in 1844, upon the claim of Sir Augustus D'Este to the dukedom of Sussex.

Heseltine v. Murray (Lady Augusta), (2 Add. 400,) was a suit brought by letters of request, from the judge of the Consistory court of London, in virtue of which, Heseltine, the king's proctor, prayed a citation, on the 20th of January, 1794, against Lady Augusta Murray, in a cause of nullity of marriage.

An appearance having been given for the party cited, a libel was afterwards brought in, and admitted, pleading the statute of 12 Geo. 3, c. 11, rendering any descendant of the body of King George the Second incapable of contracting marriage, under the age of twenty-five, without the royal consent declared in council, and pleading the birth and descent of Prince Augustus Frederic, (then Duke of Sussex,) and that no royal consent had been given to his marriage; and further pleading, that, on the 4th of April, 1793, Prince Augustus Frederic, being under twenty-one years of age, a marriage, or rather a shew or effigy of marriage, was, in fact, had or solemnized, or pretended so to be had, or solemnized, in the house of Lady Dunmore, at Rome, (but by whom, the party proponent was unable to set forth,) between the prince, and Lady Augusta; that they shortly after came to England, and, on the 4th of December, 1793, were married by banns, in the parish church of St. George, Hanover Square; and that both the marriages were void, for want of the royal consent, by virtue of the statute aforesaid.

Two exhibits were pleaded, *viz.* an extract

from the baptismal register of his royal highness, and an extract from the marriage register of St. George's, Hanover Square.

The law of Rome, or the validity or invalidity of the marriage by that law, was, in no manner whatever, pleaded in the cause.

Lady Augusta's proctor declared, that he confessed Stat. 12 Geo. 3, c. 11, to be a public act; and also confessed the two marriages pleaded in the libel; but, otherwise, contested suit negatively.

There was no direct proof of the marriage at Rome; but Lady Dunmore deposed that she believed, (because she was so assured by her daughter Lady Augusta, and also by a letter from the prince,) that they were married in her, Lady Dunmore's, house, at Rome, by a clergyman of the church of England in full orders.

Upon such facts, the following decree was pronounced by Sir William Wynne, (Dean of the Arches,) 14th July, 1794.

"And the judge did also pronounce, decree, and declare, that in respect to the fact of marriage, or rather shew, or effigy of marriage, pleaded in the said libel to have been had, or solemnized, or pretended to have been had, or solemnized, at the house of the Right Honourable Charlotte Countess of Dunmore, in the city of Rome, on the 4th day of April, 1793, there is not sufficient proof by witnesses, that any such fact of marriage, or rather shew, or effigy of a marriage, was, in any manner, had, or solemnized, at the said city of Rome, between his said royal highness, Prince Augustus Frederic, and the Right Honourable Lady Augusta Murray, spinster, the party cited in the cause; but that if any such marriage, or rather, shew or effigy of a marriage, was in fact had, or solemnized, at the said city of Rome, between the said parties, the said

dignity of your crown, was graciously pleased to recommend to your parliament to take into their serious consideration, whether it might not be wise and expedient

STAT. 12 GEO.
3, c. 11.

pretended marriage was, and is, absolutely null, and void, to all intents and purposes in law, whatsoever."

Upon the death of the Duke of Sussex, Sir Augustus D'Este, the son of the Duke of Sussex and Lady Augusta Murray, claimed, in 1844, at the bar of the House of Lords, the dukedom of Sussex, earldom of Inverness, and barony of Arklow:—and their lordships, after hearing counsel and receiving evidence in support of such claims, propounded the following question to the judges: *viz.*

"Evidence being offered of a marriage solemnized at Rome in the year 1793, by an English priest according to the rites of the church of England, between A. B. a son of his majesty King George the Third, and C. D. a British subject, without the previous consent of his said majesty, assuming such evidence to have been sufficient to establish a valid marriage between A. B. and C. D. independently of the provisions of Stat. 12 Geo. 3, c. 11, would it be sufficient, having regard to that statute, to establish a valid marriage in a suit, in which the eldest son of A. B. claims lands in England, as heir of A. B. by virtue of such alleged marriage?"

In answer to this question, the Lord Chief Justice *Tindal* delivered the unanimous opinion of the judges, as follows:

"I am requested by my brethren to inform your lordships, that it is the unanimous opinion of all the judges who have heard the argument in this case, that, assuming the evidence given to have been sufficient to establish a valid marriage between A. B. and C. D. independently of the provisions of Stat. 12 Geo. 3, c. 11, it is not sufficient, having regard to that statute, to establish a valid marriage in a suit, in which the eldest son of A. B. claims lands in England, as heir of A. B. by virtue of such alleged marriage.

"The question, my lords, turns entirely upon the legal construction of the statute above referred to, and is shortly this: whether, to bring a marriage within the prohibition of that statute, it is necessary that it should have been contracted within the realm of England; or whether the statute extends to prohibit and to annul marriages, wherever the same be contracted or solemnized, either within the realm of England or without?

"It is scarcely necessary to observe, that as your lordships' question states that A. B. is a son of his late majesty King George the Third, it applies to a descendant of the body of his late majesty King George the Second, not being the issue of any princess married into a foreign family; so that A. B. falls precisely within the class or description of persons with respect to whose marriage the statute intends to legislate; and that, as he falls within that description or class, the statute may be considered as if it had been passed with respect to him personally and individually; as if it had enacted in express terms, 'That A. B. shall not be capable

of contracting matrimony without the previous consent of the reigning sovereign, signified under the great seal, and declared in council;' and again, 'That the marriage of A. B. without such consent first had and obtained, shall be null and void to all intents and purposes.'

"My lords, the only rule for the construction of acts of parliament is, that they should be construed according to the intent of the parliament which passed the act. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary, than to expound those words in their natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the lawgiver. But if any doubt arises from the terms employed by the legislature, it has always been held a safe mean of collecting the intention, to call in aid the ground and cause of making the statute, and to have recourse to the preamble, which, according to Chief Justice *Dyer*, (Plowd. 369,) is 'a key to open the minds of the makers of the act, and the mischiefs which they intended to redress.'

"And, looking to all these grounds of interpretation, we think they concur, in the present instance, in demanding that construction of the statute at which we have arrived.

"For, in the first place, the words of the statute itself appear to us to be free from ambiguity. The prohibitory words of the statute are general: 'That no one of the persons therein described shall be capable of contracting matrimony;' and again, 'That every marriage or matrimonial contract of any such person shall be null and void to all intents and purposes whatsoever.' The statute does not enact an incapacity to contract matrimony within one particular country and district or another, but to contract matrimony generally, and in the abstract. It is an incapacity attaching itself to the person of A. B. which he carries with him wherever he goes. But as a marriage once duly contracted in any country will be a valid marriage all the world over, the incapacity to contract a marriage at Rome is as clearly within the prohibitory words of the statute as the incapacity to contract in England. So, again, as to the second or annulling branch of the enactment, 'that every marriage without such consent shall be null and void;' the words employed are general, or, more properly, universal; and cannot be satisfied in their plain, literal, ordinary meaning, unless they are held to extend to *all* marriages, in whatever part of the world they may have been contracted or celebrated.

"The words of the second section throw light upon and confirm the interpretation to be given to the first. By the second section, the descendants of the body of George the Second, being above the age of twenty-five years, who shall persist in their resolution to contract a marriage disapproved of or dissented from by the king, upon giv-

STAT. 12 GEO. 3, c. 11. dient to supply the defect of the laws now in being, and, by some new provision, more effectually to guard the descendants of his late majesty King George the

ing notice to the privy council, are enabled at any time from the expiration of twelve calendar months after such notice, to contract such marriage, and such marriage may be duly solemnized, without the previous consent of his majesty, his heirs or successors; and such marriage is declared to be good, as if that act had never been made, unless both houses of parliament shall, before the expiration of the said twelve months, expressly declare their disapprobation of such intended marriage. The words employed in this section are the same as in the first, 'to contract a marriage,' and 'marriage' generally, and without any reference to the country wherein the marriage is contracted or solemnized. But as no doubt could be entertained by any one, but that a marriage taking place with the due observance of the requisites of the second section would be held equally valid, whether contracted and celebrated at Rome or in England; so we think it would be contrary to all established rules of construction, if the very same words in the first section were to receive a different sense from those in the second; if it should be held that a marriage at Rome, contracted with reference to the second section, is made valid, and at the same time a marriage at Rome is not prohibited under the first.

"Indeed, it is scarcely supposable, that the legislature should have provided the minute and laborious machinery of the second section; that it should have interposed such checks against a marriage without consent, and at the same time have rendered such a marriage ultimately valid, in one given state of circumstances; if the party himself who is the subject of such legislation, by an easy journey, or a voyage of a few hours, could render all these provisions useless, and set the statute at defiance, by contracting a marriage abroad, with whomever he thought proper.

"And, my lords, it is not unworthy of remark, whilst we are looking to the body of this act in order to discover its interpretation, that the very exception from the prohibitory clause, of the issue of those princesses, who have married or may marry *into foreign families*, affords some proof that marriages abroad could not have been out of the view or contemplation of the legislature at the time of passing the act, as such marriages, in all probability, might not unfrequently be celebrated out of England.

"It was contended in the course of the argument at your lordships' bar, that an act of the English legislature can have no binding force beyond, or out of, the realm of England; and if by this is meant only, that it can have no obligatory force upon the subjects of another state, the position is no doubt correct in its full extent; but it is equally certain, that an act of the legislature will bind the subjects of this realm, both within the kingdom and without, if such was its intention. Indeed, it was admitted by

the learned counsel for the claimant, that if there had been found in this statute, the words, 'marriages within the realm of England, or without,' or any other words equipollent thereto, under such an enactment the capacity to contract a marriage at Rome, would have been taken away, and the marriage there solemnized, would have been made null and void. But if the words actually found in the statute are comprehensive enough to include all marriages, as well those within the realm as without, as we think they are; and if, at the same time, the restraining the sense of those words, to marriages within England, must necessarily defeat the object and purpose of the act, as we think it would; then it seems to follow, that the construction of the act must be the same, whether those words are found within the statute or not. Surely, if the marriage of a descendant of George the Second, contracted or celebrated in Scotland, or Ireland, or on the continent, is to be held a marriage not prohibited by this act, the statute itself may be considered as virtually and substantially a dead letter from the first day it was passed.

"But the object and purpose for which the act was passed, and the mischief intended to be prevented thereby, are clear, and leave no doubt as to the proper construction of the act. It was founded upon the policy and expediency, which requires that no marriage of any branch of the royal family should be contracted, which might be detrimental to the interests of the state, either at home or abroad. The object declared by the preamble is 'more effectually to guard the descendants of his late majesty King George the Second, from marrying without the approbation of the reigning sovereign;' it declares 'the marriages of the royal family to be of the highest importance to the state;' and 'that therefore the kings of this realm have ever been entrusted with the care and approbation thereof.' But this object is frustrated, the mischief is remediless, and the power of the sovereign nugatory, if the marriage, which in England would have been confessedly void, is to be held good and valid when celebrated out of the country.

"It was argued on the part of the claimant, that as it is directed in the first section of the act, that the consent under the great seal shall be set out in the licence and register of the marriage, and as this direction can only be applicable to the case of a marriage celebrated in this country, so the prohibition must be construed as confined to a marriage in this country only, and as not extending to a foreign marriage. But to this objection it appears to us to be a sufficient answer, that the only words in that section that are essential to make the marriage a valid marriage, are those, which require 'the previous consent of his majesty, signified under the great seal, and declared in council;' and that the words which fol-

Second, (other than the issue of princesses who have married, or may hereafter marry, into foreign families,) from marrying without the approbation of your majesty, your heirs or successors, first had and obtained; we have taken this weighty matter into our serious consideration; and, being sensible that marriages in the royal family are of the highest importance to the state, and that therefore the kings of this realm have ever been entrusted with the care and approbation thereof; and being thoroughly convinced of the wisdom and expediency of what your majesty has thought fit to recommend upon this occasion, we, your majesty's most dutiful and loyal subjects, the lords spiritual and temporal, and commons, in this present parliament assembled, do humbly beseech your majesty, that it may be enacted; and be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that no descendant of the body of his late majesty King George the Second, male or female, (other than the issue of princesses who have married, or may hereafter marry, into foreign families,) shall be capable of contracting matrimony without the previous consent of his majesty, his heirs or successors, signified under the great seal, and declared in council, (which consent, to preserve the memory thereof, is hereby directed to be set out in the licence and register of marriage, and to be entered in the books of the privy council;) and that every marriage, or matrimonial contract, of any such descendant, without such consent first had and obtained, shall be null and void to all intents and purposes whatsoever.

STAT. 12 GEO.
3, c. 11.

No descendant
of Geo. 2,
(other than,
&c.) capable
of contracting
matrimony
without con-
sent, &c.

"II. Provided always, and be it enacted by the authority aforesaid, that in case any such descendant of the body of his late majesty King George the Second, being above the age of twenty-five years, shall persist in his or her resolution to contract a marriage disapproved of, or dissented from, by the king, his heirs or successors; that then such descendant, upon giving notice to the king's privy council, which notice is hereby directed to be entered in the books thereof, may at any time from the expiration of twelve calendar months after such notice given to the privy council as aforesaid, contract such marriage; and his or her marriage with the person before proposed, and rejected, may be duly solemnized, without the previous consent of his majesty, his heirs or successors; and such marriage shall be good, as if this act had never been made, unless both houses of parliament shall, before the expiration of the said twelve months, expressly declare their disapprobation of such intended marriage.

"III. And be it further enacted by the authority aforesaid, that every person who shall knowingly or wilfully presume to solemnize, or to assist, or to be present at the celebration of any marriage with any such descendant, or at his or her

Persons who
shall wilfully
assist, &c.
incur the pe-

low, *directing* such consent to be set out in the licence and register of the marriage, are, as the very words import, *directory* only, not *essential*, and are applicable to those cases alone where they can be applied, namely, to the case of a marriage celebrated in England by licence. For it would be impossible to contend, if the marriage of A. B. had been celebrated at Rome, with the previous consent of his majesty King George the Third, signified under the great seal, and declared in council, that such marriage would not have been good and valid to all intents and purposes, although the observance of the direction that such consent should be inserted in the licence and register of the marriage had become, in that case, impracticable.

"It was further contended in argument, that inasmuch as by the third section of the act, all persons who wilfully and knowingly presume to solemnize or assist, or be present at the celebration of any marriage, or at the making of any matrimonial contract, without

such consent, shall incur the penalties of a *præmunire*; and as there is no provision made in this section for the trial and consequently the punishment of the offender, where the offence shall be committed out of England, the necessary inference must be, that the statute itself does not extend to prohibit a marriage out of England; but we think the inference that the penal clause is itself defective, in not making provision for the trial of British subjects when they violate the statute, out of the realm, is the more just and reasonable inference; not that we should refuse, on that account, to give the plain words of the statute their necessary force, and hold the enactment itself to be substantially useless and inoperative.

"We therefore think, for the reasons humbly submitted to your lordships, that the eldest son of A. B. under the circumstances stated in your lordships' question, and regard being had to Stat. 12 Geo. 3, c. 11, could not make out a good title, as heir to A. B., to the lands sought to be recovered."

STAT. 12 GEO. 3, c. 11. making any matrimonial contract, without such consent as aforesaid first had and obtained, except in the case above mentioned, shall, being duly convicted thereof, incur and suffer the pains and penalties ordained and provided by the statute of provision and premunire made in the sixteenth year of the reign of Richard the Second."

STAT. 12 GEO. 3, c. 28.

L. STAT. 12 GEORGHII 3, c. 28. A.D. 1772.

"An Act to enlarge the Cemetery or Churchyard of the Parish of Watford, in the County of Hertford, and to make an additional Building to the present Workhouse, for the reception of the Poor of the said Parish; and for other Purposes therein mentioned."

STAT. 12 GEO. 3, c. 36.

LI. STAT. 12 GEORGHII 3, c. 36. A.D. 1772.

"An Act for completing a Building intended for a new Church or Chapel at Richmond, near Evertton, in the County Palatine of Lancaster, and for other Purposes."

STAT. 12 GEO. 3, c. 40.

LII. STAT. 12 GEORGHII 3, c. 40. A.D. 1772.

"An Act for amending and rendering more effectual an Act, made in the tenth year of His Majesty's Reign, intituled, An Act for building a new Parish Church, and declaring the present Parish Church a Chapel; for making a Cemetery or Churchyard, and for building an House for the use of the Minister of the Parish of Saint Mary le Bone in the County of Middlesex."

STAT. 12 GEO. 3, c. 43.

LIII. STAT. 12 GEORGHII 3, c. 43(1). A.D. 1772.

"An Act for vesting Ely House in Holborn, in His Majesty, his Heirs, and Successors, and for applying the Purchase Money, with another Sum therein mentioned, in the purchasing of a freehold piece of Ground in Dover Street, and in the building and fitting up another House thereon for the future Residence of the Bishops of Ely, and the Surplus to the benefit of the See, and for other Purposes therein mentioned."

STAT. 12 GEO. 3, c. 62.

LIV. STAT. 12 GEORGHII 3, c. 62. A.D. 1772.

"An Act to enable the Lord Bishop of Durham, and his Successors, to raise a competent Sum of Money, to be applied for the repairing, improving, or rebuilding such part of Tyne Bridge as belongs to the See of Durham."

STAT. 12 GEO. 3, c. 64.

LV. STAT. 12 GEORGHII 3, c. 64. A.D. 1772.

"An Act for building two new Chapels, and providing Burial Places thereto, within the Town of Birmingham, in the County of Warwick."

STAT. 12 GEO. 3, cap. lxxviii.

LVI. STAT. 12 GEORGHII 3, cap. lxxviii. A.D. 1772.

"An Act for vesting in the most noble Augustus Henry Duke of Grafton, and his Heirs, the Manor, or reputed Manor, and Rectory and Parsonage Appropriate, of Potterspury, otherwise Eastpury, in the County of Northampton, (except the Presentation to the Advowson to the Church there,) and certain Messuages, Lands, Tithes, and Hereditaments, situate and arising in the same County, the Estate of Robert Brydges, Esquire, a Lunatic;"

STAT. 12 GEO. 3, cap. lxxxiv.

LVII. STAT. 12 GEORGHII 3, cap. lxxxiv. A.D. 1772.

"An Act to enable the Governors, and Assistants to the said Governors, . . . of the Free Grammar School of Elizabeth, Queen of England, in the Town of Ashburne, in the County of Derby, . . . as Trustees of six Almshouses in Ashburne aforesaid, founded and endowed by Christopher Pegg, Esquire, deceased; to convey certain Lands and Possessions of the said School and Almshouses. . . ."

LVIII. STAT. 13 GEORGII 3, cap. vi. A.D. 1773.

STAT. 13 GEO.
3, cap. vi.

"An Act to enable the Rector of Saint Martin in Birmingham, to grant Leases of certain parts of the Glebe Lands belonging to the said Rectory."

LIX. STAT. 13 GEORGII 3, c. 21. A.D. 1773.

STAT. 13 GEO.
3, c. 21.

"An Act to extend the Provisions of An Act, made in the fourth year of the Reign of His late Majesty King George the Second, intituled, An Act to explain a Clause in an Act, made in the seventh year of the Reign of Her late Majesty Queen Anne, for naturalizing Foreign Protestants, which relates to the Children of the natural-born Subjects of the Crown of England, or of Great Britain, to the Children of such Children."

LX. STAT. 13 GEORGII 3, c. 25. A.D. 1773.

STAT. 13 GEO.
3, c. 25.

"An Act to explain two Acts of Parliament, one of the thirteenth year of the Reign of His late Majesty, for naturalizing such Foreign Protestants, and others, as are settled, or shall settle, in any of His Majesty's Colonies in America, and the other of the second year of the Reign of His present Majesty, for naturalizing such Foreign Protestants as have served, or shall serve, as Officers or Soldiers in His Majesty's Royal American Regiments, or as Engineers, in America."

LXI. STAT. 13 GEORGII 3, cap. xxxii. A.D. 1773.

STAT. 13 GEO.
3, cap. xxxii.

"An Act to enable the Vicar of Kensington, in the County of Middlesex, to grant Leases of part of the Glebe Lands belonging to the said Vicarage."

LXII. STAT. 13 GEORGII 3, cap. l. A.D. 1773.

STAT. 13 GEO.
3, cap. l.

"An Act to enable the Dean and Chapter of the Cathedral Church of Worcester, to make and establish an Exchange of certain Lands and Premises in the County of Worcester, for other Lands and Premises in the said County, belonging to Thomas Foley, Esquire."

LXIII. STAT. 13 GEORGII 3, cap. li. A.D. 1773.

STAT. 13 GEO.
3, cap. li.

"An Act to empower the Wardens, Preceptor, or Master of the Scholars, and Poor People of the Almshouse or Hospital of Jesus, in Gisburn, in Cleveland, in the County of York, to convey a certain Messuage, and divers Lands, Tenements, and Hereditaments, the Estate of the said Almshouse or Hospital, unto Charles Turner, of Kirkleatham, in the said County, Esquire, and his Heirs; and to enable the said Wardens, Preceptor, or Master . . . to carry into execution an Agreement with the Reverend Henry Hewgill, of Hornby Grange, in the said County of York, Clerk, for the Purchase of a certain Messuage, or Tenement, Lands, and Hereditaments, in the Parish of Birkby, in the North Riding of the said County, . . . for the Use, Benefit, and Advancement of the said Charity."

LXIV. STAT. 13 GEORGII 3, cap. lv. A.D. 1773.

STAT. 13 GEO.
3, cap. lv.

"An Act to enable the Rector of the Parish Church of Stockport, in the County of Chester, for the time being, to grant Leases of part of the Glebe Lands belonging to the said Rectory, and to exchange part of the said Glebe Lands, and other Lands, in the Township of Stockport aforesaid, between Sir George Warren, Knight of the Bath, Patron of the Advowson of the said Rectory, and John Watson, present Rector of the Parish and Parish Church of Stockport aforesaid."

STAT. 13 GEO.
3, c. 58.

LXV. STAT. 13 GEORGII 3, c. 58 (1). A.D. 1773.

"An Act for providing Clergymen to officiate in Gaols within that part of Great Britain called England."

STAT. 13 GEO.
3, c. 80.

LXVI. STAT. 13 GEORGII 3, c. 80 (2). A.D. 1773.

"An Act to repeal an Act, made in the tenth year of the Reign of His present Majesty, intituled, An Act for the better Preservation of the Game within that part of Great Britain called England; and for making other Provisions in lieu thereof."

STAT. 13 GEO.
3, c. 82.

LXVII. STAT. 13 GEORGII 3, c. 82. A.D. 1773.

"An Act for the better Regulation of Lying-in Hospitals, and other Places, appropriated for the charitable Reception of Pregnant Women; and also to provide for the Settlement of Bastard Children, born in such Hospitals and Places."

STAT. 13 & 14
GEO. 3, c. 10.
[Ir.]

LXVIII. STAT. 13 & 14 GEORGII 3, c. 10 (3). [IRELAND.] A.D. 1773-4.

"An Act to explain and amend an Act made in the third year of the Reign of His late Majesty King George the Second, intituled, An Act for the better keeping Churches in repair."

STAT. 13 & 14
GEO. 3, c. 27.
[Ir.]

LXIX. STAT. 13 & 14 GEORGII 3, c. 27 (4). [IRELAND.] A.D. 1773-4.

"An Act to amend an Act passed in the eighth year of His present Majesty, intituled, An Act for erecting new Chapels of Ease in the Parish of Armagh, and making such Chapels, and those that are already erected in said Parish, perpetual Cures; and for making a proper Provision for the Maintenance of perpetual Curates to officiate in the same; and for other Purposes."

STAT. 13 & 14
GEO. 3, c. 40.
[Ir.]

LXX. STAT. 13 & 14 GEORGII 3, c. 40. [IRELAND.] A.D. 1773-4.

"An Act for settling and preserving a Public Library in the City of Armagh for ever, and for enabling the Archbishop of Armagh to appropriate parts of a piece of waste Ground contiguous to the said City to certain Uses for the Benefit of the Inhabitants thereof, and to make long Leases of the remainder."

STAT. 14 GEO.
3, c. 12.

LXXI. STAT. 14 GEORGII 3, c. 12. A.D. 1774.

"An Act for vesting a piece of waste Ground within, and parcel of, the Manor of Clapham, in the County of Surrey, in Trustees, and for enabling them to build a new Parish Church thereon."

STAT. 14 GEO.
3, cap. xxi.

LXXII. STAT. 14 GEORGII 3, cap. xxi. A.D. 1774.

"An Act for enabling the Right Honourable John Earl Spencer to inclose the several open and common Fields in the Parish of Dunton, in the County of Bucks; and for vesting certain Glebe Lands, and the Tithes belonging to the Rectory of Dunton aforesaid, in the said John Earl Spencer; and for making a Compensation to the Rector of the said Parish in lieu thereof."

STAT. 14 GEO.
3, cap. xliii.

LXXIII. STAT. 14 GEORGII 3, cap. xliii. A.D. 1774.

"An Act for enabling the Dean and Chapter of Canterbury, Henry Penton, Esquire, and Thomas Brandon, to grant Building Leases, pursuant to two several Agreements entered into for that Purpose."

(1) Powers enlarged by Stat. 55 Geo. 3, c. 48. Amended by Stat. 58 Geo. 3, c. 32. Repealed, and other provisions made, by Stat. 4 Geo. 4, c. 64, and Stat. 2 & 3 Vict. c. 56.

(2) Stat. 13 Geo. 3, c. 30, s. 6, relating to the Lord's day, repealed by Stat. 1 & 2

Gul. 4, c. 32.

(3) Repealed by Stat. 15 & 16 Geo. 3, c. 14. (1.)

(4) So much of this statute as relates to the uniting or disappropriating appropriate parishes, was repealed by Stat. 7 & 8 Geo. 4, c. 43.

LXXIV. STAT. 14 GEORGII 3, c. 51. A.D. 1774.

STAT. 14 GEO.
3, c. 51.

“An Act to confirm certain Sales and Purchases of Estates, made by the Governors of the Free Grammar School of King Edward the Sixth, in Macclesfield, in the County of Chester, to enable them to make other Sales, Purchases, and Exchanges, and to improve and extend the Benefits of the Foundation of the said School.”

LXXV. STAT. 14 GEORGII 3, cap. lxvii. A.D. 1774.

STAT. 14 GEO.
3, cap. lxvii.

“An Act to enable the Vicar of the Parish Church of Saint Nicholas, in the Town and County of the Town of Newcastle-upon-Tyne, to demise or lease part of the Land belonging to the said Vicarage to William Lowes, Esquire, for the Purposes, and upon the Conditions, in such Lease to be mentioned.”

LXXVI. STAT. 14 GEORGII 3, c. 83(1). A.D. 1774.

STAT. 14 GEO.
3, c. 83.

“An Act for making more effectual Provision for the Government of the Province of Quebec in North America.”

“V. And, for the more perfect security and ease of the minds of the inhabitants of the said province, it is hereby declared, that his majesty’s subjects, professing the religion of the church of Rome, of and in the said province of Quebec, may have, hold, and enjoy the free exercise of the religion of the church of Rome, subject to the king’s supremacy, declared and established by an act, made in the first year of the reign of Queen Elizabeth, over all the dominions and countries which then did, or thereafter should belong to the imperial crown of this realm; and that the clergy of the said church may hold, receive, and enjoy, their accustomed dues and rights, with respect to such persons only as shall profess the said religion.

Inhabitants of Quebec may profess the Romish religion, &c.

“VI. Provided nevertheless, that it shall be lawful for his majesty, his heirs or successors, to make such provision out of the rest of the said accustomed dues and rights, for the encouragement of the protestant religion, and for the maintenance and support of a protestant clergy within the said province, as he or they shall, from time to time, think necessary and expedient.

“VII. Provided always, and be it enacted, that no person professing the religion of the church of Rome, and residing in the said province, shall be obliged to take the oath required by the said statute passed in the first year of the reign of Queen Elizabeth, or any other oaths substituted by any other act in the place thereof; but that every such person who, by the said statute, is required to take the oath therein mentioned, shall be obliged, and is hereby required, to take and subscribe the following oath before the governor, or such other person in such court of record as his majesty shall appoint, who are hereby authorized to administer the same; *videlicet*,

No person professing the Romish religion obliged to take the oath 1 Eliz.; but to take the following oath.

“I, A. B., do sincerely promise and swear, that I will be faithful, and bear true allegiance to his majesty King George, and him will defend to the utmost of my power, against all traitorous conspiracies, and attempts whatsoever, which shall be made against his person, crown, and dignity; and I will do my utmost endeavour to disclose and make known to his majesty, his heirs and successors, all treasons, and traitorous conspiracies and attempts, which I shall know to be against him, or any of them; and all this I do swear without any equivocation, mental evasion, or secret reservation, and renouncing all pardons and dispensations from any power or person whomsoever to the contrary. So help me God.”

“And every such person who shall neglect or refuse to take the said oath before mentioned, shall incur and be liable to the same penalties, forfeitures, disabilities, and incapacities, as he would have incurred and been liable to for neglecting or

(1) *Vide* Stat. 31 Geo. 3, c. 31. Stat. 7 & 8 Geo. 4, c. 62. Stat. 3 & 4 Vict. c. 35. Stat. 3 & 4 Vict. c. 78.

STAT. 14 GEO.
3, c. 83.

Canadian sub-
jects (religious
orders except-
ed) may hold
all their pos-
sessions, &c.

refusing to take the oath required by the said statute passed in the first year of the reign of Queen Elizabeth.

“VIII. And be it further enacted by the authority aforesaid, that all his majesty’s Canadian subjects within the province of Quebec, the religious orders and communities only excepted, may also hold and enjoy their property and possessions, together with all customs and usages relative thereto, and all other their civil rights, in as large, ample, and beneficial manner, as if the said proclamation, commissions, ordinances, and other acts and instruments had not been made, and as may consist with their allegiance to his majesty, and subjection to the crown and parliament of Great Britain; and that in all matters of controversy, relative to property and civil rights, resort shall be had to the laws of Canada, as the rule for the decision of the same; and all causes that shall hereafter be instituted in any of the courts of justice, to be appointed within and for the said province by his majesty, his heirs and successors, shall, with respect to such property and rights, be determined agreeably to the said laws and customs of Canada, until they shall be varied or altered by any ordinances that shall, from time to time, be passed in the said province by the governor, lieutenant-governor, or commander-in-chief, for the time being, by and with the advice and consent of the legislative council of the same, to be appointed in manner hereinafter mentioned.

“IX. Provided always, that nothing in this act contained shall extend, or be construed to extend, to any lands that have been granted by his majesty, or shall hereafter be granted by his majesty, his heirs and successors, to be holden in free and common socage.

Owners of
goods may
alienate by
will, &c.

“X. Provided also, that it shall and may be lawful to and for every person that is owner of any lands, goods, or credits, in the said province, and that has a right to alienate the said lands, goods, or credits, in his or her life-time, by deed of sale, gift, or otherwise, to devise or bequeath the same at his or her death, by his or her last will and testament; any law, usage, or custom, heretofore or now prevailing in the province, to the contrary hereof in any wise notwithstanding; such will being executed either according to the laws of Canada, or according to the forms prescribed by the laws of England.

“XV. Provided also, that no ordinance touching religion, or by which any punishment may be inflicted greater than fine or imprisonment for three months, shall be of any force or effect, until the same shall have received his majesty’s approbation.

“XVII. And be it further enacted by the authority aforesaid, that nothing herein contained shall extend, or be construed to extend, to prevent or hinder his majesty, his heirs and successors, by his or their letters patent under the great seal of Great Britain, from erecting, constituting, and appointing such courts of criminal, civil, and ecclesiastical jurisdiction within and for the said province of Quebec, and appointing, from time to time, the judges and officers thereof, as his majesty, his heirs and successors, shall think necessary and proper for the circumstances of the said province.”

STAT. 14 GEO.
3, c. 93.

LXXVII. STAT. 14 GEORGII 3, c. 93. A.D. 1774.

“An Act for rebuilding the Church of the Parish of Lewisham, in the County of Kent.”

STAT. 14 GEO.
3, c. 94.

LXXVIII. STAT. 14 GEORGII 3, c. 94. A.D. 1774.

“An Act for establishing a new Church or Chapel erecting at Toxteth Park, in the Parish of Walton, near Liverpool, in the County Palatine of Lancaster.”

STAT. 14 GEO.
3, c. 95.

LXXIX. STAT. 14 GEORGII 3, c. 95. A.D. 1774.

“An Act for rebuilding the Parish Church of Battersea, in the County of Surrey, and for enlarging the Churchyard of the said Parish Church.”

LXXX. STAT. 15 GEORGII 3, c. 49. A.D. 1775.

STAT. 15 GEO.
3, c. 49.

"An Act for taking down the Church of All Saints, in the Town of Fulbourne and County of Cambridge, and for the better repairing and keeping in Repair the Church of Saint Vigors in the said Town."

LXXXI. STAT. 15 GEORGII 3, cap. liii. A.D. 1775.

STAT. 15 GEO.
3, cap. liii.

"An Act to enable the Dean and Chapter of the Cathedral Church of Worcester, and Rowland Berkeley, Esquire, to make and establish an Exchange of certain Lands and Tithes, in the Parish of Cotheridge, in the County of Worcester."

LXXXII. STAT. 15 GEORGII 3, cap. lxxxviii. A.D. 1775.

STAT. 15 GEO.
3, cap. lxxxviii.

"An Act for rendering effectual a Proposal, or Agreement, made between the Duke of Buccleugh and the Lord Bishop of Winchester, for exchanging and enfranchising certain Leasehold and Copyhold Lands and Hereditaments, in the Parish and Manor of Adderbury, in the County of Oxford; and for enabling the said Bishop to grant Leases in manner therein mentioned."

LXXXIII. STAT. 15 & 16 GEORGII 3, c. 14. [IRELAND.] A.D. 1775-6.

STAT. 15 & 16
GEO. 3, c. 14.
[IR.]

"An Act for repealing an Act made in the thirteenth and fourteenth years of the Reign of His present Majesty, intituled, An Act to explain and amend an Act made in the third year of the Reign of His late Majesty King George the Second, intituled, An Act for the better keeping Churches in Repair, and for other Purposes."

"II. And to the end that parliament may be informed of the state and condition of the several churches and chapels in this kingdom, and of the conduct of the parishioners thereof with respect to the particulars herein before mentioned, in order that an adequate remedy may be provided for the reformation of such abuses, be it enacted by the [authority aforesaid, that the deans, archdeacons, prebendaries, and all rectors, vicars, and perpetual curates within this kingdom, shall upon the best information make a special return to the clerks of both houses of parliament on or before the first day of the next session of parliament of the true state, age, and condition of their respective parish churches and chapels, and whether they are safe and fit for the resort of the parishioners to have divine service performed therein, and whether the said churches and chapels respectively have been from time to time provided with such useful and decent requisities, as are necessary for the due celebration of the sacrament, and the regular performance of divine service according to the rites and ceremonies of the church of Ireland, and whether any taxes, and to what amount, have been applied for or levied for five years previous to the first day of December one thousand seven hundred and seventy-five to answer the purposes aforesaid."

A special return to both houses by first of next session of the state of churches and chapels; and whether fit for parishioners' resort, and provided with requisites for divine service;

and of taxes five years before 1st December, 1775.

LXXXIV. STAT. 15 & 16 GEORGII 3, c. 17. [IRELAND.] A.D. 1775-6.

STAT. 15 & 16
GEO. 3, c. 17.
[IR.]

"An Act to explain and amend the several Statutes now in force in this Kingdom relative to the Exchange of Glebe Lands and the Endowment of Churches with new Glebes, and to remove some Doubts relative to said Statutes, and for other Purposes."

"Whereas a doubt hath arisen, whether under the several acts of parliament now in force in this kingdom relative to the exchange of glebe lands, and for other purposes, a tenant for life of lands in possession is empowered and authorized by virtue of the said acts to exchange such lands, or any part thereof, in like manner and for such purposes as tenants in tail in possession are enabled and authorized to do by virtue of said acts or any of them: now, in order to remove said doubt and for the better and more speedy execution of the good purposes intended by said acts, be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal and commons in this present par-

Tenant for life in possession may by deed exchange lands for glebe for

STAT. 15 & 16
GEO. 3, c. 17.
[Ir.]

parish minister
or demesne of
master of free
school, as
tenant in tail
may by 1 Geo.
2, c. 15, under
restrictions by
2 Ann. c. 10,
or other act in
force.

To encourage
clergy to build
glebe houses
and reside,
endowment of
church, chapel,
perpetual cu-
racy, or free
school, with
new glebe and
demesne, may
be made pur-
suant to sta-
tutes in force,
though pos-
sessed of above
ten, and under
twenty, acres,
so as not above
forty in all.

Statutes as to
exchange of, or
endowment
with, new
glebe, in force
save as hereby
altered.

Cathedral in
Armagh deem-
ed the mother
church for all
legal purposes.

Saving all ca-
thedral rights.
All acts hereto-
fore therein
valid.

liament assembled, and by the authority of the same, that it shall and may be lawful to and for every person or persons, being seised of an estate for life in possession in any lands, by his or their deed or deeds under his or their hands and seals to exchange such lands, or any part thereof, as a glebe for the incumbent or minister of any parish having actual cure of souls, or for a demesne for a master of any free school, in such manner and in such effect as persons, seised of an estate tail in possession of any lands, are enabled to grant such lands, as a glebe for the incumbent of any parish having actual cure of souls, by an act that passed in the first year of his late Majesty King George the Second, intituled, 'An Act for rendering more effectual an Act, intituled, An Act for the better enabling of the Clergy having Cure of Souls to reside on their respective Benefices, and for the Encouragement of Protestant Schools within this Kingdom of Ireland;' and under such restrictions as he or they might have done by virtue of an act, intituled, 'An Act for the Exchange of Glebes belonging to Churches in this Kingdom,' which passed in the second year of her late majesty Queen Anne, or any other act now in force in this kingdom.

"II. And whereas there is some room to doubt from the several laws and statutes now in force in this kingdom relative to the endowment of churches, chapels, perpetual curacies, and free schools with new glebes or demesne lands, whether such endowments, or any of them, as aforesaid, can be made under the powers and by virtue of the several statutes now in force in this kingdom for that purpose, in any case where such church, chapel, or perpetual curacy, or free schools, so to be endowed with such new glebe or demesne, shall at the time of said intended endowment be possessed of ten acres of glebe lands in perpetuity to such church, chapel, or perpetual curacy, or free school belonging: now, in order to remove said doubt, and for the better encouragement of the clergy to build glebe houses, and to reside within their respective parishes, be it enacted by the authority aforesaid, that it shall and may be lawful for any ecclesiastical or lay corporation, or body corporate or politic, and for every person or persons seised of an estate in fee, or for life, or in tail, of any lands in possession, without the consent of the next heir, or next in remainder, under the several rules, limitations, and restrictions of the said several statutes in force in this kingdom for that purpose, and in pursuance of the same, to endow with new glebe and demesne any church, chapel, perpetual curacy, or free school, though such church, chapel, perpetual curacy, or free school should at the time of said endowment be in possession of more than ten and under twenty acres of glebe lands or demesne to such church, chapel, perpetual curacy, or free school, of right belonging: provided, that such quantity of land so granted, together with all other glebe to such church, chapel, perpetual curacy, or free school before belonging, shall not exceed forty acres, plantation measure.

"III. Provided, that nothing in this act contained shall extend or be construed to extend to alter or take away from the force of the several laws and statutes now in force in this kingdom relative to the exchange of glebe lands, or the endowments of churches with new glebes; but the same and every part thereof shall remain and be in full force, as if this act had never been made, save where they or any of them are altered or amended by this act.

"IV. And whereas the mother church of the parish of Armagh hath been in ruins for a time past the memory of man, insomuch that the site of said church cannot at this day be sufficiently ascertained; and whereas the cathedral church of Saint Patrick's, situate in the city of Armagh, hath been hitherto made use of from its convenient situation to all parts of said parish to serve for all the legal purposes of a parish church within said parish: be it enacted by the authority aforesaid, that all acts, had and done heretofore in said cathedral church as the mother church of said parish, shall be and are hereby declared to be as good and valid in law to all intents and purposes, as if the said cathedral church had been the mother church of said parish, and that for the future the said cathedral church of Saint Patrick's, Armagh, be deemed and taken to be the mother church of said parish of Armagh for all legal purposes whatsoever within the said parish, without prejudice to the rights, privileges, or immunities, of said cathedral; and

also saving to his grace the Lord Archbishop of Armagh, his successors, and the dean and chapter of said cathedral, and their successors, their several and respective and distinct rights, privileges, and immunities in said cathedral; anything in this act contained to the contrary in any wise notwithstanding.”

STAT. 15 & 16
GEO. 3, c. 17.
[IR.]

LXXXV. STAT. 15 & 16 GEORGII 3, c. 27. [IRELAND.] A.D. 1775-6.

STAT. 15 & 16
GEO. 3, c. 27.
[IR.]

“An Act to amend the several Acts of Parliament made in this Kingdom for the more effectual preventing of Frauds by Tenants.”

[Lessor of great or small tithes or dues, may, if one year due, and he hath right to re-enter, bring ejectment for non-payment of such rent, as on lease of lands, &c. s. 3. Remedies, if lessee abscond. ss. 4, 5.]

LXXXVI. STAT. 15 & 16 GEORGII 3, c. 38. [IRELAND.] A.D. 1775-6.

STAT. 15 & 16
GEO. 3, c. 38.
[IR.]

“An Act for confirming and establishing an Agreement made between the surviving Trustees named in or elected and appointed, pursuant to the last Will and Codicil of George Vaughan, Esquire, deceased, and the surviving Devisees named in the said Will, concerning the Real and Personal Estates whereof the said George Vaughan died seised or possessed, and for making the said Agreement effectual, and for incorporating the said Trustees for the better Execution of such of the Charities appointed by the said Will, as can be maintained, and for other Purposes.”

LXXXVII. STAT. 16 GEORGII 3, cap. xlvii. A.D. 1776.

STAT. 16 GEO.
3, cap. xlvii.

“An Act for ascertaining the Landed Property as well of the Reverend the Dean and Chapter of the Cathedral Church of Christ and the Blessed Mary the Virgin at Worcester, as of others, situate in the Hamlet of Charlton, in the Parish of Crophthorn, in the County of Worcester; and for dividing and inclosing the open Common Fields, and other Commonable Land, within the same Hamlet.”

LXXXVIII. STAT. 16 GEORGII 3, c. 55. A.D. 1776.

STAT. 16 GEO.
3, c. 55.

“An Act to enable the Trustees of certain Charity Lands, belonging to the Poor of Salford, in the County Palatine of Lancaster, to grant Building Leases thereof.”

LXXXIX. STAT. 16 GEORGII 3, cap. cxxi. A.D. 1776.

STAT. 16 GEO.
3, cap. cxxi.

“An Act to enable the Rector of the Parish Church of Hatherop, in the County of Gloucester, to exchange part of his Glebe Lands there, for other Lands more conveniently situated, the Property of Samuel Blackwell, Esquire, in the Hamlet of Williamstrip, adjoining to the said Parish of Hatherop.”

XC. STAT. 17 GEORGII 3, cap. vi. A.D. 1777.

STAT. 17 GEO.
3, cap. vi.

“An Act for vesting the several Rectories, Parsonages, Churches, and Chapels of Rockburne, Beeamore, South Charford, Hale, Whitsbury, and Quidesley, with the Glebe Lands, Tithes, and other Appurtenances, thereto respectively belonging, part of the settled Estate of the most noble George Duke of Manchester, in Trustees, upon certain Trusts therein expressed; and for settling other Lands and Hereditaments of the said Duke, in lieu thereof, to the several Uses therein mentioned ”

XCI. STAT. 17 GEORGII 3, c. 32. A.D. 1777.

STAT. 17 GEO.
3, c. 32.

“An Act for building a new Church within the Town and Parish of Buckingham.”

STAT. 17 GEO.
3, c. 53

XCII. STAT. 17 GEORGII 3, c. 53 (1). A.D. 1777.

"An Act to promote the Residence of the Parochial Clergy, by making Provision for the more speedy and effectual building, rebuilding, repairing, or purchasing Houses, and other necessary Buildings and Tenements, for the use of their Benefices."

"(2) Whereas many of the parochial clergy, for want of proper habitations, are induced to reside at a distance from their benefices, by which means the parishioners lose the advantage of their instruction and hospitality, which were great objects in the original distribution of tithes and glebes for the endowment of churches: for remedy whereof may it please your majesty that it may be enacted, and be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the twenty-fourth day of June, one thousand seven hundred and seventy-seven, whenever the parson, vicar, or other incumbent, of any ecclesiastical living, parochial benefice, chapelry, or perpetual curacy, being under the jurisdiction of the bishop or other ecclesiastical ordinary, whereon there is no house of habitation, or such house is become so ruinous and decayed, or is so mean, that one year's net income and produce of such living will not be sufficient to build, rebuild, or put the same, with the necessary offices belonging thereto, in sufficient repair, shall think fit to apply for the aid and assistance intended to be given by this act, it shall and may be lawful for every such parson, vicar, or incumbent, (after having procured, from some skilful and experienced workman or surveyor, a certificate, containing a state of the condition of the buildings on their respective glebes, and of the value of the timber and other materials thereupon, fit to be employed in such buildings or repairs, or to be sold, and also a plan and estimate of the work proposed to be done, (such state and estimate to be verified upon oath, taken before some justice of the peace, or master in Chancery, ordinary or extraordinary,) and laid the same, together with a just and particular account in writing, signed by him, and verified upon oath, taken as aforesaid, of the annual profits of such living, before the ordinary and patron of the living, and obtained their consent to such proposed new buildings or repairs, by writing under their respective hands, in the form for that purpose contained in the schedule hereunto annexed,) to borrow and take up at interest, in the manner hereafter mentioned, such sum or sums of money as the said estimate shall amount unto, after deducting the value of timber or other materials which may be thought proper to be sold, not exceeding two years' net income and produce of such living, after deducting all rents, stipends, taxes, and other outgoings, excepting only the salaries to the assistant curate, where such a curate is necessary; and as a security for the money so to be borrowed, to mortgage the glebe, tithes, rents, and other profits and emoluments, arising or to arise from such living, to such person or persons who shall advance the same, by one or more deed or deeds, for the term of twenty-five years, or until the money so to be borrowed, with interest for the same, and such costs and charges as may attend the recovery thereof, shall be fully paid and satisfied, according to the terms, conditions, true intent and meaning of this act; which mortgage deed or deeds shall be made in the forms or to the effect for that purpose contained in the said schedule, and shall bind every succeeding parson, vicar, or incumbent, of such living, until the principal and interest, costs and charges, shall be paid off and discharged, as fully and effectually as if such successor had executed the same.

"II. (2) And be it further enacted, that every such mortgagee shall execute a counterpart of every such mortgage, to be kept by the incumbent for the time being; and a copy of every such deed of mortgage shall be registered in the office of the registrar of the bishop of the diocese where the parish lies, or other ordinary

Incumbent of any living, whereon there is no house, &c.

(with the consent of the ordinary and patron) may borrow money to build one,

and mortgage the glebe, &c. for twenty-five years.

Every mortgagee to execute a counterpart of the mortgage, to

(1) *Vide* Stat. 21 Geo. 3, c. 66. Stat. 55 Geo. 3, c. 147. Stat. 56 Geo. 3, c. 52. Stat. 1 Geo. 4, c. 6. Stat. 5 Geo. 4, c. 89. Stat. 7 Geo. 4, c. 66. Stat. 1 & 2 Vict. c. 106. (2) Amended by Stat. 55 Geo. 3, c. 147. s. 7. Stat. 1 & 2 Vict. c. 23, s. 4.

having episcopal jurisdiction therein for the time being, after having been first examined by him with the original; which officer shall register the same, and be entitled to demand and receive the sum of five shillings, and no more, for such register; and every such deed shall be referred to upon all necessary occasions, the person inspecting the same paying one shilling for every such search; and the said deed, or a copy thereof, certified under the hand of the registrar, shall be allowed as legal evidence, in case any such mortgage deed shall happen to be lost or destroyed.

“III. Provided always, and be it further enacted, that whenever the principal and interest, directed to be paid to the mortgagee under the several provisions of this act, shall be in arrear and unpaid, for the space of forty days after the same shall become due, it shall and may be lawful for such mortgagee, his executors, administrators, or assigns, to recover the same, and the costs and charges attending the recovery thereof, by distress and sale, in such manner as rents may be recovered by landlords or lessors from their tenants by the laws in being.

“IV. And be it further enacted, that the money so to be borrowed shall be paid into the hands of such person or persons as shall be nominated and appointed to receive and apply the same for the purposes aforesaid, by the ordinary, patron, and incumbent, by writing under their respective hands, in the form for that purpose contained in the said schedule, after such nominee shall have given a bond to the ordinary, with sufficient surety, in double the sum so to be borrowed or raised, with condition for his duly applying and accounting for the same according to the directions of this act; and the receipt of the person or persons so to be nominated shall be a sufficient discharge to the person or persons who shall advance and pay the money: and the person or persons, so to be nominated, shall enter into contracts with proper persons for such buildings or repairs as shall be approved by the ordinary, patron, and incumbent, and shall be specified in an instrument written upon parchment, and signed by them, in the form for that purpose contained in the said schedule; and shall inspect and have the care of the execution of such contracts, and shall pay the money for such buildings and repairs, according to the terms of such agreements, and shall take proper receipts and vouchers for the same; and as soon as such buildings or repairs shall be completed, and the money paid, shall make out an account of his receipts and payments, together with the vouchers for the same, and enter them in a book, fairly written, which shall be signed by him, and laid before the ordinary, patron, and incumbent, and examined by them; and when allowed, by writing under their respective hands, in the form for that purpose contained in the said schedule, such allowance shall be a full discharge to the person so nominated, in respect to the said accounts; and if any balance shall remain in the hands of such nominee or nominees, the same shall be laid out in same further lasting improvements in building upon such glebe, or shall be paid and applied in discharge of so much of the said principal debt as such balance will extend to pay, at the discretion of the said ordinary, patron, and incumbent, or two of them, of which the said ordinary to be one, by order signed by them, in the form for that purpose contained in the said schedule; and an account shall also be kept, made out, and allowed, of such further disbursements, in manner aforesaid: all which accounts, when made out, completed, and allowed, shall be deposited, with the vouchers, in the hands of the said registrar, and kept by him for the use and benefit of the incumbents of such living for the time being, who shall have a right to inspect the same whenever occasion shall require, paying to such registrar, or deputy registrar, the sum of one shilling for every such inspection.

“V. (1) Provided always, and be it further enacted, that every such ordinary, before he or they shall signify his or their consent, in manner aforesaid, shall cause an inquiry to be made, and certified to him or them by the archdeacon, chancellor of the diocese, or other proper persons living in or near the parish where such buildings are proposed to be made or repaired, in the forms for that purpose specified in the said schedule, of the state and condition of such buildings at the time

STAT. 17 GEO
3, c. 53.

be kept by the
incumbent, &c.

Mortgagee may
distrain.

Money bor-
rowed to be
paid to such
persons as
ordinary, &c.
shall appoint;

who shall con-
tract for the
buildings, &c.

How the bal-
ance shall be
disposed of.

Ordinary to
cause inquiry
to be made of
the condition
of the build-
ings when in-
cumbent en-

STAT. 17 GEO.
3, c. 53.

tered on the
living, &c.

Directions for
payment of the
principal and
interest of the
mortgages, &c.

Proportioning
the annual
payment, in
case of avoid-
ance.

The ordinary
of any living

the incumbent entered upon such living or benefice, how long such incumbent had enjoyed such living or benefice, what money he had received, or may be entitled to receive, for dilapidations, and how and in what manner he had laid out what he had so received; and if it shall appear to them that such incumbent had, by wilful negligence, suffered such buildings to go out of repair, then to certify the same to the said ordinary, and also the amount of the damage which such buildings had sustained by the wilful neglect of such incumbent; and such incumbent, if the ordinary require it, shall pay the same into the hands of the nominee or nominees to be appointed under the authority of this act, towards defraying the expenses of building or repairs, before the ordinary shall give his consent as aforesaid.

“VI. (1) And be it further enacted, that the incumbent of every such living or benefice, in cases where such mortgage or mortgages shall be made as aforesaid, and his successors for the time being shall, and he and they is and are hereby required to pay the interest arising upon every such mortgage, yearly, as the same shall become due, or within one month after, and also five pounds per centum per annum, of the principal remaining due, by yearly payments; and that every such incumbent who shall not reside twenty weeks in each year upon such living, computing such year from the date of the said mortgage deed, shall instead of the said sum of five pounds per centum per annum, pay the sum of ten pounds per centum per annum, of the principal remaining due, by yearly payments, such payments to be respectively made at the same time such interest shall be paid, until the whole principal money and interest shall be fully paid and discharged; and that every such incumbent who shall pay only five pounds per centum per annum of such principal money, shall, at the time he pays the same, produce and deliver to the mortgagee a certificate under the hands of two rectors, vicars, or officiating ministers, of some parishes near adjoining, signifying that he had resided twenty weeks upon the said living or benefice, within the year for which such payment became due, according to the regulations aforesaid; which certificate shall be in the form, or to the effect, contained in the said schedule; and that every such incumbent shall, annually, at his own expense, from the time such buildings, authorized to be made by this act, shall be completed, insure at one the public offices established in London or Westminster for insurance of houses and buildings, the house and other buildings upon such glebe, against accidents by fire, at such sum of money as shall be agreed upon by the ordinary, patron, and incumbent; and in default of the payment of either the principal or interest, in manner aforesaid, or neglect of the incumbent to make such insurance, the ordinary shall have power to sequester the profits of the living till such payment or insurance shall be made.

“VII. (2) And, in order that the payment of such year may be justly and equitably ascertained and adjusted, between the successor, and the parson, vicar, or incumbent, avoiding such living or benefice by death or otherwise, or his representatives, in case of death or other avoidance, in such proportions as the profits of such living shall have been received by them respectively, for the year in which such death or avoidance shall happen: be it further enacted, that in case any difference shall arise in adjusting or settling the proportions aforesaid, the same shall be determined by two indifferent persons, the one to be named by the said successor, and the other by the person making such avoidance, or his representatives, in case of his death; and in case such nominees shall not be appointed within the space of two calendar months next after such death or avoidance, or if they cannot agree in adjusting such proportions within the space of one calendar month after they shall have been appointed, the same shall be determined by some neighbouring clergyman, to be nominated by the ordinary, whose determination shall be final and conclusive between the parties; which nominations and determinations shall be made according to the forms for that purpose contained in the said schedule, as near as conveniently may be.

“VIII. And be it further enacted, that where there shall be no house of habitation upon any ecclesiastical living or benefice, so described as aforesaid,

exceeding in clear yearly value one hundred pounds per annum, or being one, the same shall be so mean, or in such a state of decay as aforesaid, and the incumbent shall not reside in the parish twenty weeks within any year, computing the same from the first day of January, it shall be lawful for the ordinary of such living or benefice, with the consent of the patron, (in case the incumbent shall not think fit to lay out one year's income, where the same may be sufficient, to put the house and buildings in proper and sufficient repair, or to make such application as aforesaid, for building, repairing, or rebuilding such parsonage house,) to procure such plan, estimate, and certificate, as herein directed, and at any time, within the course of the succeeding year, to proceed in the execution of the several purposes of this act, in such manner as the parson, vicar, or incumbent, is hereby authorized and directed to proceed, and to make and execute such mortgage as aforesaid; which shall be binding upon the incumbent and his successors, and he and they shall be, and are hereby made liable to the payment of the interest, principal, and costs; and every such incumbent, and his representatives, shall be, and are hereby also made respectively liable to the proportion of the payments for the year which shall be growing at the time of the death of such incumbent, or avoidance of such living, according to the directions aforesaid; which said interest, principal, and costs, and proportion of payments growing at the time of the death of such incumbent or avoidance, shall and may be recovered against such incumbent, his successors or representatives, respectively, by action of debt, in any court of record.

“IX. And be it further enacted, that all sum and sums of money recovered or received, by suit or compositions, from the representatives of any former incumbent of such living or benefice, and not laid out in the repairs of such buildings, shall go and be applied in part of the payments under such estimate as aforesaid; and that all money thereafter to be recovered or received, in case the same cannot be had before such buildings are completed, and the money paid for the same, shall be applied, as soon as received, to the payment of the principal then due, as far as the same will extend; or in case the said mortgage money shall have been discharged, all such money arising from dilapidations, shall be paid into the hands of the nominee to be appointed as aforesaid, or of some other person or persons to be nominated by the ordinary, patron, and incumbent, in case such nominee shall be dead, or shall decline to act therein, to be laid out and expended in making some additional buildings or improvements upon the glebe of such living or benefice, to be approved by the ordinary, patron, and incumbent; and in the mean time, or in case such buildings shall not be necessary, then in trust, to lay out the same in government or other good securities, and pay the interest thereof to the incumbent for the time being.

“X. (1) Provided always, and be it further enacted, that where new buildings are necessary to be provided or erected for the habitation and residence of the rector, vicar, or other incumbent, pursuant to the authority hereby given, it shall and may be lawful for the ordinary, patron, and incumbent, of every such living or benefice, to contract, or to authorize, if they shall think fit, the person so to be nominated by them as aforesaid, to contract, for the absolute purchase of any house or buildings, in a situation convenient for the habitation and residence of the rector or vicar of such living or benefice, and not at a greater distance than one mile from the church belonging to such living, benefice, or chapelry; and also to contract for any land adjoining or lying convenient to such house or building, or to the house or building belonging to any parochial living or benefice, having no glebe lying near or convenient to the same, not exceeding two acres, if the annual value of such living, to be ascertained as aforesaid, shall be less than one hundred pounds per annum, nor two acres for every one hundred pounds per annum, if of greater value, and to cause the purchase-money for such house or buildings to be paid out of the money to arise under the powers and authorities of this act; in all which cases the said buildings and lands shall be conveyed to the patron of such living or benefice, and his heirs, in trust, for the sole use and benefit of the rector,

STAT. 17 GEO. 3, c. 53.

worth 100*l.* per annum, which has no proper habitation, may proceed in execution of this act, &c.

Money received for dilapidations, &c. shall be applied in part of the payments, &c.

Where new buildings are necessary, ordinary, &c. may purchase any convenient house, &c.

STAT. 17 GEO.
3, c. 53.

Purchase money to be raised by sale, &c. of part of the glebe or tithes.

Governors of Queen Anne's bounty empowered to lend, &c.

Colleges, &c. may lend any sums without interest.

Who is to act for any patron who shall be a minor, &c.

Writings not liable to stamp duty.

Proviso, when ordinary a

vicar, or other incumbent of such living or benefice for the time being, and their successors, and shall be annexed to such church or chapel, and be enjoyed and go in succession with the same for ever; but no contract so made by the nominee shall be valid, until confirmed by the ordinary, patron, and incumbent, by writing under their hands; and every such purchase-deed shall be in the form or to the effect contained in the schedule hereunto annexed, and shall be registered in such manner, and in such office, as the other deeds are hereby directed to be registered.

“XI.(1) Provided also, and be it further enacted, that when any such land lying near to the parsonage house and buildings, belonging to such living or benefice, or to be so purchased or exchanged as aforesaid, shall be thought fit to be taken and used as a convenience for the same, the purchase-money or equivalent for such land, shall be raised and had by sale or exchange of some part of the glebe or tithes of such living or benefice, which shall appear to the said ordinary, patron, and incumbent, most convenient for that purpose; and every such sale or exchange shall be by deed, in the form or to the effect contained in the schedule hereunto annexed, and registered as hereinbefore directed.

“XII. And be it further enacted, that it shall and may be lawful for the governors authorized or appointed to regulate and superintend the bounty given by her late majesty Queen Anne, for the augmentation of the maintenance of the poor clergy, to advance and lend any sum or sums of money, not exceeding the sum of one hundred pounds, in respect of each living or benefice, out of the money which has arisen, or shall from time to time arise, from that bounty, for promoting and assisting the several purposes of this act, with respect to any such livings or benefices as shall not exceed the clear annual improved value of fifty pounds; and such mortgage and security shall be made for the repayment of the principal sums so to be advanced, as are hereinbefore mentioned, but no interest shall be paid for the same; and in cases where the annual value of such living or benefice shall exceed the sum of fifty pounds, that it shall and may be lawful for the said governors to advance and lend, for the purposes of this act, any sum not exceeding two years' income of such living or benefice upon such mortgage and security as aforesaid, and subject to the several regulations of this act, and to receive interest for the same, not exceeding four pounds for one hundred pounds by the year.

“XIII. And be it further enacted, that it shall and may be lawful for any college or hall, within the universities of Oxford and Cambridge, or for any other corporate bodies possessed of the patronage of ecclesiastical livings or benefices, to advance and lend any sum or sums of money, of which they have the power of disposing, in order to aid and assist the several purposes of this act, for the building, rebuilding, repairing, or purchasing, of any houses or buildings for the habitation and convenience of the clergy, upon livings or benefices under the patronage of such college or hall, upon the mortgage and security directed by this act for the repayment of the principal, without taking any interest for the same.

“XIV. And be it further enacted, that whenever the patron of any living or benefice, to which the provisions of this act are proposed to be extended, shall happen to be a minor, idiot, lunatic, or feme-covert, it shall and may be lawful for the guardian, committee, or husband of every such patron, to transact the several matters aforesaid for such patron, who shall be bound thereby, in such manner as if he or she had been of full age, of sound mind, or feme-sole, and had done such act, or given his or her consent thereto.

“XV. Provided also, and be it further enacted, that all acts hereinbefore required to be done or consented to by the ordinary and patron, shall be done by the ordinary alone, when such ordinary shall happen to be the patron of the living; and that no deed, bond, transfer, or other writing, instrument, or proceeding, made, had, or done, under the powers or authority of this act, shall be charged or chargeable with any stamp duty, or fee of office, except as herein mentioned; any law or statute to the contrary notwithstanding.

“XVI. Provided always, and it is hereby further enacted, that in all cases where any act is required to be done by the ordinary, in the execution of any of

the purposes of this act, and such ordinary shall be a body corporate aggregate, every such act shall be done and signified under the seal of such body corporate. STAT. 17 GEO. 3, c. 53.

“XVII. (1) Provided always, and be it further enacted, that where the incumbent of any chapelry or perpetual cure shall be nominated by the rector or vicar of the parish wherein the same is situated, in every such case the consent of such rector or vicar, together with the consent of the patron of such rectory, shall be necessary in all such matters wherein the consent of the patron is required by the former provisions of this act. body corporate, &c.
Consent of rector, &c.

“XVIII. (2) Provided likewise, and be it further enacted, that whenever any controversy or dispute shall arise, touching the residence of the incumbent, with respect to any of the matters contained in this act, the same shall be adjusted and determined by the ordinary of the diocese. Disputes touching residence, &c.

“XIX. Provided also, and be it further enacted, that it shall and may be lawful for the patron, ordinary, and incumbent, of any such living or benefice as aforesaid, or any two of them, of which the ordinary to be one, by writing under their hands, to make such allowance to the person or persons to be nominated by them, for the purpose of paying and applying the money so to be raised as aforesaid, as they shall think fit, not exceeding the sum of five pounds for every one hundred pounds so to be laid out and expended as aforesaid. Patron, &c.
to make allowance for applying the money, &c.

“XX. Provided also, and be it further enacted, that in all cases where the patronage of any living or benefice herein before described shall be in the crown, and such living or benefice shall be above the yearly value of twenty pounds in the king's books, the consent of the crown to the several proceedings hereby authorized respecting such living or benefice, shall be signified by the lord high treasurer, or first lord commissioner of the treasury for the time being; but if such living or benefice shall not exceed the value of twenty pounds in the king's books, such consent shall be signified by the lord high chancellor, lord keeper, or commissioners of the great seal for the time being; or if such living or benefice shall be within the patronage of the crown in right of the duchy of Lancaster, then such consent shall be signified by the chancellor of the duchy for the time being, by writing under their respective hands, in the form or to the effect for that purpose contained in the schedule hereunto annexed; and that in all such cases where such deed is hereby required to be executed by the patron as well as the ordinary and incumbent, such deed shall be valid and effectual to all intents and purposes whatsoever, if executed by the ordinary and incumbent only, after such consent shall have been obtained as aforesaid from the said lord high treasurer, first commissioner of the treasury, lord chancellor, lord keeper, lords commissioners of the great seal, or chancellor of the duchy of Lancaster respectively, as the case shall be, provided such consent shall be registered at the register office aforesaid. In what manner the consent of the crown shall be made known, &c.

“XXI. (3) And be it further enacted, that it shall and may be lawful for any archbishop or bishop of any diocese, and also for any ecclesiastical corporation sole or aggregate, being lord or lords of any manor within which there shall be any waste or common lands, parcel of the demesnes of such manor, lying convenient for the house and buildings, and other the purposes of this act, to grant a part or parts of such waste or common lands in perpetuity for the several purposes of this act, leaving sufficient common for the several persons having right of common upon such wastes or commons, and obtaining the consent of the lessee of such lands, if the same shall be in lease. Lords of manors may grant a part in perpetuity, &c.

“SCHEDULE TO WHICH THE BILL REFERS.

“*Form of the Consent of the Ordinary and Patron (to be written on Parchment).*

“A. B., rector, vicar, &c. (as the case shall be) of the parish, chapelry, or perpetual curacy (as the case shall be) of _____ in the county of _____ under the jurisdiction of the ordinary, having produced to us the said ordinary, and _____ patron of the said church and living, a certificate under the hand of _____ a skilful and experienced workman, or surveyor, of the state

(1) *Vide* Stat. 1 & 2 Vict. c. 23, s. 2.

(3) Amended by Stat. 21 Geo. 3 c.

(2) Superseded by Stat. 1 & 2 Vict. c. 23, 66.

STAT. 17 GEO. 3, c. 53. and condition of the buildings upon the glebe belonging to the said church, chapelry, or perpetual curacy, (as the case shall be,) and of the value of the timber, and other materials thereupon, fit to be sold, or employed about such buildings; and also a plan, made by the said of the work proposed to be done by new buildings and repairs upon the said glebe, and an estimate of the expense attending the same, after applying the said materials, or the money to arise from the sale thereof, in such buildings and repairs; and also a particular account in writing, signed by the said *A. B.*, of the annual profits of such living, and of the rents, stipends, taxes, and other outgoings, annually issuing thereout, verified upon oath, pursuant to the directions of an act, passed in the seventeenth year of the reign of his majesty King George the Third, to promote the residence of the parochial clergy, by making provision for the more speedy and effectual building, rebuilding, repairing, or purchasing houses, and other necessary buildings and tenements, for the use of their benefices; and having considered such certificate, plan, and account: now, we do approve thereof; and do consent, that such buildings and repairs shall be made as therein specified; and that the said *A. B.* do borrow and take up at interest the sum of being the estimate of the expenses, after deducting the value of the timber, and other materials, thought proper to be sold, and which appears to us, from the said account, a sum not exceeding two years net income and produce of the said living; which money is to be paid to (a person nominated by us and the said *A. B.*,) and applied according to the direction of the said act.

“Form of the Mortgage.

“This indenture, made the day of in the year of the reign of his majesty and in the year of our Lord between the Reverend rector or vicar, &c. of the parish church, curacy, or chapelry, of in the county of and the diocese of the bishop of of the one part: and of the other part. Whereas the said pursuant to the directions of an act, passed in the seventeenth year of the reign of his majesty King George the Third, intituled, “An Act to promote the Residence of the Parochial Clergy, by making provision for the more speedy and effectual building, rebuilding, repairing, or purchasing Houses, and other necessary Buildings and Tenements for the use of their Benefices,” hath obtained the consent of the ordinary of the said diocese, and the patron of the said church and living, to borrow and take up at interest the sum of to be laid out and expended in building, rebuilding, or repairing (as the case shall be) the parsonage house, and other necessary offices, upon the glebe belonging to the said church, chapel, or curacy, as appears by an instrument, signed by the said ordinary and patron, hereunto annexed: and whereas the said hath agreed to lend and advance the sum of upon a mortgage of the glebe, tithes, rents, and other profits and emoluments of the said living, pursuant to the direction and the true intent and meaning of the said act: now this indenture witnesseth, that the said in consideration of the sum of five shillings to him in hand paid, and of the sum of paid at or before the sealing and delivery hereof, into the hands of (a person or persons (as the case shall be) nominated by the said ordinary, patron, and incumbent, to receive the same, pursuant to the direction of the said act, (which nomination is also hereunto annexed,) and which receipt of the said sum of the said have or hath acknowledged, by an indorsement on the back of this deed,) hath granted, bargained, sold, and demised, and by these presents doth grant, bargain, sell, and demise, unto the said his executors, administrators, and assigns, all the glebe lands, tithes, rents, moduses, compositions for tithes, salaries, stipends, fees, gratuities, and other emoluments and profits whatsoever, arising, coming, growing, renewing, or payable to the rector, vicar, or incumbent, (as the case shall be,) of the said living in respect thereof, with all and every their rights, privileges, and appurtenances thereunto belonging, to have, hold, receive, take, and enjoy the said premises, with their and every of their

appurtenances, unto the said his executors, administrators, and assigns, from thenceforth, for and during the term of years, fully to be complete and ended, in as full, ample, and beneficial manner, and with such remedies and powers for obtaining and recovering the same, and every part thereof, to all intents and purposes, as the said his successors, rectors, vicars, &c. (as the case shall be) of the said church, could, or might, or ought to have held, enjoyed, received, taken, or recovered the same, if these presents had not been made:

In cases where the mortgage by this act directed is to be made by the ordinary and patron alone, without the incumbent, this covenant and proviso are to be omitted, and the form is to be varied in such other respects as shall be necessary.

[And the said *A. B.* for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree, to and with the said his executors, administrators, and assigns, that he, the said *A. B.*, during the time he shall continue rector, vicar, &c., of the said parish and parish church, shall and will well and truly pay, or his executors, administrators, or assigns, or so much thereof as shall remain due at

cause to be paid unto the said _____ his executors, administrators, or assigns, interest for the said sum of _____ or so much thereof as shall remain due at the end of every year, to be computed from the day of the date of these presents, after the rate of _____ per centum per annum, by yearly payments, the first of the said payments to begin and be made on the _____ day of _____ next; and also, at the several times before mentioned for payment of the interest as aforesaid, shall and will well and truly pay, or cause to be paid, the sum of five pounds per centum per annum of the principal which remained due at the beginning of the year in which every such payment is to be paid, in case the said *A. B.* shall be resident upon the said living for the time mentioned in, and according to the true intent and meaning of the said act; and in case the said *A. B.* shall not reside upon the said living during the time mentioned in, and according to the true intent and meaning of the said act, he shall pay, or cause to be paid, the sum of ten pounds per centum per annum of the said principal money, by such yearly payments as aforesaid, instead of the said sum of five pounds per centum per annum, and shall and will continue such respective payments of the said interest, and on account of the said principal money, so long as he shall continue rector, vicar, &c. (as the case shall be) of the said parish and parish church, unless all the said principal money, and interest for the same, shall be sooner paid and discharged. Provided always, and these presents are upon this condition, that if the said *A. B.* and his successors shall well and truly pay, or cause to be paid, the said principal money, and interest for the same, in manner and at the times aforesaid, according to the true intent and meaning of the said act, and of these presents, and also all costs and charges which shall have been occasioned by the nonpayment thereof, these presents, and everything herein contained, shall cease and be void. Provided also, that it shall and may be lawful for the said *A. B.* and his successors, peaceably and quietly to hold, occupy, possess, and enjoy, all and singular the said glebe lands, tithes, rents, moduses, composition for tithes, stipends, fees, gratuities, and other emoluments and profits whatsoever, arising, or to arise, from or in respect of the said living, until default shall be made by him or them respectively in the payment of the interest and principal, or some part thereof, at the times and in the manner aforesaid. In witness, &c.’

"Nomination of a Clergyman by the Bishop, to settle any Dispute about the Proportion of the Payments within the Year in which any Avoidance shall happen.

"I, the Right Reverend bishop of pursuant to the authority of an act, passed in the seventeenth year of the reign of his majesty King George the Third, intituled, "An Act to promote the Residence of the Parochial Clergy, by making Provision for the more speedy and effectual building, rebuilding, repairing, or purchasing Houses, and other necessary Buildings and Tenements, for the Use of their Benefices," do hereby nominate the Reverend

being a clergyman within my said diocese, to adjust and determine the matter in dispute between the Reverend clerk, and the present incum-

STAT. 17 GEO. 3, c. 53. bent of the rectory, vicarage, &c. of within my diocese, and
the representatives of the the last incumbent, (in case of
his death,) or the said (in case of his resignation or promotion,) con-
cerning the due proportion to be paid by each of the said parties of the principal
and interest which accrued due within the year in which such other death or other
avoidance happened, according to the direction, true intent, and meaning of the
said act. Given under my hand this day of .

"Award and Determination of the Clergyman nominated by the Bishop.

"I the Reverend A. B. of in the county of and dio-
cese of the Bishop of clerk, having been nominated by the said bishop,
pursuant to the power given by an act, passed in the seventeenth year of the reign
of his majesty King George the Third, intituled, "An Act to promote the Residence
of the Parochial Clergy, by making Provision for the more speedy and effectual
building, rebuilding, repairing, or purchasing Houses, and other necessary Build-
ings and Tenements, for the Use of their Benefices," to adjust and determine the
matter in dispute between the Reverend clerk, the present incumbent
of the rectory, vicarage, &c. of within the said diocese and
the representatives of the last incumbent, (in case of his death,) or the said
(in case of his resignation or promotion) concerning the due propor-
tion to be paid by each of the said parties, of the principal and interest which accrued
due within the year in which such death or avoidance happened, according to the
direction and true intent and meaning of the said act; and having heard and duly
considered the said matters so referred to me as aforesaid, do award, adjudge, and
determine, that the said shall pay, in respect of the interest and prin-
cipal which became due within the year aforesaid, the sum of and
that the said shall pay, in respect of the same, the sum of
being the remainder thereof, according to the provision and direction of the said
act. Given under my hand, this day of .

"Appointment of the Nominee (to be wrote on Parchment).

"We whose names are subscribed, being the ordinary, patron, and incumbent,
of the rectory, vicarage, &c. of within the county of and
diocese of the Bishop of do hereby nominate and appoint
of to receive the money authorized to be raised by an act, passed in
seventeenth year of the reign of his majesty King George the Third, intituled, "An
Act to promote the Residence of the Parochial Clergy, by making Provision for
the more speedy and effectual building, rebuilding, repairing, or purchasing
Houses, and other necessary Buildings and Tenements, for the Use of their Bene-
fices," for the purpose of building, rebuilding, repairing, or purchasing the parson-
age house, &c. (as the case shall be) to the said rectory, vicarage, &c. belonging,
and to pay and apply the same, and to enter into contracts with proper persons for
such buildings or repairs, and to inspect and take care of the execution of such
contracts, and to take such receipts and vouchers, keep such accounts, and do and
perform all such other matters and things, which nominees are authorized and
required to do and perform in and by the said act, the said having
given security for the due application thereof, according to the direction of the
said act. Given under our hands, this day of .

*"Form of Order of the Ordinary, Patron, and Incumbent, for laying out or applying
the Surplus Money.*

"We whose names are subscribed, being the ordinary, patron, and incumbent,
of the rectory, vicarage, &c. of in the county of and
diocese of the Bishop of do hereby order, that the sum of
now remaining in the hands of the person nominated and appointed
to receive and apply the money raised for building, repairing, &c. the parsonage
house, &c. belonging to the said rectory, vicarage, &c. under the act of parliament,
passed in the seventeenth year of the reign of his majesty King George the Third,
intituled, "An Act to promote the Residence of the Parochial Clergy, by making
Provision for the more speedy and effectual building, rebuilding, repairing, or

purchasing Houses, and other necessary Buildings and Tenements, for the Use of their Benefices," shall be [paid to _____ being the person entitled to receive the money now remaining due on the mortgage made of the glebe lands, tithes, and other profits and emoluments of the said living, and applied in part of payment thereof, pursuant to the direction of the said act] or [applied in building or repairing, &c. (describing the same) upon the glebe belonging to the said living]. Given under our hands, this _____ day of _____.

"Form of Certificate from the two Clergymen.

"We, the Reverend *A. B.* of _____ in the county of _____ clerk, and *C. D.* of _____ clerk, being two clergymen within the diocese of the Bishop of _____ do hereby certify to the said bishop, pursuant to the directions and instructions sent by him to us, that we have made inquiry into the state and condition of the buildings upon the glebe belonging to the rectory, vicarage, &c. of _____ within the said diocese, at the time the Reverend _____ clerk, the present incumbent thereof, entered upon the said living, which was in or about the year of our Lord _____ and do find [that the same have been kept in due and common repair, without any wilful neglect (if the case is so)] or [that the same have, by wilful negligence, been suffered to go to decay, and that they have sustained damage, from a want of common and ordinary repair, to the amount of _____ pounds] and we have also inquired into the money received by the said _____ for dilapidations, from the representatives of the former incumbent, and do find, that he hath received the sum of _____ for such dilapidations; and [that he hath expended the whole, or _____ thereof (as the case may be) in the necessary repairs of the buildings] or [that the same hath not been laid out or expended in repairing the buildings] upon the glebe belonging to the said living. Given under our hands, this _____ day of _____.

"Form of the Deed of Sale, or Exchange, of Lands or Tithes belonging to the Living or Benefice.

"This indenture, made the _____ day of _____ in the _____ year of the reign of his majesty King George the _____ and in the year of our Lord _____ between *A. B.* ordinary of the rectory (vicarage, chapelry, or perpetual cure, as the case shall be) of _____ in the county of _____ *C. D.* of _____ patron of the said rectory, &c. and the Reverend *E. F.* clerk, incumbent of the said rectory, &c. of the one part, and *G. H.* of _____ of the other part. Whereas, in the execution of an act passed in the seventeenth year of the reign of his majesty King George the Third, intituled, An Act, &c. (here set forth the title of the act,) it hath been found convenient to purchase (or exchange, as the case shall be,) certain lands, &c. (describe particularly the lands purchased) lying near and convenient to the parsonage house belonging to the said rectory, &c. (or if the house be lately purchased) [lying near a certain messuage, house, or tenement, and buildings, lately purchased for the habitation of the minister of the said rectory, &c. under the powers of the said act] and it hath been found most convenient, and agreed by the said ordinary, patron, and incumbent, that the glebe lands (or tithes, as the case shall be,) hereinafter described, belonging to the said rectory, &c. shall be sold, to raise the sum of _____ being the purchase money for the said lands herein before described, (or exchanged, if the same is to be done by exchange, in order to make an equivalent for such lands,) and a contract hath been made with the said *G. H.* for the absolute sale, at the price or sum of _____ (or exchange, as the case shall be) of part of the glebe land (or of the tithes, as the case shall be,) belonging to the said rectory, &c. herein after mentioned; that is to say, (here describe the particulars of the land or tithes proposed to be sold or exchanged,) which contract is hereby ratified and confirmed by the said ordinary, patron, and incumbent: now this indenture witnesseth, that the said *A. B. C. D.* and *E. F.* in order to carry the said contract into execution, and to fulfil the purposes of the said recited act, in pursuance of the powers thereby to them given, and in consideration of the sum of _____

the sale (or exchange) of certain lands or tithes (as the case shall be) belonging to the said rectory, &c., hereinafter described, pursuant to the powers given by the said act; viz., (here give a full description of the lands so agreed to be sold;) (if the equivalent is to be by exchange, then after the word "incumbent," last mentioned, insert [and the said *A. B.* to be exchanged for [certain lands or tithes, &c., (as above.)] Now this indenture witnesseth, that the said *A. B.*, for and in consideration of the said several sums of and to him in hand paid for the purchases aforesaid (if both the buildings and lands are purchased for money;) (but if the equivalent for the land is to be by exchange, then) in consideration of the said sum of for the purchase of the said messuage, house, or tenement, and buildings, and in consideration of the land (or tithes, as the case shall be,) so agreed to be exchanged as aforesaid, and intended to be conveyed to him the said *A. B.*, by the said ordinary, patron, and incumbent, by indenture of equal date herewith] the receipt of which said sum (or sums of money, as the case shall be,) [and acknowledgment of the said exchange,] (if the equivalent for the land is to be by exchange,) the said *A. B.* hath admitted, by an indorsement on the back of this deed, hath granted, bargained, and sold, and by these presents doth grant, bargain, and sell, (if by exchange) [hath granted, bargained, sold, and exchanged, with, and] unto the said *E. F.* and his heirs, all, &c., (here insert a full description of the buildings or lands so intended to be conveyed, with their and every of their rights, privileges, and appurtenances,) to hold to the said *E. F.* and his heirs, in trust, for the sole use and benefit of the said *G. H.*, and his successors, rectors, vicars, &c., (as the case shall be,) of the said living or benefice for the time being, for ever: and the said *A. B.* for himself, his heirs, executors, and administrators, doth covenant and agree to and with the said *E. F.*, and his heirs, that he hath good right to convey the said messuage, house, or tenement, and buildings, lands, &c., (as the case shall be,) and that he will warrant the same, for the use and purposes aforesaid, for ever, free from all claims, charges, and incumbrances whatsoever, by, from, or under him, or any of his ancestors. In witness, &c.'

"Form of Certificate of Residence.

"We, *A. B.*, rector, vicar, or officiating minister, (as the case shall be,) of the parish of in the diocese of clerk, and *C. D.*, rector, vicar, or officiating minister, (as the case shall be,) of the parish of within the said diocese, clerk, which said parishes of and are near adjoining to the parish of within the said diocese, do hereby certify, that *E. F.*, rector, vicar, or incumbent, (as the case shall be,) of the said parish and parish church of aforesaid, hath resided upon his living or benefice, within that parish, for the space of twenty weeks, between the day of and the day of last. Given under our hands, this day of ."

"Form of Consent where the Living or Benefice shall be in the Patronage of the Crown, or within the Duchy of Lancaster.

"Whereas the living or benefice of within the diocese of is in the patronage of | the crown, and rated above or under (as the case shall be) twenty pounds per annum in the king's books, | or of the chancellor of the duchy of Lancaster (as the case shall be); and application hath been made for building (rebuilding, repairing, or purchasing, or exchanging, as the case shall be,) the parsonage house or other buildings or land, (as the case shall be,) for the use of the said living or benefice, in pursuance of the powers given for that purpose, by an act passed in the seventeenth year of the reign of his majesty King George the Third, intituled, "An Act to promote the Residence of the Parochial Clergy, by making Provision for the more speedy and effectual building, rebuilding, repairing, or purchasing Houses, and other necessary Buildings and Tenements, for the use of their Benefices;" now I, the right honourable first lord commissioner of the treasury, | lord high chancellor of Great Britain, | or chancellor of

STAT. 17 GEO. 3, c. 53. the duchy of Lancaster, (as the case shall be,) being satisfied that such building, rebuilding, repairing, purchasing, or exchanging, &c., (as the case shall be,) will be an improvement and advantage to the said living or benefice, do hereby consent, that such buildings, repairs, purchases, or exchanges, (as the case shall be,) shall be made, according to the directions and the true intent and meaning of the said act. Given under my hand, this day of .”

STAT. 17 & 18 GEO. 3, c. 15. [IRELAND.] A.D. 1777-8.

“*An Act to enable Testamentary Guardians of Minors to make Leases for the purpose of building County Infirmaries and Hospitals on the Estates of such Minors, subject to the Restrictions herein after mentioned.*”

5 Geo. 3, c. 20.

“Whereas by an act made in the fifth year of his present majesty for erecting and establishing public infirmaries or hospitals in this kingdom, tenants for life are empowered to make fee-farm grants or leases in perpetuity, of any quantity of ground, not exceeding two acres, for the purpose of erecting a county infirmary or hospital: and whereas by an act passed in the seventh year of his present majesty, made to amend the aforesaid recited act, archbishops, bishops, and other corporate bodies, are empowered to make leases in perpetuity and in reversion of any quantity of ground, not exceeding two acres, at a reasonable rent, for erecting an infirmary or hospital for any county: but no provision is made by the said recited acts to enable the testamentary guardians of minors to make leases in perpetuity for the same purpose, which has prevented the erecting of infirmaries in places proper for them: be it therefore enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that it shall and may be lawful for the testamentary guardian or guardians of any minor or minors to make a lease or leases in perpetuity of any quantity of land, not exceeding two acres, and not being part of the demesne land, of any minor or minors, at the most improved rent, to the governors of any county infirmary or hospital; which lease or leases the said guardians are hereby empowered to make respectively, for erecting an infirmary or hospital for any county: provided such lease be approved of by the chancellor, lord keeper, or lords commissioners for keeping the great seals for the time being, by his or their order upon a petition to him or them for that purpose.”

Testamentary guardians may lease in perpetuity not above two acres, not part of demesne, at most improved rent, for county hospital, if approved in Chancery, on petition.

STAT. 17 & 18 GEO. 3, c. 25. [Ir.]

XCIV. STAT. 17 & 18 GEORGII 3, c. 25. [IRELAND.] A.D. 1777-8.

“*An Act to explain the Statute of the twenty-eighth year of Henry the Eighth, intituled, The Act of Faculties.*”

28 Hen. 8, c. 19.

“Whereas doubts have arisen, whether a dignity, canonry, or prebend in a cathedral church be compatible with any other benefice, or may be holden together with the same without first obtaining a dispensation for such purpose; and whereas according to the practice in this kingdom many benefices are in fact so holden, and the titles thereunto respectively are consequently exposed to such doubts: in remedy whereof be it enacted by the king’s most excellent majesty by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that all persons who were in the actual possession of any dignity, canonry, or prebend in a cathedral church, together with any other benefice or benefices, on or before the twenty-fifth day of December last, may hold, possess, and enjoy the same in like manner, as if a dispensation had been regularly and in due time obtained for holding the same; any law or usage to the contrary hereof in anywise notwithstanding.

Dignity, canonry, or prebend, possessed with other benefice 25th December last enjoyed as if dispensation regularly obtained.

Acts or suits before not affected.

“II. Provided, that nothing herein contained shall extend to or affect any act, matter, or thing, done, or suit commenced, before the said twenty-fifth day of December last, for voiding any ecclesiastical benefice, dignity, canonry, or prebend, on account of such incompatibility as aforesaid.”

XCV. STAT. 17 & 18 GEORGHII 3, c. 49 (1). [IRELAND.] A.D. 1777-8.

*"An Act for the Relief of His Majesty's Subjects of this Kingdom professing the Popish Religion."*STAT. 17 & 18
GEO. 3 c. 49.
[IR.]

XCVI. STAT. 18 GEORGHII 3, c. 9. A.D. 1778.

*"An Act for taking down the Parish Church of Lilford, being a Vicarage united to the Rectory of Achurch, in the County of Northampton, and for repairing the Parish Church of Achurch aforesaid, and for other Purposes therein mentioned."*STAT. 18 GEO.
3, c. 9.

XCVII. STAT. 18 GEORGHII 3, cap. xxxii. A.D. 1778.

*"An Act to enable the Lord Archbishop of Canterbury to enfranchise and grant a small parcel of Glebe and Waste Land belonging to the Manor of Lambeth, in the County of Surrey; and also to enable the Rector of the Parish of Saint Mary, Lambeth, or his Successors, to build a Parsonage House on part of the said Glebe and Waste Land, and to grant Building Leases of other parts thereof, and for other the Purposes therein mentioned."*STAT. 18 GEO.
3, cap. xxxii.

XCVIII. STAT. 18 GEORGHII 3, cap. xxxv. A.D. 1778.

*"An Act for annexing a Portion of the Rectory, and of the Rectory Manor thereto belonging, of Huntspill, in the County of Somerset, to the Office of Master of Baliol College in Oxford."*STAT. 18 GEO.
3, cap. xxxv.

XCIX. STAT. 18 GEORGHII 3, cap. xxxvi. A.D. 1778.

*"An Act for establishing an Agreement for discharging the Manor of Laughton, in the County of Leicester, and certain Lands and Hereditaments in the Parish of Laughton, from the Payment of Tithes, or any Modus or Rate for Tithe; and for vesting other Lands and Hereditaments in the Rector of the said Parish, and his Successors, as a Compensation for the said Tithes, and in lieu thereof."*STAT. 18 GEO.
3, cap. xxxvi.

C. STAT. 18 GEORGHII 3, c. 41. A.D. 1778.

*"An Act for uniting the Free Grammar School of James King of England, within the Town of Henley-upon-Thames, in the County of Oxford, with the Charity School, founded in the same Town by Dame Elizabeth Periam, Widow, and for the better Regulation and Management of the said Endowments."*STAT. 18 GEO.
3, c. 41.

CI. STAT. 18 GEORGHII 3, cap. lvi. A.D. 1778.

*"An Act for establishing and confirming an Agreement made between the Dean and Chapter of Durham, and General Cuthbert Ellison, for the Partition and Division of a Tract of unimproved Land, in the Parish of Jarrow, in the County Palatine of Durham, and the Partition and Division made in pursuance thereof."*STAT. 18 GEO.
3, cap. lvi.

CII. STAT. 18 GEORGHII 3, c. 60 (2). A.D. 1778.

*"An Act for relieving His Majesty's Subjects professing the Popish Religion from certain Penalties and Disabilities imposed on them by an Act made in the eleventh and twelfth years of the Reign of King William the Third, intituled, An Act for the further preventing the Growth of Popery."*STAT. 18 GEO.
3, c. 60.

(1) Vide Stat. 10 Geo. 4, c. 7.

Geo. 3, c. 30. Stat. 10 Geo. 4, c. 7. Stat.

(2) Vide Stat. 31 Geo. 3, c. 32. Stat. 43 1 Gul. 4, c. 26. Stat. 2 & 3 Gul. 4, c. 115.

STAT. 19 GEO.
3, c. 7.

CIII. STAT. 19 GEORGHII 3, c. 7. A.D. 1779.

"An Act for making the Church or Chapel erected by Charles Roe, Esquire, in the Town of Macclesfield, in the County Palatine of Chester, a perpetual Cure and Benefice, and for endowing the same, and vesting the Right of Nomination or Presentation thereof in the said Charles Roe, his Heirs, and Assigns, and for other Purposes."

STAT. 19 GEO.
3, c. 20.

CIV. STAT. 19 GEORGHII 3, c. 20. A.D. 1779.

"An Act for the better raising and securing a Fund for a Provision for the Widows and Children of the Ministers of the Church of Scotland, and of the Heads, Principals, and Masters in the Universities of Saint Andrew's, Glasgow, Edinburgh, and Aberdeen; and for repealing two Acts made in the seventeenth and twenty-second years of the Reign of His late Majesty King George the Second for those Purposes."

STAT. 19 GEO.
3, c. 23.

CV. STAT. 19 GEORGHII 3, c. 23. A.D. 1779.

"An Act more effectually to enable the President and Governors of the Hospital or Infirmary at Bath . . . to take or acquire, and hold, any Lands, Tenements, or Hereditaments, or any Interest in Lands, Tenements, or Hereditaments, and any Money, or Personal Property, to be laid out in Lands, Tenements, or Hereditaments, pursuant to any Will or otherwise. . ."

STAT. 19 GEO.
3, cap. xxiii.

CVI. STAT. 19 GEORGHII 3, cap. xxiii. A.D. 1779.

"An Act for confirming and establishing an Exchange agreed upon between the Dean and Chapter of the Cathedral Church of the blessed Virgin Mary of Lincoln, and the Right Honourable John Lord Monson, of certain Lands and Hereditaments, in the County of Lincoln."

STAT. 19 GEO.
3, c. 44.

CVII. STAT. 19 GEORGHII 3, c. 44 (1). A.D. 1779.

"An Act for the further Relief of Protestant Dissenting Ministers and Schoolmasters."

Protestant dissenting ministers, who shall take the oaths and subscribe the declaration against popery required by the said act, and shall also make and subscribe the following declaration,

"Whereas, by an act made in the first year of the reign of King William and Queen Mary, intituled, 'An Act for exempting their Majesties' Protestant Subjects, dissenting from the Church of England, from the Penalties of certain Laws,' persons dissenting from the church of England, in holy orders, or pretended holy orders, or pretending to holy orders, and preachers or teachers of any congregation of dissenting protestants, are required, in order to be entitled to certain exemptions, benefits, privileges, and advantages, to declare their approbation of, and to subscribe, the articles of religion mentioned in the statute made in the thirteenth year of the reign of Queen Elizabeth (except as in the said act, made in the first year of the reign of King William and Queen Mary, is excepted): and whereas, many such persons scruple to declare their approbation of, and to subscribe, the said articles not excepted as aforesaid; for giving ease to such scrupulous persons in the exercise of religion, may it please your majesty that it may be enacted; and be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that every person dissenting from the church of England, in holy orders, or pretended holy orders, or pretending to holy orders, being a preacher or teacher of any congregation of dissenting protestants, who, if he scruple to declare and subscribe as aforesaid, shall take the oaths, and make and subscribe the declaration against popery, required by the said act, in the first year of the reign of King William and Queen Mary, to be taken, made, and subscribed by protestant dissenting ministers, and shall also make and subscribe a declaration in the words following; videlicet,

“I, *A. B.*, do solemnly declare, in the presence of Almighty God, that I am a Christian and a Protestant, and as such, that I believe that the Scriptures of the Old and New Testament, as commonly received among Protestant Churches, do contain the revealed Will of God; and that I do receive the same as the rule of my doctrine and practice.”

“Shall be, and every such person is hereby declared to be, entitled to all the exemptions, benefits, privileges, and advantages, granted to protestant dissenting ministers by the said act, made in the first year of the reign of King William and Queen Mary; and by an act, made in the tenth year of the reign of Queen Anne, intituled, ‘An Act for preserving the Protestant Religion, by better securing the Church of England, as by Law established; and for confirming the Toleration granted to Protestant Dissenters by an Act, intituled, “An Act for exempting their Majesties’ Protestant Subjects, dissenting from the Church of England, from the Penalties of certain Laws,” and for supplying the defects thereof; and for the further securing the Protestant Succession, by requiring the Practisers of the Law in North Britain to take the Oaths and subscribe the Declaration therein mentioned;’ and the justices of the peace at the general session of the peace to be holden for the county or place where any protestant dissenting minister shall live, are hereby required to tender and administer the said last-mentioned declaration to such minister, upon his offering himself to make and subscribe the same, and thereof to keep a register; and such minister shall not give or pay, as a fee or reward to any officer or officers belonging to the court aforesaid, above the sum of sixpence for his or their entry of such minister’s making and subscribing the said last-mentioned declaration, and taking the oaths, and making and subscribing the declaration against popery, required by the said act, made in the first year of the reign of King William and Queen Mary, to be taken, made, and subscribed by protestant dissenting ministers; nor above the sum of sixpence for any certificate thereof to be made out and signed by the officer or officers of the said court; and every such person, qualifying himself as aforesaid, shall be exempted from serving in the militia of this kingdom; and shall also be exempted from any imprisonment, or other punishment, by virtue of an act, made in the thirteenth and fourteenth years of the reign of King Charles the Second, intituled, ‘An Act for the Uniformity of Public Prayers and Administration of Sacraments, and other Rites and Ceremonies; and for establishing the Form of making, ordaining, and consecrating, Bishops, Priests, and Deacons, in the Church of England;’ or by an act made in the fifteenth year of the same reign, intituled, ‘An Act for Relief of such Persons as by Sickness, or other Impediment, were disabled from subscribing the Declaration in the Act of Uniformity, and Explanation of part of the said Act;’ for preaching or officiating in any congregation of protestant dissenters, for the exercise of religion permitted and allowed by law.

“II. And be it further enacted by the authority aforesaid, that no dissenting minister, nor any other protestant dissenting from the church of England, who shall take the aforesaid oaths, and make and subscribe the above-mentioned declaration against popery, and the declaration hereinbefore mentioned, shall be prosecuted in any court whatsoever, for teaching and instructing youth as a tutor or schoolmaster; any law or statute to the contrary notwithstanding.

“III. Provided always, that nothing in this act contained shall extend, or be construed to extend, to the enabling of any person dissenting from the Church of England to obtain or hold the mastership of any college or school of royal foundation, or of any other endowed college or school for the education of youth, unless the same shall have been founded since the first year of the reign of their late Majesties King William and Queen Mary, for the immediate use and benefit of protestant dissenters.

“IV. And whereas it hath been doubted, whether the said act, made in the first year of the reign of King William and Queen Mary, be a public or private act; be it enacted and declared, that the said act, and also this present act, shall be adjudged, deemed, and taken to be public acts; and shall be judicially taken notice of as such, by all judges, justices, and other persons whomsoever, without specially pleading them, or either of them.”

STAT. 19 GEO.
3, c. 44.

shall be entitled to all the privileges granted by the Toleration Act, and by 10 Ann. for confirming the same, &c.;

and shall be exempted from serving in the militia, and from any punishment by virtue of the Act of Uniformity.

Dissenters allowed to instruct youth.

No dissenter to hold the mastership of any college or school of royal foundation, &c.

1 G. & M. and this act, to be deemed public acts.

STAT. 19 GEO.
3, cap. xlviii.

CVIII. STAT. 19 GEORGII 3, cap. xlviii. A.D. 1779.

"An Act for Sale of the next Presentations to certain Livings, late the Estates of Sir Griffith Boynton, Baronet, deceased. . . ."

STAT. 19 GEO.
3, c. 57.

CIX. STAT. 19 GEORGII 3, c. 57. A.D. 1779.

"An Act for the better providing of a Maintenance for the Vicar of the Parish of the Trinity, in the City of Coventry."

STAT. 19 GEO.
3, c. 60.

CX. STAT. 19 GEORGII 3, c. 60. A.D. 1779.

"An Act for establishing certain Payments to be made to the Vicar of the Parish of Saint Michael in the City of Coventry for the time being in lieu of Tithes; and for repealing so much of an Act of the fourth and fifth of Philip and Mary as relates to the Payment of Tithes in the said Parish."

STAT. 19 & 20
GEO. 3, c. 6.
[Ir.]

CXI. STAT. 19 & 20 GEORGII 3, c. 6 (1). [IRELAND.] A.D. 1779-80.

"An Act for the Relief of His Majesty's faithful Subjects the Protestant Dissenters of this Kingdom, and to repeal a Clause in the Act of the second of Queen Anne, intituled, An Act to prevent the further Growth of Popery, as far as the same relates to the Protestant Dissenters."

STAT. 19 & 20
GEO. 3, c. 39.
[Ir.]

CXII. STAT. 19 & 20 GEORGII 3, c. 39 (2). [IRELAND.] A.D. 1779-80.

"An Act for explaining an Act made in the eighth year of the Reign of Her late Majesty Queen Anne, intituled, An Act for explaining and amending an Act to prevent the further Growth of Popery, so far only as the same makes a Provision for the Maintenance of Popish Priests converted to the Protestant Religion."

STAT. 20 GEO.
3, c. 15.

CXIII. STAT. 20 GEORGII 3, c. 15. A.D. 1780.

"An Act for repealing so much of an Act made in the twelfth year of His present Majesty, intituled, An Act for amending and rendering more effectual an Act made in the tenth year of His Majesty's Reign, intituled, An Act for building a new Parish Church, and declaring the present Parish Church a Chapel; for making a Cemetery, or Churchyard; and for building an House for the use of the Minister of the Parish of Saint Mary-le-bone, in the County of Middlesex; as empowers the Vestrymen of the said Parish to build a Church upon a certain parcel of Ground, in the said Parish, belonging to Henry William Portman, Esquire, heretofore parcel of a certain Close, called The Fifteen Acres."

STAT. 20 GEO.
3, c. 28.

CXIV. STAT. 20 GEORGII 3, c. 28 (3). A.D. 1780.

"An Act for granting to His Majesty . . . certain Duties on Receipts for Legacies, or for any Share of a Personal Estate divided by force of the Statute of Distributions, or the Custom of any Province or Place."

Parchment, &c.
to be brought
to the stamp
office to be
stamped, be-

"III. And, for better securing the said stamp duties hereby imposed, be it further enacted by the authority aforesaid, that all vellum, parchment, or paper, upon which any such receipt or other discharge for any legacy left by any will, or other testamentary instrument, or any part thereof, or for any share or part of a

(1) *Vide* Stat. 10 Geo. 4, c. 7.

(2) Obsolete.

Vide Stat. 8 Ann. c. 3, s. 18. (I.) Stat. 31 Geo. 2, c. 9. (I.) Stat. 11 & 12 Geo. 3, c. 19, s. 1. (I.)

(3) The duties imposed by Stat. 20 Geo.

3, c. 28, on receipts and discharges for legacies, have been repealed, and new duties have been imposed on the legacy itself, by Stat. 55 Geo. 3, c. 184. *Vide* Stephens on Nisi Prius, tit. EXECUTORS AND ADMINISTRA-

personal estate, divided by force of the Statute of Distributions, or the custom of any province or place, or any part thereof, shall, before the same shall be ingrossed, written, or printed, be brought to the head office for stamping and marking of vellum, parchment, and paper; and the said commissioners, by themselves or their officers, shall from time to time stamp or mark as this act directs, any quantities of vellum, parchment, or paper, upon payment of the said duty, the said duty to be paid by the person or persons giving such receipt or other discharge; and if any receipt or other discharge, so hereby directed to be stamped, shall not be marked or stamped as by this act is directed, or shall be marked or stamped for a lower duty than as aforesaid, no such receipt shall be pleaded or given in evidence in any court, or admitted in any court to be good, useful, or available, in law or equity."

STAT. 20 GEO.
3, c. 28.

for any receipt
for a legacy,
&c. shall be
written or
printed there-
on.

CXV. STAT. 20 GEORGII 3, cap. xlv. A.D. 1780.

"An Act for incorporating the Trustees of the Charities established by the Settlements and Will of Henry Raine, Esquire, deceased. . . ."

STAT. 20 GEO.
3, cap. xlv.

CXVI. STAT. 20 GEORGII 3, cap. lvii. A.D. 1780.

"An Act for vesting in Trustees the Capital Messuage, with the Appurtenances at Croydon, in the County of Surrey, known by the name of the Palace of the Archbishop of Canterbury, and two Closes near thereto adjoining, in Trust, to sell the same, and for disposing of, and applying the Money to arise thereby, and received on account of the Dilapidations thereof, and other Money, in the manner, and for the purposes therein mentioned."

STAT. 20 GEO.
3, cap. lvii.

CXVII. STAT. 21 GEORGII 3, c. 49. A.D. 1781.

"An Act for preventing certain Abuses and Profanations on the Lord's Day, called Sunday."

STAT. 21 GEO.
3, c. 49.

"Whereas, certain houses, rooms, or places, within the cities of London or Westminster, or in the neighbourhood thereof, have of late frequently been opened for public entertainment or amusement upon the evening of the Lord's day, commonly called Sunday; and at other houses, rooms, or places, within the said cities, or in the neighbourhood thereof, under pretence of inquiring into religious doctrines, and explaining texts of holy Scripture, debates have frequently been held on the evening of the Lord's day, concerning divers texts of holy Scripture, by persons unlearned and incompetent to explain the same, to the corruption of good morals, and to the great encouragement of irreligion and profaneness; be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the passing of this present act, any house, room, or other place, which shall be opened or used for public entertainment or amusement, or for publicly debating on any subject whatsoever, upon any part of the Lord's day called Sunday, and to which persons shall be admitted by the payment of money, or by tickets sold for money, shall be deemed a disorderly house or place; and the keeper of such house, room, or place, shall forfeit the sum of two hundred pounds for every day that such house, room, or place shall be opened or used as aforesaid on the Lord's day, to such person as will sue for the same, and be otherwise punishable as the law directs in cases of disorderly houses; and the person managing or conducting such entertainment or amusement on the Lord's day, or acting as master of the ceremonies there, or as a moderator, president, or chairman, of any such meeting for public debate on the Lord's day, shall likewise, for every such offence, forfeit the sum of one hundred pounds to such person as will sue for the same; and every door-keeper, servant, or other person, who shall collect or receive money or tickets from persons assembling at such house, room, or place, on the Lord's day, or who shall deliver out tickets for admitting persons to such house, room, or place, on the Lord's day, shall also forfeit the sum of fifty pounds to such person as will sue for the same.

House, &c.
opened on a
Sunday, to
which persons
shall be ad-
mitted by pay-
ment, &c.
shall be deemed
a disorderly
house, &c.

STAT. 21 GEO.
3, c. 49.

The person
who acts as
master or mis-
tress in any
such house,
shall be deemed
the owner
thereof.

All houses
where refresh-
ments are sold
at greater
prices on Sun-
days than on
other days, &c.
liable to the
penalties in-
flicted by this
act.

Penalty on ad-
vertising, &c.

Penalties how
to be recovered.

Actions within
six months.

General issue.

Treble costs.
Act not to
affect eccle-
siastical juris-
diction;
nor Toleration
Act.

“II. And whereas, by reason of the many subtle and crafty contrivances of persons keeping such houses, rooms, or places as aforesaid, it may often be difficult to prove who is the real owner or keeper thereof; be it enacted by the authority aforesaid, that any person who shall at any time hereafter appear, act, or behave him or herself as master or mistress, or as the person having the care, government, or management of any such house, room, or place as aforesaid, shall be deemed and taken to be the keeper thereof, and shall be liable to be sued or prosecuted, and punished as such, notwithstanding he or she be not in fact the real owner or keeper thereof: and wherever any such house, room, or place, shall belong to or be kept by divers persons in partnership, as joint-owners or joint-keepers thereof, each and every such joint-owner or joint-keeper of such house, room, or place, shall be deemed the keeper thereof, and shall be liable to be sued or prosecuted, and punished as such: and any house, room, or place, at which persons shall be supplied with tea, coffee, or any other refreshments of eating or drinking on the Lord's day, at any greater prices than the common and usual prices at which the like refreshments are commonly sold upon other days at such house, room, or place, or at coffee houses, or other houses where the same are usually sold, shall be deemed a house, room, or place, to which persons are admitted by the payment of money, although money be not there taken in the name of or for admittance, or at the time when persons enter into or depart from such house, room, or place; and any house, room, or place, which shall be opened or used for any public entertainment or amusement, or for public debate, on the Lord's day, at the expense of any number of subscribers or contributors to the carrying on any such entertainment or amusement, or debate, on the Lord's day, and to which persons shall be admitted by tickets, to which the subscribers or contributors shall be entitled, shall be deemed a house, room, or place, to which persons are admitted by the payment of money, within the meaning of this act.

“III. And, for the better preventing persons assembling on the Lord's day for such irreligious purposes as aforesaid, be it further enacted by the authority aforesaid, that any person advertising, or causing to be advertised, any public entertainment or amusement, or any public meeting for debating on any subject whatsoever, on the Lord's day, to which persons are to be admitted by the payment of money, or by tickets sold for money, and any person printing or publishing any such advertisement, shall respectively forfeit the sum of fifty pounds for every such offence, to any person who will sue for the same.

“IV. And be it further enacted by the authority aforesaid, that any person entitled to either of the aforesaid forfeitures, may sue for the same by action of debt in any of his majesty's courts of record at Westminster, in which it shall be sufficient to declare, that the defendant is indebted to the plaintiff in the sum of [being the sum demanded by the said action], being forfeited by an act made in the twenty-first year of the reign of his majesty King George the Third, intituled, ‘An Act for preventing certain Abuses and Profanations on the Lord's Day, called Sunday;’ and the plaintiff, if he recover in any such action, shall have his full costs.

“V. Provided, that no action shall be brought for either of the said penalties by this act imposed, unless the same be brought within six calendar months next after the offence committed.

“VI. Provided also, that if any action or suit shall be brought against any person for anything done in pursuance and in execution of this act, the defendant may plead the general issue; and if a verdict pass for the defendant, or the plaintiff discontinue his or her action, or be nonsuited, or judgment be given against the plaintiff, then such defendant shall have treble costs.

“VII. Provided also, that the ecclesiastical jurisdiction within this realm shall not by this act be altered or abridged; but that the ecclesiastical courts may punish the said offences, as if this act had not been made.

“VIII. Provided also, that nothing in this act contained shall be construed to extend to take away, alter, or abridge, any of the liberties or immunities to which the protestant subjects of this kingdom are entitled, by an act made in the first

year of the reign of King William and Queen Mary, intituled, ‘An Act for STAT. 21 GEO.
exempting their Majesties’ Protestant Subjects, dissenting from the Church of 3, c. 49.
England, from the Penalties of certain Laws.”

CXVIII. STAT. 21 GEORGII 3, c. 53(1). A.D. 1781.

STAT. 21 GEO.
3, c. 53.

“*An Act to render valid certain Marriages(2), solemnized in certain Churches and Public Chapels in which Banns had not usually been published, before or at the time of passing an Act, made in the twenty-sixth year of King George the Second, intituled, An Act for the better preventing of Clandestine Marriages.*”

“Whereas, since the making of an act, passed in the twenty-sixth year of the reign of his late majesty King George the Second, intituled, ‘An Act for the better preventing of Clandestine Marriages,’ divers churches and public chapels have been erected and built within that part of Great Britain called England, Wales, and the town of Berwick-upon-Tweed, which have been duly consecrated, and divers marriages have been solemnized therein; but, by reason that in such churches and chapels banns of matrimony had not usually been published before or at the time of passing the said act, such marriages have been deemed to be void: may it therefore please your majesty that it may be enacted, and be it enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that all marriages already solemnized, or to be solemnized before the first day of August, one thousand seven hundred and eighty-one, in any church or public chapel, in that part of Great Britain called England, Wales, and the town of Berwick-upon-Tweed, erected since the making of the said act, and consecrated, shall be as good and valid in law as if such marriages had been solemnized in parish churches or public chapels having chapelries annexed, and wherein banns had been usually published before or at the time of passing the said recited act.

Act 26 Geo. 2
recited.

“II. And be it further enacted by the authority aforesaid, that all parsons, vicars, ministers, and curates, who, before the tenth day of July, one thousand seven hundred and eighty-one, shall have solemnized any of the marriages which are hereby enacted to be valid in law, shall be, and they are hereby indemnified against the penalties inflicted by the said recited act upon persons who shall solemnize marriages in any other place than a church or public chapel in which banns had been usually published before or at the time of passing the said recited act.

Marriages
solemnized
before August
1, 1781, in any
church, &c. in
England,
erected since
the recited act,
valid.

“III. And be it further enacted by the authority aforesaid, that the registrars of marriages, solemnized or to be solemnized in the said churches or chapels, which are hereby enacted to be valid in law, or copies thereof, shall be received in all courts of law and equity as evidence of such marriages, in the same manner as registers of marriages solemnized in parish churches or public chapels, in which banns were usually published before or at the time of passing the said recited act, or copies thereof are received in evidence.

Clergymen
indemnified.

“IV. And be it enacted by the authority aforesaid, that the registers of all marriages, solemnized in any public chapels, which are hereby enacted to be valid in law, shall, within twenty days next after the first day of August, one thousand seven hundred and eighty-one, be removed to the parish church of the parish in which such chapel shall be situated; and in case such chapel shall be situated in an extra-parochial place, then to the parish church next adjoining to such extra-parochial place, to be kept with the marriage registers of such parish, and in like manner as marriage registers are directed to be kept by the said recited act.”

Registers of
such marriages
to be received
as evidence.

Registers of
marriages in
chapels to be
removed to
parish church.

(1) The decision of the court of King’s Bench in *Rex v. Northfield (Inhab. of)*, (Doug. 658,) was the cause of the enactment of Stat. 21 Geo. 3, c. 53.

77. Stat. 48 Geo. 3, c. 127. Stat. 4 Geo. 4, c. 76. Stat. 6 Geo. 4, c. 92. Stat. 6 & 7 Gul. 4, c. 85. Stat. 7 Gul. 4 & 1 Vict. c. 22. Stat. 3 & 4 Vict. c. 72.

(2) *Marriages*:—Vide Stat. 44 Geo. 3, c.

STAT. 21 GEO.
3, c. 66.

CXIX. STAT. 21 GEORGII 3, c. 66(1). A.D. 1781.

“An Act to explain and amend an Act, made in the seventeenth year of the Reign of His present Majesty, intituled, An Act to promote the Residence of the Parochial Clergy, by making Provision for the more speedy and effectual building, rebuilding, repairing, or purchasing Houses and other necessary Buildings and Tenements, for the Use of their Benefices.”

17 Geo. 3, c. 53.

“(2) Whereas by an act passed in the seventeenth year of the reign of his present majesty, intituled, ‘An Act to promote the Residence of the Parochial Clergy, by making Provision for the more speedy and effectual building, rebuilding, repairing, or purchasing Houses, and other necessary Buildings and Tenements, for the Use of their Benefices;’ it is enacted, amongst other things, that the incumbent of every living or benefice, of which the glebe, tithes, rents, and profits, shall be mortgaged for the purposes of the said act, shall pay the interest arising upon every such mortgage, yearly, as the same shall become due; and also five pounds per centum per annum, if such incumbent was resident, and ten pounds per centum per annum, if non-resident, of the principal remaining due, by yearly payments; which words, if literally understood and observed, would, contrary to the true intent and meaning of the said act, render the discharge of the principal sum impracticable, and thereby discourage persons from lending money upon such securities: be it therefore enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that the incumbent of every living or benefice of which the glebes, tithes, rents, and profits, have been or shall be mortgaged for the purposes of the said act, shall, from and after the passing of this act, well and truly pay, or cause to be paid, to every such mortgagee, over and besides the interest of the principal money due upon such mortgage, the sum of five pounds per centum per annum, if resident, or ten pounds per centum per annum, if non-resident, of the money originally advanced upon such mortgage, until the whole of the said principal money shall be discharged; and if, upon any such mortgage or mortgages already made, less shall have been paid by the present incumbent than what is hereby directed to be paid, he shall, and he is hereby required, within six months after the passing of this act, to make up the deficiency; and in default of payment thereof within the time aforesaid, the same shall be recovered in such and the same manner as the interest is recoverable by virtue of the provisions in the said recited act.

Incumbent,
where glebes,
&c. be mort-
gaged, shall
pay to the
mortgagee, &c.

Forms in the
schedule to be
observed.

“II. (3) And be it further enacted, that the forms contained in the said schedule respecting the allowance of accounts, and the bond and receipt to be given by the nominee, as directed by the said recited act, or forms to the like effect, shall be observed and complied with in the execution of this and the said recited act.

Public act.

“III. And be it further enacted, that this act, and every thing herein contained, shall be deemed, adjudged, and taken to be a public act; and shall be judicially taken notice of as such by all judges, justices, and other persons whomsoever, without specially pleading the same.”

“‘STATE of Account of the Money advanced and paid by A. B., (rector or vicar, &c., as the case shall be,) of the living of _____ in the county of _____ for the building (rebuilding or repairing) the parsonage house and buildings belonging to the said living, according to the direction of a statute made in the seventeenth year of the reign of his majesty King George the Third.

‘C. D., Ordinary.

‘E. F., Patron.

‘G. H., Incumbent.’

(1) *Vide* Stat. 55 Geo. 3, c. 147. Stat. 3 & 4 Vict. cc. 20; 60, s. 21; 86, s. 2; 113, 56 Geo. 3, c. 52. Stat. 1 Geo. 4, c. 6. s. 34. Stat. 4 & 5 Vict. c. 39, ss. 9, 10, 23, Stat. 5 Geo. 4, c. 89. Stat. 7 Geo. 4, c. & 24.
66. Stat. 1 & 2 Vict. c. 23. Stat. 1 & 2 (2) *Vide* Stat. 1 & 2 Vict. c. 23.
Vict. c. 106. Stat. 2 & 3 Vict. c. 49. Stat. (3) Amended by Stat. 1 Geo. 4, c. 6, s. 2.

“Form of Allowance of the Nominee’s Account of the Money received and expended by him, pursuant to the Directions of the said Statute of the seventeenth of George the Third, to be written at the Foot of such Account.” STAT. 21 GEO. 3, c. 66.

“We have examined, and do hereby approve and allow the above account.
Given under our hands, this day of

‘A. B., Ordinary.

‘C. D., Patron.

‘E. F., Incumbent.’

“Receipt to be signed by the Nominee for the Money which shall be borrowed and paid into his Hands, pursuant to the Direction of the said Act.”

“I, A. B., being the person nominated by the ordinary, patron, and incumbent, of the rectory (vicarage, &c., as the case shall be,) of in the county of and diocese of the Bishop of to receive and apply the money authorized to be borrowed by mortgage of the glebe, tithes, rents, and other profits and emoluments of the said for the purpose of building (rebuilding, or repairing, as the case shall be,) the parsonage house (or out-buildings, &c., as the case shall be) belonging to such living or benefice, do hereby acknowledge to have received from the hands of C. D., being the person to whom such mortgage is intended to be made, the sum of being the sum for which such mortgage or security is to be made: and I do hereby promise to apply the same in such manner and for such purposes as are directed by the said act.”

“Form of Bond to be given by the Nominee and his Surety, pursuant to the Direction of the said Act.”

“Obligation of the bond (in the common form of obligations) from A. B. (describing him as in the last form of receipt) and C. D., of, &c., (describing the surety,) to (describing the ordinary) in the penal sum of (to be double the sum for which the security is to be given, &c., &c.)”

“Form of the Condition of the said Bond.”

“The condition of the above obligation is such, that if the said A. B. (naming the nominee as before mentioned) shall and do justly and truly pay and account for the sum of received by him this day from C. D. being the person to whom a mortgage hath been this day made and executed of the glebe, tithes, rents, and other profits and emoluments, of the rectory (vicarage, &c., as the case shall be) of for the purpose of building (rebuilding or repairing of the said rectory, &c., as the case shall be), according to the true intent and meaning of two several acts of parliament, passed in the seventeenth and twenty-first years of the reign of his majesty King George the Third, for those purposes; then this obligation to be void, or otherwise to remain in force.

‘A. B.

‘C. D.’”

CXX. STAT. 21 GEORGH 3, c. 71. A.D. 1781.

STAT. 21 GEO. 3, c. 71.

“An Act for vesting the Parish Church of Saint Christopher le Stocks, in the City of London, and the Materials and Site thereof, and the Churchyard thereto adjoining, in the Governor and Company of the Bank of England, and their Successors for ever; and for uniting the said Parish to the Parish of Saint Margaret, Lothbury, in the said City.”

CXXI. STAT. 21 GEORGH 3, c. 76. A.D. 1781.

STAT. 21 GEO. 3, c. 76.

“An Act for building a new Church and Rectory House within the Parish of Eserick, in the County of York; and for confirming an Agreement with the Rector of the said Parish, for exchanging and exonerating from Tithes certain Lands and Tenements in Eserick, aforesaid.”

CXXII. STAT. 21 & 22 GEORGH 3, c. 24 (1). [IRELAND.] A.D. 1781—2.

STAT. 21 & 22 GEO. 3, c. 24. [IR.]

“An Act for the further Relief of His Majesty’s Subjects of this Kingdom professing the Popish Religion.”

STAT. 21 & 22
GEO. 3, c. 25.
[Ir.]

CXXIII. STAT. 21 & 22 GEORGII 3, c. 25 (1). [IRELAND.] A.D. 1781-2.

"An Act for the Relief of Protestant Dissenters, in certain Matters therein contained."

All marriages solemnized, and hereafter to be, between protestant dissenters, and by a protestant dissenting clergyman, shall be good and valid in law; and all persons deriving under such marriages entitled to all rights and benefits whatsoever, as by any other marriage.

"Whereas, the removing any doubts that may have arisen concerning the validity of matrimonial contracts or marriages entered into between protestant dissenters, and solemnized by protestant dissenting ministers or teachers, will tend to the peace and tranquillity of many protestant dissenters and their families; therefore be it declared and enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that all matrimonial contracts or marriages heretofore entered into, or hereafter to be entered into, between protestant dissenters, and solemnized or celebrated by protestant dissenting ministers or teachers, shall be, and shall be held and taken to be good and valid to all intents and purposes whatsoever; and that all parties to such marriages, and all persons deriving under them, shall in virtue of such marriages be, and be deemed, adjudged, and taken as entitled to all rights and benefits whatsoever, from, under, or in consequence of such marriages, in like manner as all his majesty's subjects of the established church, and as if the same had been solemnized by a clergyman of the church of Ireland by law established; any law, statute, custom, matter, or thing to the contrary thereof in any wise notwithstanding.

Not to extend to avoid any acts made in the reigns of George 1 & 2, against clandestine marriages.

"II. Provided always, that nothing herein contained shall extend to, or make void, or be construed in any ways contrary to the several acts made in the reigns of their late majesties George the First and George the Second, for preventing clandestine and other marriages therein specified, but that the said acts shall be, and shall be deemed and taken to be in full force and effect, as if this present act had not passed; anything herein contained to the contrary thereof in any wise notwithstanding."

STAT. 21 & 22
GEO. 3, c. 26.
[Ir.]

CXXIV. STAT. 21 & 22 GEORGII 3, c. 26. [IRELAND.] A.D. 1781-2.

"An Act for the rendering the Manner of Conforming from the Popish to the Protestant Religion, more easy and expeditious."

All persons reputed protestants, who in time of divine service receive the sacrament before minister, subscribe the declaration, take the oaths, &c.

"Whereas, the manner of conforming from the popish to the protestant religion, according to the laws now in force in this kingdom, is attended with considerable delay and difficulty; and whereas, it will tend to promote the interests of the protestant religion, if the mode of conforming thereto shall be rendered more easy and expeditious: be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that from and after the first day of June, which shall be in this present year of our Lord one thousand seven hundred and eighty-two, any person who is or shall be desirous of conforming from the popish to the protestant religion, shall be deemed, taken, and reputed to be a protestant of the church of Ireland, as by law established, to all intents and purposes whatsoever, if he or she shall, on any Sunday in the year, in the time of divine service, take and receive from the hands of the minister or curate of any parish in this kingdom, the sacrament of the Lord's supper, according to the law and usage of the church of Ireland, as by law established; and shall, before such minister or curate, in the house of such minister or curate, or at any other convenient place, make and subscribe the declaration, pursuant to an act, intituled, 'An Act to prevent the further Growth of Popery,' and shall also take the oaths of allegiance, supremacy, and abjuration; which said declaration and oaths, every such minister and curate is hereby authorized and required to receive and administer respectively; and shall file in the high court of Chancery, a certificate under the hand and seal of such minister or curate, of his or her having performed the said several requisites; which said certificate, every such

(which minister, &c. authorized to receive and administer), and file a certificate thereof in Chancery.

minister and curate is hereby authorized and required to grant, without fee or reward; and for the filing of which certificate, no greater fee shall be taken than sixpence.

“II. Provided always, that every such certificate shall be so filed as aforesaid, within six months after every person so conforming shall have taken and received the sacrament of the Lord’s supper as aforesaid; or if the person so conforming shall be under the age of eighteen years, then within six months next after his or her attaining that age; anything in any former act to the contrary thereof in any wise notwithstanding.

“III. And be it further enacted by the authority aforesaid, that every such minister and curate as aforesaid, shall keep a roll of parchment, containing the said declaration and oath, from which roll said declaration shall be read, and said oaths administered; and being so administered and read, the person so conforming shall sign the same respectively.”

STAT. 21 & 22
Geo. 3, c. 26.
[Ir.]

Period within
which such
certificate to be
filed.

Every minister
&c. to keep a
roll of parch-
ment, with said
declaration and
oath, which
person so
taking to sign.

CXXV. STAT. 21 & 22 GEORGH 3, c. 27. [IRELAND.] A.D. 1781-2.

“An Act to enable the Governors of any of the Schools founded in this Kingdom, to make long Leases of such Lands as have been granted for the Support of the said Schools, and are situate in Counties of Cities, and Counties of Towns.”

“Whereas, it would increase the funds provided for the support of several of the schools founded in this kingdom, if the governors of the said schools were enabled to make building leases, in the manner, and subject to the provisos hereinafter mentioned, of a competent part of such lands as have been granted for the support of the said schools, and are situate in counties of cities, and counties of towns: and whereas such leases would tend to the advantage and improvement of the said cities and towns; be it enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that it shall and may be lawful to and for the said respective governors to make leases of any part of the said lands so situate as aforesaid, for any term not exceeding forty-one years; any law or statute to the contrary thereof in any wise notwithstanding.

STAT. 21 & 22
Geo. 3, c. 27.
[Ir.]

Altered and
amended by
25 Geo. 3, c. 55.

Governors may
lease for forty-
one years.

“II. Provided always, that in every such lease there shall be contained a covenant on the part of the tenant, to lay out a certain sum of money in building on the said demised premises, or on some part of the same.

“III. And be it enacted by the authority aforesaid, that it shall and may be lawful to and for the said governors to renew the said leases from time to time, taking fines for such renewals, which fines shall be applied to the credit of the funds of the said schools.

With covenant
on tenant to
build.

And may re-
new, taking
fines.

“IV. Provided always, that the lease so renewed shall not exceed the term of forty-one years.

“V. Provided further, and be it enacted by the authority aforesaid, that the lands to be severally demised by any of the said respective governors from time to time, by virtue of this act, shall not contain in the whole more than the quantity of twenty acres, plantation measure.

“VI. Provided always, and be it enacted by the authority aforesaid, that the primate of Ireland, the lord chancellor, the archbishops of Dublin, Cashel, and Tuam, the lord chief justice of the court of King’s Bench, the lord chief justice of the Common Pleas, the lord chief baron of the Exchequer, all for the time being, or any three of them, shall, by writing under their hands and seals, signify their consent, or the consent of any three of them, to the making any such original lease, previous to the execution thereof; otherwise the same to be null and void to all intents and purposes whatsoever.”

Such renewal
not to exceed
forty-one
years.

No demise to
contain more
than twenty
acres.

Provided
always, that
primate, chan-
cellor, &c. or
any three of
them, signify
their consent
to original
lease under
hands and
seals,
otherwise void.

STAT. 21 & 22
GEO. 3, c. 28.
[I.R.]

Archbishop,
with consent
of patron and
schoolmaster,
or bishop,
with consent
of archbishop
and patron
and school-
master, may
change site of
such school
within their
diocese.

Procuring a
conveyance of
place to which
removed not
less than 999
years at a
pepper-corn
rent.
Grand juries
may present
sums for
building, &c.

And archbi-
shop, &c. may
demise old
school houses,
&c. at best rent
for forty-one
years, for
augmentation
of schoolmas-
ter's salary.

CXXVI. STAT. 21 & 22 GEORGII 3, c. 28. [IRELAND.] A.D. 1781-2.

"An Act to amend the Laws for the erecting and regulating Free Schools."

"Whereas certain lots of ground have been set apart and appropriated in several dioceses for free schools, in pursuance of the laws made in this kingdom for the erecting and regulating of free schools, upon which school houses have been erected, some of which are inconveniently situated, and have been suffered to go to decay: and whereas some of the lots of ground so appropriated are not large enough for the accommodation of such schools, and are so confined by neighbouring buildings, as to render the air unwholesome: and whereas well-disposed persons may be willing to give more convenient and larger lots of ground for erecting such school houses upon, without desiring any rent for the same: and whereas the ground on which such school houses at present stand may be demised at considerable rents, which may be applied to increase the salaries of the masters of such schools; be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that it shall and may be lawful for any archbishop, by and with the approbation and consent of the patron and schoolmaster, and for any bishop, by and with the consent and approbation of the archbishop of the province, and of the patron and schoolmaster, to change the site of any such school house to a more convenient place within their respective diocese.

"II. Provided always, that such archbishop or bishop shall, previous to such change, procure a conveyance, grant, or demise for a term, not less than nine hundred and ninety-nine years, to himself and his successors, of the ground to which such school house shall be removed, at the rent of one pepper corn, in trust for the erecting of such school.

"III. And be it enacted by the authority aforesaid, that it shall and may be lawful to and for the grand jury of each county, and county of a city, or county of a town within such diocese, from time to time to present such sum or sums of money as they shall find reasonable, for building and repairing such school house and offices, and for providing proper accommodations for the same; which sum and sums so presented, the presentment being confirmed by the court, shall be levied in the manner directed by the acts made in this kingdom for the more effectual erecting and better regulating of free schools.

"IV. And be it enacted by the authority aforesaid, that it shall and may be lawful to and for such archbishop or bishop, and their respective successors, by and with the consent of the respective schoolmasters, from time to time, to demise such old school houses, and the ground belonging to the same, for any term not exceeding forty-one years, at the best and most improved rent which can be had for the same, to be reserved to the said archbishop or bishop, and their respective successors, in trust for the masters of such schools respectively for the time being, as an augmentation of their respective salaries."

STAT. 21 & 22
GEO. 3, c. 31.
[I.R.]

CXXVII. STAT. 21 & 22 GEORGII 3, c. 31(1). [IRELAND.] A.D. 1781-2.

"An Act to enable the Clergy to issue Process or Execution for Debts due for Tithes or Dues under Five Pounds."

[Clause in 19 & 20 Geo. 3, c. 38, against arresting, imprisoning, or holding to bail under 5*l.*, not to extend to process or execution for tithes or dues owing to the clergy, or securities passed for such.]

STAT. 21 & 22
GEO. 3, c. 52.
[I.R.]

CXXVIII. STAT. 21 & 22 GEORGII 3, c. 52(2). [IRELAND.] A.D. 1781-2.

"An Act to oblige Churchwardens to account, pursuant to an Act for the better keeping Churches in Repair, and to make the Cathedral Church of Ferns the Parish Church of the Parish of Ferns."

(1) *Vide* Stat. 1 & 2 Vict. c. 109.

dens to account, was repealed by Stat. 7

(2) So much of Stat. 21 & 22 Geo. 3, c. 52, as relates to the obliging of churchwar-

Geo. 4, c. 72.

- CXXIX. STAT. 21 & 22 GEORGII 3, c. 57 (1). [IRELAND.] A.D. 1781-2. STAT. 21 & 22 GEO. 3, c. 57. [IR.]
"An Act for the Relief of His Majesty's Protestant Dissenting Subjects called Seceders."
- CXXX. STAT. 21 & 22 GEORGII 3, c. 62 (2). [IRELAND.] A.D. 1781-2. STAT. 21 & 22 GEO. 3, c. 62. [IR.]
"An Act to allow Persons professing the Popish Religion to teach Schools in this Kingdom, and for regulating the Education of Papists, and also to repeal Parts of certain Laws relative to the Guardianship of their Children."
- CXXXI. STAT. 22 GEORGII 3, cap. xxxi. A.D. 1782. STAT. 22 GEO. 3, cap. xxxi.
"An Act for confirming a certain Piece of Ground, part of the Common of Norwood, in the Parish of Batcombe, in the County of Somerset, to the Rector of the said Parish; and for vesting the same, together with an additional Piece of Ground, other part of the said Common, in him and his Successors, in lieu of all Right of Common and Tithes belonging to the Rectory of Batcombe. . . ."
- CXXXII. STAT. 22 GEORGII 3, c. 64 (3). A.D. 1782. STAT. 22 GEO. 3, c. 64.
"An Act for the amending and rendering more effectual the Laws in being relative to Houses of Correction."
- CXXXIII. STAT. 22 GEORGII 3, c. 77. A.D. 1782. STAT. 22 GEO. 3, c. 77.
"An Act to render valid and effectual certain Articles of Agreement between the Mayor, and Commonalty, and Citizens of the City of London, Governors of the Possessions, Revenues, and Goods of the Hospitals of Edward, King of England, the Sixth, of Christ, Bridewell, and St. Thomas the Apostle, and of the Hospitals of Henry the Eighth, King of England, called the House of the Poor, in West Smithfield, near London, and of the House and Hospital called Bethelam, and the Presidents, Treasurers, and Acting Governors of the said several Hospitals."
- CXXXIV. STAT. 23 GEORGII 3, c. 58 (4). A.D. 1783. STAT. 23 GEO. 3, c. 58.
"An Act for granting to His Majesty several additional and new Duties upon Stamped Vellum, Parchment, and Paper; and also for repealing certain Exemptions from the Stamp Duties (5)."
- CXXXV. STAT. 23 GEORGII 3, c. 67 (6). A.D. 1783. STAT. 23 GEO. 3, c. 67.
"An Act for granting to His Majesty a Stamp Duty on the Registry of Burials, Marriages, Births, and Christenings."
- CXXXVI. STAT. 23 & 24 GEORGII 3, c. 49 (7). [IRELAND.] A.D. 1783-4. STAT. 23 & 24 GEO. 3, c. 49. [IR.]
"An Act for making appropriate Parishes belonging to Archbishops and Bishops perpetual Cures, and the better to enable such Archbishops and Bishops to endow and augment the Endowments of Vicarages and Curacies to them respectively appropriated, and to render more effectual the several Acts now in force to enable the Clergy having Cure of Souls to reside (8) upon their respective Benefices, and to build on their respective Glebe Lands."
- "IX. And be it enacted by the authority aforesaid, that it shall and may be lawful for the archbishop or bishop of the diocese wherein any such endowment as
- (1) *Vide* Stat. 10 Geo. 4, c. 7. 3, c. 52.
 (2) *Ibid.*
 (3) Power of justices respecting chaplains enlarged by Stat. 55 Geo. 3, c. 48; amended by Stat. 58 Geo. 3, c. 32; repealed, and other provisions made, by Stat. 4 Geo. 4, c. 64, and Stat. 2 & 3 Vict. c. 56.
 (4) *Vide* Stat. 55 Geo. 3, c. 184.
 (5) *Duties*:—Repealed by Stat. 36 Geo. 3, c. 52.
 (6) Repealed by Stat. 34 Geo. 3, c. 11.
 (7) Repealed, so far as relates to unions and divisions of parishes, by Stat. 7 & 8 Geo. 4, c. 43.
 (8) *Reside*:—*Vide* Stat. 5 Geo. 4, c. 91. Stat. 3 & 4 Gul. 4, c. 37. Stat. 4 & 5 Gul. 4, c. 90. Stat. 6 & 7 Gul. 4, c. 99. Stat. 6 & 7 Vict. c. 57.
- On such endowments not

STAT. 23 & 24 GEO. 3, c. 49. [IR.]
 above six acres allocated under hand and seal as demesne for freeschoolmaster and sexton. Not qualified thereby to vote at elections.

aforesaid shall be granted, or shall, in pursuance of any act of parliament now in force, be hereafter granted by writing under his hand and archiepiscopal or episcopal seal, to allocate and appoint any part of any lands so to be granted as a perpetual glebe, not exceeding six acres, as and for demesnes for a master of a free school, and sexton of the parish, in such proportion as such archbishop or bishop shall judge to be proper, and the same from henceforth shall for ever be deemed severally the demesnes of the master of the free school and sexton of such parish for the time being; provided that no such master of a free school, or sexton, shall be qualified to vote at the election of any member to serve in parliament as a freeholder by virtue of such grant."

STAT. 24 GEO. 3, SESS. 2, cap. ii.

CXXXVII. STAT. 24 GEORGII 3, SESS. 2, cap. ii. A.D. 1784.

"An Act for establishing and confirming a certain Exchange, agreed upon between the Lord Bishop of Saint David's, Rector of the Parish and Parish Church of Battesford, in the County of Gloucester, and Thomas Edwards Freeman, Esquire, of certain Grounds and other Hereditaments within the said Parish."

STAT. 24 GEO. 3, SESS. 2, c. 35.

CXXXVIII. STAT. 24 GEORGII 3, SESS. 2, c. 35 (1). A.D. 1784.

"An Act to empower the Bishop of London for the time being, or any other Bishop to be by him appointed, to admit to the Order of Deacon or Priest, Persons being Subjects or Citizens of Countries out of His Majesty's Dominions, without requiring them to take the Oath of Allegiance as appointed by Law."

"Whereas by the laws of this realm, every person who shall be admitted to holy orders is to take the oath of allegiance in manner thereby provided: and whereas there are divers persons, subjects or citizens of countries out of his majesty's dominions, inhabiting and residing within the said countries, who profess the public worship of Almighty God according to the liturgy of the church of England, and are desirous that the word of God, and the sacraments, should continue to be administered unto them according to the said liturgy, by subjects or citizens of the said countries, ordained according to the form of ordination in the church of England: be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that, from and after the passing of this act, it shall and may be lawful to and for the Bishop of London for the time being, or any other bishop by him to be appointed, to admit to the order of deacon or priest, for the purposes aforesaid, persons being subjects or citizens of countries out of his majesty's dominions, without requiring them to take the oath of allegiance.

"II. Provided always, and be it hereby declared, that no person, ordained in the manner hereinbefore provided only, shall be thereby enabled to exercise the office of deacon or priest within his majesty's dominions.

"III. Provided always, and be it further enacted, that in the letters testimonial of such orders, there shall be inserted the name of the person so ordained, with the addition of the country whereof he is a subject or citizen, and the further description of his not having taken the said oath of allegiance, being exempted from the obligation of so doing by virtue of this act."

STAT. 25 GEO. 3, c. 21.

CXXXIX. STAT. 25 GEORGII 3, c. 21. A.D. 1785.

"An Act to render more effectual several Acts of Parliament, for erecting Hospitals and Workhouses, within the City and County of the City of Exon. . . ."

(1) *Vide* Stat. 26 Geo. 3, c. 84. Stat. 59 Geo. 3, c. 60. Stat. 3 & 4 Vict. c. 33. Stat. 5 Vict. c. 6.

CXL. STAT. 25 GEORGII 3, c. 21. [IRELAND.] A.D. 1785.

STAT. 25 GEO.
3, c. 21. [IR.]

"An Act to explain and amend the several Acts made in this Kingdom to encourage the building of Houses, and making other Improvements on Church Lands, and to prevent Dilapidations."

"Whereas a doubt has been conceived concerning the construction of the said acts, whether any archbishop can legally grant a certificate to any bishop, or any bishop to any other ecclesiastical person, of the sums by him expended in part execution of the works proposed in the memorial of such bishop or other ecclesiastical person, (the completion of such works not having been prevented by death or removal,) so as to entitle such bishop or other ecclesiastical person, or the executors or administrators of such bishop or other ecclesiastical person, to recover from the successor of such bishop or other ecclesiastical person the sums, or such proportions of the sums so expended as by law could be recovered, were such doubt removed; to remove said doubt, be it declared and enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that such certificate is, and shall be, deemed and taken to be as good and effectual in the law, as if the whole plan proposed in such memorial had been completed before the granting of such certificate."

Archbishop can grant a certificate to a bishop, or a bishop to any other ecclesiastical person, of the sums by him expended in part execution of works proposed in their memorials.

CXLI. STAT. 25 GEORGII 3, c. 38. [IRELAND.] A.D. 1785.

STAT. 25 GEO.
3, c. 38. [IR.]

"An Act to remedy the Inconveniences which arise to Ecclesiastical Persons, from the Loss of their Titles, and Certificates of their other Qualifications."

"Whereas the clergy are often required to prove their induction, and other qualifications, which by the death of witnesses and loss of certificates is frequently rendered extremely difficult, if not impracticable: for remedy thereof, be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this parliament assembled, and by authority of the same, that upon the mandate of every ordinary for the induction of any person to any ecclesiastical preferment, a return shall be made by the person giving induction thereon, that induction hath been given upon such mandate, which mandate, together with the return thereon indorsed, as also the certificate of the persons attesting the assent and consent, and other qualifications of the person so inducted, shall be registered in the registry of the diocese wherein such preferment lies, and an entry thereof shall be made in the books of the said office, the truth of such return and certificate being verified on oath by one or both of the witnesses attesting the same, to be by affidavit made before the register of such diocese, who is hereby authorized and empowered to administer such oaths; and in case any person shall falsely make any such oath, the said person may be prosecuted for perjury, and be liable to such punishment as persons guilty of wilful and corrupt perjury.

Preamble.

Upon the mandate of every ordinary for induction of a person to any ecclesiastical preferment, a return shall be made by the person giving induction, which mandate indorsed, as also the certificate of the person attesting the assent, shall be registered, and an entry made thereof; the truth of the return and certificate verified on oath.

"II. And be it enacted by the authority aforesaid, that such mandate, return, and certificate, and such affidavit or affidavits verifying the same, or a copy of such mandate, return, and certificate, and of such affidavit or affidavits verifying the same, attested by the register of the diocese for the time being, shall in all courts be admitted and received as evidence competent to prove such induction, and other qualifications to all intents and purposes whatsoever, any law, usage, custom, or thing, to the contrary notwithstanding; and that every register shall be entitled to demand and take the sum of five shillings for every such attested copy, from the person requiring the same: provided that nothing herein contained shall be construed to deprive any ecclesiastical person of a right to prove the validity of his title in any other way, by which he may now by law prove the same."

Such mandate, &c., to be admitted in all courts as evidence.

STAT. 25 GEO.
3, c. 47. [IR.]

CXLII. STAT. 25 GEORGII 3, c. 47. [IRELAND.] A.D. 1785.

"An Act for amending the several Laws relating to the registering of Wills and Deeds in the Registry Office of this Kingdom, and for the better regulating and conducting the Business of the said Office."

STAT. 25 GEO.
3, c. 49. [IR.]

CXLIII. STAT. 25 GEORGII 3, c. 49. [IRELAND.] A.D. 1785.

"An Act to explain and amend the several Acts made in this Kingdom to encourage the building of Houses, and making other Improvements on Church Lands, and for other Purposes."

STAT. 25 GEO.
3, c. 55. [IR.]

CXLIV. STAT. 25 GEORGII 3, c. 55. [IRELAND.] A.D. 1785.

"An Act to alter and amend an Act made in the twenty-first and twenty-second years of His present Majesty's Reign, intituled, An Act to enable the Governors of any of the Schools founded in this Kingdom to make long Leases of such Lands as have been granted for the Support of the said Schools, and are situate in Counties of Cities, and Counties of Towns."

STAT. 25 GEO.
3, c. 58. [IR.]

CXLV. STAT. 25 GEORGII 3, c. 58 (1). [IRELAND.] A.D. 1785.

"An Act for the better carrying into execution the several Laws for providing a Maintenance for Parish Clerks, and for other Purposes."

STAT. 25 GEO.
3, c. 62. [IR.]

CXLVI. STAT. 25 GEORGII 3, c. 62. [IRELAND.] A.D. 1785.

"An Act to explain and amend several Laws now in force for the Encouragement of Agriculture."

Archbishops and bishops, and other ecclesiastical persons; the master and governors, and fellows of colleges and hospitals, and persons in possession of an estate in fee-tail, &c. may make leases for years, or for three lives renewable, of lands not being part of the demesne, and not exceeding three acres, for building corn mills, making mill ponds or mill dams. Rent to be reserved without fine; but on each renewal half a year's rent may be reserved as a fine.

"XII. And whereas many advantageous situations for corn mills cannot now be made use of, from the want of power in the owners of the land to make sufficient leases for encouraging the building thereof, be it therefore enacted by the authority aforesaid, that from and after the passing of this act, it shall and may be lawful to and for every archbishop and bishop, and to and for every dean, dean and chapter, archdeacon, dignitary, prebendary, rector, vicar, and ecclesiastical person whatsoever, with the consent of the archbishop or bishop of their respective diocese, signified under the hand and seal of such archbishop and bishop respectively, and to and for the master and governors, and fellows of colleges and hospitals, and to and for every person or persons whatsoever, being seised in possession in law or equity of an estate in fee-tail, or for his life, with immediate remainder over to, or in trust for his issue, to make one or more lease or leases for any term or number of years, or for one, two, or three lives, with covenant of perpetual renewal of any part or parts of land to them respectively belonging, not being any part of the demesne usually occupied with his or their mansion-house, and not exceeding three acres plantation measure, in any one such lease, to any person or persons for the purpose of building corn mills, making mill ponds, or mill dams, and that all grants or leases so made shall be good and effectual against the successors of every such archbishop, bishop, dean, dean and chapter, archdeacon, dignitary, prebendary, rector, vicar, and other ecclesiastical person respectively, and against the successors of the masters, governors, and fellows of colleges and hospitals respectively.

"XIII. Provided always, that the best and highest rent be reserved for the land, so to be demised, that can be reasonably had for the same, at the time of making such demise without fine, and that one half year's rent of the said demised land be reserved as a fine on each renewal, to be paid within six months after the fall of each life, if such lease be made for life or lives."

(1) Repealed by Stat. 7 Geo. 4, c. 72.

CXLVII. STAT. 25 GEORGII 3, c. 75 (1). A.D. 1785.

STAT. 25 GEO.
3, c. 75.

"An Act to extend the Provisions of an Act made in the twenty-third year of His present Majesty's Reign, for granting to His Majesty a Stamp Duty on the Registry of Burials, Marriages, Births, and Christenings, to the Registry of Burials, Births, and Christenings of Protestant Dissenters from the Church of England."

CXLVIII. STAT. 25 GEORGII 3, c. 94. A.D. 1785.

STAT. 25 GEO.
3, c. 94.

"An Act for repairing, new pewing, seating, and erecting Galleries, and making other Alterations and Additions in and to the Parish Church of Kidderminster, in the County of Worcester."

CXLIX. STAT. 25 GEORGII 3, c. 95. A.D. 1785.

STAT. 25 GEO.
3, c. 95.

"An Act for rebuilding the Parish Church of Christ Church, otherwise the Holy Trinity, within the City of Bristol, and for widening the Streets adjacent thereto."

CL. STAT. 26 GEORGII 3, c. 15. A.D. 1786.

STAT. 26 GEO.
3, c. 15.

"An Act for augmenting and ascertaining the Income of the Rectors of the Parish Church and Parochial Chapel of Liverpool."

CLI. STAT. 26 GEORGII 3, cap. xviii. A.D. 1786.

STAT. 26 GEO.
3, cap. xviii.

"An Act to enable the Vicar of the Parish and Parish Church of Sheffield, in the County of York, to grant Leases of the Glebe Land, and otherwise improve the Estate belonging to the said Vicarage."

CLII. STAT. 26 GEORGII 3, cap. lii. A.D. 1786.

STAT. 26 GEO.
3, cap. lii.

"An Act for applying part of the Trust Fund which was given by the Will of Doctor Ralph Freeman, for repairing or rebuilding the Vicarage House of the Parish of Barking, in the County of Essex, in purchasing a convenient Piece of Ground in the said Parish, and in building a new Vicarage House thereon."

CLIII. STAT. 26 GEORGII 3, cap. liv. A.D. 1786.

STAT. 26 GEO.
3, cap. liv.

"An Act for enabling the Right Honourable Edmund Earl of Cork and Orrery, in the Kingdom of Ireland, and Baron Boyle of Marston, in England, to pull down the present Parish Church of Marston Biggott, otherwise Marston Bygood, in the County of Somerset, and for building a new Parish Church there."

CLIV. STAT. 26 GEORGII 3, c. 58. A.D. 1786.

STAT. 26 GEO.
3, c. 58.

"An Act for procuring, upon Oath, Returns of all Charitable Donations, for the Benefit of poor Persons, in the several Parishes and Places within that Part of Great Britain called England."

CLV. STAT. 26 GEORGII 3, c. 84 (2). A.D. 1786.

STAT. 26 GEO.
3, c. 84.

"An Act to empower the Archbishop of Canterbury, or the Archbishop of York, for the time being, to consecrate to the Office of a Bishop Persons being Subjects or Citizens of Countries out of His Majesty's Dominions."

"Whereas, by the laws of this realm, no person can be consecrated to the office of a bishop without the king's licence for his election to that office, and the royal Preamble.

(1) Repealed by Stat. 34 Geo. 3, c. 11. Geo. 3, c. 60. *Vide etiam* Stat. 5 Vict.

(2) This statute is unaffected by Stat. 59 c. 6.

STAT. 26 GEO.
3, c. 84.

The Archbishop of Canterbury or York, with such other bishops as they shall think fit to assist, may consecrate subjects of foreign states bishops, without the king's licence for the election, or requiring them to take the usual oaths;

but not without first obtaining his majesty's royal licence for performing the consecration, &c.

No persons so consecrated, &c. thereby enabled to exercise their offices in his majesty's dominions.

Certificate of consecration to be given by the archbishop, &c.

mandate, under the great seal, for his confirmation and consecration; and whereas every person who shall be consecrated to the said office is required to take the oaths of allegiance and supremacy, and also the oath of due obedience to the archbishop; and whereas there are divers persons, subjects, or citizens of countries out of his majesty's dominions, and inhabiting and residing within the said countries, who profess the public worship of Almighty God, according to the principles of the church of England, and who, in order to provide a regular succession of ministers for the service of their church, are desirous of having certain of the subjects or citizens of those countries consecrated bishops, according to the form of consecration in the church of England: be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the passing of this act, it shall and may be lawful to and for the Archbishop of Canterbury, or the Archbishop of York, for the time being, together with such other bishops as they shall call to their assistance, to consecrate persons, being subjects or citizens of countries out of his majesty's dominions, bishops, for the purposes aforesaid, without the king's licence for their election, or the royal mandate under the great seal, for their confirmation and consecration, and without requiring them to take the oaths of allegiance and supremacy, and the oath of due obedience to the archbishop for the time being.

"II. Provided always, that no persons shall be consecrated bishops in the manner herein provided, until the Archbishop of Canterbury, or the Archbishop of York, for the time being, shall have first applied for and obtained his majesty's licence, by warrant under his royal signet and sign manual, authorizing and empowering him to perform such consecration, and expressing the name or names of the persons so to be consecrated, nor until the said archbishop has been fully ascertained of their sufficiency in good learning, of the soundness of their faith, and of the purity of their manners.

"III. Provided also, and be it hereby declared, that no person or persons consecrated to the office of a bishop in the manner aforesaid, nor any person or persons deriving their consecration from or under any bishop so consecrated, nor any person or persons admitted to the order of deacon or priest by any bishop or bishops so consecrated, or by the successor or successors of any bishop or bishops so consecrated, shall be thereby enabled to exercise his or their respective office or offices within his majesty's dominions.

"IV. Provided always, and be it further enacted, that a certificate of such consecration shall be given under the hand and seal of the archbishop who consecrated, containing the name of the person so consecrated, with the addition, as well of the country whereof he is a subject or citizen, as of the church in which he is appointed bishop, and the further description of his not having taken the said oaths, being exempted from the obligation of so doing by virtue of this act."

STAT. 26 GEO.
3, c. 117.

CLVI. STAT. 26 GEORGII 3, c. 117. A.D. 1786.

"An Act for pulling down and rebuilding the Church of All Saints, in the Town of Newcastle-upon-Tyne, and for enlarging the Church Yard, and making convenient Avenues and Passages thereto."

STAT. 27 GEO.
3, c. 15. [IR.]

CLVII. STAT. 27 GEORGII 3, c. 15 (1). [IRELAND.] A.D. 1787.

"An Act to prevent tumultuous Risings and Assemblies, and for the more effectual Punishment of Persons guilty of Outrage, Riot, and illegal Combination, and of administering and taking unlawful Oaths."

[To inflict or threaten pain or punishment, or provide instruments or means, or use force, or destroy or threaten property, in order to induce into combination, or prevent collection of lawful rate or tax, capital felony. s. 8. Voluntarily entering into any unlawful combination to defraud clergyman or lay impropriator of

tithes or dues, or obstruct him in collection thereof; or preventing such or any employed by him, by force, threats, or other unlawful means, from viewing, valuing, setting, or selling them, a misdemeanor, and fine and gaol, or corporal punishment, at court's direction. s. 11. So though the combination entered into before this act, if he do any act to defraud, &c., or obstruct, &c., or by force, &c., prevent, &c., after passing it. *Ib.* But prosecution to be commenced in one year after offence. s. 12.] STAT. 27 GEO. 3, c. 15. [Ir.]

CLVIII. STAT. 27 GEORGII 3, c. 17. A.D. 1787.

STAT. 27 GEO. 3, c. 17.

"An Act for rebuilding the Chapel of East Stonehouse, in the County of Devon."

CLIX. STAT. 27 GEORGII 3, c. 36. [IRELAND.] A.D. 1787.

STAT. 27 GEO. 3, c. 36. [Ir.]

"An Act to enable all Ecclesiastical Persons and Bodies, Rectors, Vicars, and Curates, and Impropriators, and those deriving by, from, or under them, to recover a just Compensation for the Tithes withheld from them in the year One thousand seven hundred and eighty-six, in the several Counties therein mentioned, against such Persons who were liable to the same."

CLX. STAT. 27 GEORGII 3, c. 44(1). A.D. 1787.

STAT. 27 GEO. 3, c. 44.

"An Act to prevent frivolous and vexatious Suits in Ecclesiastical Courts."

"Whereas it is expedient to limit the time for the commencement of certain suits in the ecclesiastical court: may it therefore please your majesty that it may be enacted; and be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that, from and after the first day of August, one thousand seven hundred and eighty-seven, no suit for defamatory words shall be commenced in any of the ecclesiastical courts within England, Wales, or the town of Berwick upon Tweed, unless the same shall be commenced within six calendar months from the time when such defamatory words shall have been uttered. Preamble.

"II. And be it further enacted by the authority aforesaid, that no suit shall be commenced in any ecclesiastical court for fornication, or incontinence, or for striking or brawling in any church or churchyard, after the expiration of eight calendar months from the time when such offence shall have been committed; nor shall any prosecution be commenced or carried on for fornication at any time after the parties offending shall have lawfully intermarried." Suits in ecclesiastical courts for defamatory words to be commenced within six months. Limitation of suits in ecclesiastical courts.

CLXI. STAT. 27 GEORGII 3, c. 49. A.D. 1787.

STAT. 27 GEO. 3, c. 49.

"An Act for dividing the Parish of Saint James, in the City and County of Bristol, and County of Gloucester, and for building a Church, and providing a Cemetery or Churchyard, and Parsonage House within the new Parish."

[CLXII. STAT. 27 GEORGII 3, c. 62. A.D. 1787.

STAT. 27 GEO. 3, c. 62.

"An Act for taking down and rebuilding the Chapel of Hanley, in the County of Stafford; for vesting the Right of Nomination in Trustees, and for enlarging the Chapel Yard; and other Purposes."

(1) Stat. 3 & 4 Vict. c. 86, s. 21, enacts, that Stat. 27 Geo. 3, c. 44, shall not extend to the time of the commencement of suits against spiritual persons.

In *Burgoyne v. Free*, (2 Add. 414,) articles against the defendant (a clerk) for incontinence, among other offences of ecclesiastical cognizance, admitted to proof, (though no incontinence was charged within eight months before the commencement of the

suit,) notwithstanding Stat. 27 Geo. 3, c. 44, it being held by the court, that this statute only applies to suits against laymen for mere incontinence, in order to the infliction of penance; and not to suits against clerks for general unfitness to discharge their clerical functions, (such general unfitness to be inferred from this of incontinence, among other offences,) in order to their suspension or deprivation.

STAT. 27 GEO.
3, c. 63.

CLXIII. STAT. 27 GEORGII 3, c. 63. A.D. 1787.

"An Act for rebuilding the Church of the Parish of Saint Mary Wanstede, alias Wanstead, in the County of Essex."

STAT. 27 GEO.
3, c. 64.

CLXIV. STAT. 27 GEORGII 3, c. 64. A.D. 1787.

"An Act for building a new Chapel upon Portsmouth Common, in the Parish of Portsea, in the County of Southampton."

STAT. 28 GEO.
3, c. 10.

CLXV. STAT. 28 GEORGII 3, c. 10. A.D. 1788.

"An Act for pulling down the Church of Saint James at Clerkenwell, in the County of Middlesex, and for building a new Church, and making a new Churchyard, or Cemetery, in the said Parish, with convenient Avenues and Passages thereto."

STAT. 28 GEO.
3, c. 15. [Ir.]

CLXVI. STAT. 28 GEORGII 3, c. 15 (1). [IRELAND.] A.D. 1788.

"An Act to enable the Lord Lieutenant, or other Chief Governor or Governors of this Kingdom, to appoint Commissioners for inquiring into the several Funds and Revenues granted by Public or Private Donations for the purposes of Education in this Kingdom, and into the State and Condition of all Schools in this Kingdom, on Public or Charitable Foundations, and of the Funds appropriated for the Maintenance and Support thereof, and for the other Purposes herein mentioned."

STAT. 28 GEO.
3, cap. xxii.

CLXVII. STAT. 28 GEORGII 3, cap. xxii. A.D. 1788.

"An Act for confirming and establishing an Exchange agreed upon between the Reverend Philip Puleston, Doctor in Divinity, Vicar of the Parish of Ruabon, in the County of Denbigh, and Sir Watkin Williams Winn, Baronet, of certain Lands and other Hereditaments within the said Parish."

STAT. 28 GEO.
3, c. 28.

CLXVIII. STAT. 28 GEORGII 3, c. 28. A.D. 1788.

"An Act to exempt certain Licences, granted to Stipendiary Curates, from Stamp Duties."

Preamble;
reciting 5 G.
& M. c. 21;

"Whereas, by an act of parliament, made and passed in the fifth year of the reign of their late majesties King William and Queen Mary, (intituled, 'An Act for granting to their Majesties several Duties upon Vellum, Parchment, and Paper, for Four Years, towards carrying on the War against France,') it was enacted, that for every skin or piece of vellum or parchment, or sheet of paper, upon which any licence that should pass the seal of any archbishop or bishop, chancellor, or other ordinary, or any ecclesiastical court whatsoever, should be engrossed or written, there should be paid the sum of five shillings; and whereas, by another act of parliament, made and passed in the ninth year of the reign of his said late majesty, King William the Third, (intituled, 'An Act for granting to his Majesty his Heirs and Successors, further Duties upon stamped Vellum, Parchment, and Paper,') another sum of five shillings was imposed upon all such licences; and whereas, by another act, made and passed in the twelfth year of the reign of her late majesty Queen Anne, (intituled, 'An Act for laying additional Duties on Soap and Paper, and upon certain Linens, Silks, Calicoes, and Stuffs, and upon Starch, and exported Coals, and upon Stamped Vellum, Parchment, and Paper, for raising one million four hundred thousand Pounds, by way of a Lottery, for her Majesty's Supply; and for Allowances on exporting made Wares of Leather, Sheep Skins, and Lamb Skins; and for Distribution of four thousand Pounds due to the Officers and Seamen for Gun Money; and to adjust the Property of Tickets in former Lotteries; and touching certain Shares of Stock in the Capital of the South Sea Company; and for appropriating the Monies granted to her Majesty,') a further

9 Gul. 3, c. 25;

12 Ann. St. II.
c. 9;

sum of five shillings was imposed upon all such licences; and whereas by another act of parliament, made and passed in the sixth year of the reign of his late majesty King George the First, (intituled, ‘An Act for enabling the South Sea Company to increase their present Capital Stock and Fund, by redeeming such Public Debts and Incumbrances as are therein mentioned; and for raising Money to be applied for lessening several of the Public Debts and Incumbrances; and for calling in the present Exchequer Bills remaining uncanceled; and for making forth new Bills in lieu thereof, to be circulated and exchanged upon Demand at or near the Exchequer,’) the said several recited duties were made perpetual; and whereas the said several duties have been found very inconvenient and burthensome to stipendiary curates appointed by licence to perform the office of curate in a parish church, upon the nomination of the rector or vicar thereof; be it therefore enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the twenty-fourth day of June, one thousand seven hundred and eighty-eight, every such licence, so appointing any stipendiary curate, in which the annual amount of the stipend shall be inserted, that shall pass the seal of any archbishop, bishop, chancellor, or other ordinary, or any ecclesiastical court whatsoever, shall be, and the same is hereby declared to be freed and exempted from any of the said herein before recited stamp duties; and such licence shall and may be available, and given in evidence in any court of law or equity; any law or statute to the contrary thereof in anywise notwithstanding.”

STAT. 28 GEO.
3, c. 28.
and 6 Geo. 1,
c. 4.

The duties imposed by the recited acts on licences granted by archbishops, &c. to cease with respect to licences to stipendiary curates, in which the annual amount of the stipend is inserted.

CLXIX. STAT. 28 GEORGII 3, c. 29(1). [IRELAND.] A.D. 1788.

“An Act for the better ascertaining the Tithes of Hemp.”

[Tithe of hemp ascertained to five shillings per acre; unless where the land discharged by modus, composition, or otherwise.]

STAT. 28 GEO.
3, c. 29. [Ir.]

CLXX. STAT. 28 GEORGII 3, c. 32. [IRELAND.] A.D. 1788.

“An Act to repeal an Act passed in the twenty-eighth year of the Reign of King Henry the Eighth, intituled, An Act of Appeals, and to enable the Lord Chancellor, Lord Keeper, or Lords Commissioners, for the Custody of the Great Seal of this Kingdom for the time being, to issue Commissions of Appeal from the Courts of the Archbishops within the same.”

STAT. 28 GEO.
3, c. 32. [Ir.]

“Whereas it is expedient that an act passed in this kingdom in the twenty-eighth year of the reign of King Henry the Eighth, intituled, ‘An Act of Appeals,’ should be repealed, and that provision should be made for issuing commissions of appeal from the courts of the archbishops of this realm: be it enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that the said recited act be, and the same is hereby repealed, and for lack of justice at or in any the courts of the archbishops of this realm.

Preamble.

23 Hen. 8,
c. 6, repealed.

“II. Be it enacted by the authority aforesaid, that it shall and may be lawful to the parties grieved, to appeal to the king’s majesty, his heirs and successors, in his and their court of Chancery in this kingdom, and that upon every such appeal a commission shall be directed, under the great seal of this kingdom, to such persons as shall be named by the king’s most excellent majesty, his heirs or successors, in his or their said court of Chancery, to hear and definitely determine such appeals, and the causes concerning the same, and in such form as hath been used in this realm on appeals to the king’s majesty, in his said court of Chancery, which commissioners so by the king’s most excellent majesty, his heirs or successors, to be named or appointed, shall have full power and authority to hear and definitely determine every such appeal, with the causes and all circumstances concerning the same, and that such judgment and sentence as the said commissioners shall

Appeal to court
of Chancery.

Commission to
hear appeals.
Commission-
ers’ decree
definitive.

STAT. 28 GEO. 3, c. 32. [IR.] make and decree in and upon any such appeal, shall be good and effectual, and also definitive, and no further appeals to be had or made from the said commissioners for the same; and if any person or persons at any time after the passing of this act, shall provoke or sue any manner of appeals, of what nature or condition soever they be, to the derogation or let of the due execution of this act, or contrary to the same, every such person or persons so doing, their aiders, counsellors, and abettors, shall incur the pains and penalties of premunire, specified and contained in the act made in the realm of England, in the sixteenth year of the reign of King Richard the Second, against such as sue to the court of Rome against the king's crown and prerogative royal.

Persons after passing of this act suing appeals, subject to penalties of *premunire*.
Eng. 16 Rich. 2.

All commissions upon appeals heretofore valid.

“III. And be it declared and enacted by the authority aforesaid, that all commissions which have heretofore issued upon appeals to the king's majesty, or his predecessors, in his or their court of Chancery of this realm, and all proceedings had under, and by virtue of the same, shall be deemed valid and effectual to all intents and purposes whatsoever.”

STAT. 28 GEO. 3, cap. xli.

CLXXI. STAT. 28 GEORGII 3, cap. xli. A.D. 1788.

“An Act for enabling Charles Earl Camden to grant, in the manner therein mentioned, Building Leases of the Prebendal Lands at Kentish Town, in the County of Middlesex.”

STAT. 28 GEO. 3, c. 44. [IR.]

CLXXII. STAT. 28 GEORGII 3, c. 44. [IRELAND.] A.D. 1788.

“An Act to enable all Ecclesiastical Persons and Bodies, Rectors, Vicars, and Curates, and Impropriators, and those deriving by, from, or under them, to recover a just Compensation for the Tithes withheld from them in the year One thousand seven hundred and eighty-seven, in the several Counties and Counties of Cities therein mentioned, against such Persons who are liable to the same; and to explain and amend an Act made in the twenty-seventh year of His Majesty's Reign, intituled, An Act to enable all Ecclesiastical Persons and Bodies, Rectors, Vicars and Curates, and Impropriators, and those deriving by, from, or under them, to recover a just Compensation for the Tithes withheld from them, in the year One thousand seven hundred and eighty-six, in the several Counties therein mentioned, against such Persons who are liable to the same.”

STAT. 28 GEO. 3, c. 62.

CLXXIII. STAT. 28 GEORGII 3, c. 62. A.D. 1788.

“An Act for pulling down and rebuilding the Parish Church of Saint Peter le Poor, within the City of London, and for widening the Street adjacent.”

STAT. 28 GEO. 3, c. 74.

CLXXIV. STAT. 28 GEORGII 3, c. 74. A.D. 1788.

“An Act for rebuilding the Parish Church of Paddington, in the County of Middlesex, and for enlarging the Churchyard of the said Parish.”

STAT. 28 GEO. 3, c. 81.

CLXXV. STAT. 28 GEORGII 3, c. 81. A.D. 1788.

“An Act for incorporating the Governors of the Free Grammar School of the Town and Parish of Bolton in the Moors, in the County Palatine of Lancaster, of the Foundation of Robert Lever, late of London, Gentleman, deceased; and for enlarging the Trusts and Powers of the said Governors for the Benefit of the said School.”

STAT. 28 GEO. 3, c. 83.

CLXXVI. STAT. 28 GEORGII 3, c. 83. A.D. 1788.

“An Act for repairing the Church of the Parish of Saint Paul, Covent Garden, in the County of Middlesex; for repairing and improving the Gates and Avenues leading to the said Church. . . .”

CLXXVII. STAT. 29 GEORGII 3, c. 11. A.D. 1789.

STAT. 29 GEO.
3, c. 11.

"An Act to enable Mary Alsager, Margaret Alsager, and Judith Alsager, to finish and complete a new Church or Chapel, in the Parish of Barthomley, in the County of Chester, and to endow the same; and to establish a Charity School within the said Parish; and vesting the Right of Presentation to the said Church or Chapel in them, and the future Lords and Ladies of the Manor of Alsager, within the said County."

CLXXVIII. STAT. 29 GEORGII 3, c. 14. A.D. 1789.

STAT. 29 GEO.
3, c. 14.

"An Act for amending an Act of the twenty-seventh year of His present Majesty, for rebuilding the Church of the Parish of Saint Mary Wanstede, alias Wanstead, in the County of Essex."

CLXXIX. STAT. 29 GEORGII 3, c. 26(1). [IRELAND.] A.D. 1789.

STAT. 29 GEO.
3, c. 26. [IR.]

"An Act for the better enforcing the Payment of the First-fruits, chargeable on the Clergy of this Kingdom."

CLXXX. STAT. 29 GEORGII 3, c. 27 (2). [IRELAND.] A.D. 1789.

STAT. 29 GEO.
3, c. 27. [IR.]

"An Act for the better providing for the Repairs of Churches, and the Residence of the Clergy."

"Whereas applotments of parish cesses for the repair of parish churches, chapels, and other necessary charges belonging to such churches and chapels within this kingdom, are required to be subscribed by the minister, churchwardens, and three of the protestant parishioners: and whereas the said churchwardens frequently omit, neglect, or refuse to sign the same, whereby the said cesses cannot be levied, nor the said churchwardens sued for not levying the same, and thereby churches frequently fall into decay: be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that every applotment which shall be signed by the minister or curate of the parish, and three protestant parishioners at least, shall be good and valid in law, to all intents and purposes whatsoever, although the churchwardens shall not have signed the same, and that the said churchwardens shall be bound to levy the money applotted, though the applotment should not be signed by them, or either of them, in like manner as if the said applotment had been signed by them, and shall be liable to the same penalties for neglecting or refusing to levy the same, as if said applotment had been signed by them.

Preamble.

Applotments signed by the minister or curate, and three protestant parishioners, deemed good, though churchwardens do not sign the same. Churchwardens bound to levy money according to such applotment.

"II. And whereas doubts have arisen whether the act of the twenty-first and twenty-second years of his present majesty's reign, intituled, 'An Act to oblige Churchwardens to account pursuant to an Act for the better keeping Churches in repair, and to make the Cathedral Church of Ferns the Parish Church of the Parish of Ferns,' doth apply to such churchwarden or churchwardens, as is, are, or shall be appointed by the ordinary of the diocese, in pursuance of the canons of the church of Ireland; be it enacted by the authority aforesaid, that every clause, matter, and thing in the said recited act contained, do and shall apply to such churchwarden and churchwardens in like manner as they do to churchwardens duly chosen in vestry.

21 & 22 Geo. 3, c. 52, declared to extend to churchwardens appointed by the ordinary in manner as they do to churchwardens chosen in vestry.

"III. And whereas it frequently happens that there are no glebes in parishes or unions, whereon glebe houses might and ought to be built for the residence of the incumbents thereof; and whereas in many instances there are glebes in parishes contiguous thereto, or within a small distance thereof, which can be well spared, and which would constitute convenient glebes for the said parishes wherein there

Glebes of one parish may be annexed to a contiguous parish, with consent of the

(1) Repealed by Stat. 3 & 4 Gul. 4, c. 37. the repairs of churches repealed by Stat. 7
(2) So much of this statute as relates to Geo. 4, c. 72, s. 1.

STAT. 29 GEO.
3, c. 27. [Ir.]

archbishop of
the province,
and bishop of
the diocese, &c.
Such rent shall
be paid for said
glebes by the
incumbent of
the parish as
the bishop and
patron shall
appoint.

are none; be it enacted by the authority aforesaid, that in all such cases the glebe or glebes of any parish, or any part of such glebe or glebes may be annexed for ever to a contiguous parish or union, or to a parish or union at a small distance from the parish in which the same lie, with the consent and approbation of the archbishop of the province, and the bishop of the diocese, certified under their hands and seals, and with the consent of the respective patrons and incumbents, certified in like manner under their hands and seals, and attested by two or more credible witnesses, and that such rent shall be paid for the said glebe or glebes, or parts of glebes, by the incumbent of the parish or union to which the same shall be annexed and united, and his successors, as shall be appointed by the bishop of the diocese, with the consent of the respective patrons and incumbrances, signified under their hands and seals.

Incumbents of
such parishes
to which glebes
are annexed to
hold the same
as if such glebes
had always
belonged to
such parishes.

“IV. And be it further enacted, that all unions of glebes, or parts of glebes, which shall hereafter be made as aforesaid, by virtue of this act, and shall be annexed and united to other parishes or unions, for the purpose of erecting glebe houses thereon, shall be good, firm, and valid in law, and that the said glebes, or such parts thereof, as shall be so annexed and united, shall be always deemed and taken to be the glebe or glebes of the parish or union to which the same shall be so annexed and united, to all intents and purposes whatsoever; and that the incumbents of the parishes or unions to which the same shall be so annexed and united, and their successors, shall hold and enjoy the same, in as full and ample manner, to all intents and purposes, as if such portions of glebes had been always holden and enjoyed, as the glebes belonging to said parishes or unions, any law or usage to the contrary notwithstanding.

Proceedings
relative to
union and
division of
glebes, to be
registered.

“V. And be it further enacted, that all proceedings relative to the union and division of glebes, as hereby authorized, shall be registered in the office of the register of the diocese in which the said glebes shall happen to lie, and shall be entitled to receive the sum of two shillings and sixpence for the registry of each instrument.

STAT. 29 GEO.
3, c. 30.

CLXXXI. STAT. 29 GEORGII 3, c. 30. A.D. 1789.

“An Act to amend and enlarge the Powers of an Act, passed in the last Session of Parliament, intituled, An Act for repairing the Church of the Parish of Saint Paul, Covent Garden, in the County of Middlesex; for repairing and improving the Gates and Avenues leading to the said Church; . . .”

STAT. 29 GEO.
3, c. 31.

CLXXXII. STAT. 29 GEORGII 3, c. 31. A.D. 1789.

“An Act for rebuilding the Parish Church of Saint Chad, in the Town of Shrewsbury and County of Salop; and for providing a new Cemetery or Burial Ground, and making Convenient Avenues and Passages to the said Church and Cemetery.”

STAT. 29 GEO.
3, c. 47

CLXXXIII. STAT. 29 GEORGII 3, c. 47. A.D. 1789.

“An Act for providing an additional Burial Ground for the Parish of Saint James, Westminster, and erecting a Chapel adjoining thereto, and also a House for the Residence of a Clergyman to officiate in burying the Dead.”

STAT. 29 GEO.
3, c. 48.

CLXXXIV. STAT. 29 GEORGII 3, c. 48. A.D. 1789.

“An Act for constituting the Church of Saint Giles, in the Parish of Pontefract, in the County of York, the Parish Church; and for other Purposes.”

CLXXXV. STAT. 29 GEORGII 3, c. 51(1). A.D. 1789.

STAT. 29 GEO.
3, c. 51.

"An Act for granting to His Majesty several additional Stamp Duties (2), on Probates of Wills, Letters of Administration, and on Receipts for Legacies, or for any Share of a Personal Estate divided by force of the Statute of Distributions."

CLXXXVI. STAT. 30 GEORGII 3, c. 20. A.D. 1790.

STAT. 30 GEO.
3, c. 20.

"An Act for rebuilding the Parish Church and Tower of Saint Thomas within the City of Bristol."

CLXXXVII. STAT. 30 GEORGII 3, c. 34. [IRELAND.] A.D. 1790.

STAT. 30 GEO.
3, c. 34. [Ir.]

"An Act to continue an Act, intituled, An Act to enable the Lord Lieutenant, or other Chief Governor or Governors of this Kingdom, to appoint Commissioners for inquiring into the several Funds and Revenues granted by Public or Private Donations for the purposes of Education in this Kingdom, and into the State and Condition of all Schools in this Kingdom on Public or Charitable Foundations, and of the Funds appropriated for the Maintenance and Support thereof, and for the other Purposes herein mentioned."

CLXXXVIII. STAT. 30 GEORGII 3, cap. xxxiv. A.D. 1790.

STAT. 30 GEO.
3, cap. xxxiv.

"An Act to effectuate and establish an Exchange between William Colhoun, Esquire, with the Provost and College of Eton, of the Advowson and Right of Patronage of and to the Consolidated or United Rectories of Creeting All Saints and Creeting Saint Olaves, in the County of Suffolk, for the Advowson and Right of Patronage of and to the Rectory of East Wretham, in the County of Norfolk."

CLXXXIX. STAT. 30 GEORGII 3, cap. xxxv. A.D. 1790.

STAT. 30 GEO.
3, cap. xxxv.

"An Act to effectuate and establish an Exchange between William Colhoun, Esquire, and the Provost and Scholars of the King's College of Blessed Mary and Saint Nicholas, of Cambridge, of the Advowson and Right of Patronage of and to the Rectory of Hepworth, in the County of Suffolk, and certain Pieces of Land and Hereditaments in Hepworth aforesaid, for the Advowson and Right of Patronage of and to the Rectory of West Wretham, in the County of Norfolk."

CXC. STAT. 30 GEORGII 3, c. 36. [IRELAND.] A.D. 1790.

STAT. 30 GEO.
3, c. 36. [Ir.]

"An Act for enabling Trustees of Charitable Foundations to promote the Purposes and extend the Benefit of the same."

CXCI. STAT. 30 GEORGII 3, c. 64. A.D. 1790.

STAT. 30 GEO.
3, c. 64.

"An Act for establishing a Chapel at Ramsgate, in the Parish of Saint Lawrence, in the Isle of Thanet, in the County of Kent, as a Chapel of Ease to the Church of the same Parish."

CXCII. STAT. 30 GEORGII 3, c. 69. A.D. 1790.

STAT. 30 GEO.
3, c. 69.

"An Act for amending and enlarging the Powers of, and rendering more effectual, an Act made in the twenty-eighth year of the Reign of His present Majesty, intituled, An Act for pulling down the Church of Saint James at Clerkenwell, in the County of Middlessex, and for building a new Church, and making a new Churchyard, or Cemetery, in the said Parish, with convenient Avenues and Passages thereto; and for purchasing Pentonville Chapel, and making the same a Chapel of Ease to the said Church."

(1) Vide Stat. 55 Geo. 3, c. 184.

(2) Duties:—Repealed by Stat. 36 Geo. 3, c. 52.

STAT. 30 GEO.
3, c. 70.

CXCIII. STAT. 30 GEORGII 3, c. 70. A.D. 1790.

"An Act to amend an Act of the last Session of Parliament, for providing an additional Burial Ground for the Parish of Saint James, Westminster, and erecting a Chapel adjoining thereto, and also a House for the Residence of a Clergyman to officiate in burying the Dead."

STAT. 30 GEO.
3, c. 71.

CXCIV. STAT. 30 GEORGII 3, c. 71 (1). A.D. 1790.

"An Act for taking down the Church and Tower belonging to the Parish of St. John at Hackney, in the County of Middlesex, and for building another Church and Tower for the use of the said Parish, and for making an additional Cemetery or Churchyard."

STAT. 30 GEO.
3, c. 72.

CXCV. STAT. 30 GEORGII 3, c. 72. A.D. 1790.

"An Act for taking down the Church, Chancel, and Tower belonging to the Parish of Banbury, in the County of Oxford, and for rebuilding the same."

STAT. 30 GEO.
3, c. 79.

CXCVI. STAT. 30 GEORGII 3, c. 79. A.D. 1790.

"An Act for rebuilding the Parish Church of East Grinstead in the County of Sussex."

STAT. 31 GEO.
3, c. 19. [IR.]

CXCVII. STAT. 31 GEORGII 3, c. 19. [IRELAND.] A.D. 1791.

"An Act to amend an Act passed in the eleventh and twelfth years of His present Majesty, intituled, An Act for rendering more effectual the several Laws for the better enabling the Clergy having Cure of Souls to reside upon their Benefices, and to build on their respective Glebe Lands, and to prevent Dilapidations, and for the Encouragement of Protestant Schools within this Kingdom of Ireland, and also to amend an Act passed in the thirteenth and fourteenth years of His present Majesty, intituled, An Act to amend an Act passed in the eighth year of His present Majesty, intituled, An Act for erecting new Chapels of Ease in the Parish of Armagh, and making such Chapels, and those that are already erected in said Parish, perpetual Cures, and for making a proper Provision for the Maintenance of perpetual Curates to officiate in the same, and for other Purposes."

Recital of 11
& 12 and 13
& 14 Geo. 3.

"Whereas by certain clauses contained in the aforesaid acts, passed in the eleventh and twelfth years, and the thirteenth and fourteenth years of his present majesty, it may happen when an archbishop, bishop, or other ecclesiastical person, or master of a free school, having, according to the said acts, begun to erect buildings, or make other improvements on a new site, within his demesne, glebe, or mensal lands, shall die, or be removed before he shall have finished and completed the same, and made them proper and fit for the residence of himself and successors, that an unequal proportion of expense, the true intent of said acts being considered, may fall upon the successor of such archbishop, bishop, or other ecclesiastical person, or master of a free school, who shall finish and complete the same; be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that in all cases where any archbishop, bishop, or other ecclesiastical person, or master of a free school, shall, from and after the passing of this act, erect any new buildings, or make other improvements on a new site, within his demesne, glebe, or mensal lands, in such

Where any
archbishop,
&c. shall erect
any buildings,

(1) In *Varty v. Nunn*, (1 Curt. 877; 1 Eccles. Notes of Cases, 191,) an allegation was rejected, pleading in objection to a church rate, that the rate should have been made by certain trustees under the local act of Stat. 30 Geo. 3, c. 71, and not by the churchwardens of the parish of St. John's,

Hackney; that the rate ought to have extended over the whole ancient parish of Hackney, and not to be confined to the distinct parish of St. John, Hackney; and that the churchwardens were not duly elected, no notice having been given in the original parish.

manner as is by the said act passed in the eleventh and twelfth years of his present majesty directed, and shall be removed, or shall die before he shall have finished and completed the same, agreeably to a memorial or memorials presented to, and approved of by the person authorized and empowered to receive and approve of the same, and made them fit and proper for the residence of himself and successors; and when any commission shall issue or be granted for the purpose of estimating and valuing such new buildings or improvements, pursuant to an act passed in this kingdom, in the twelfth year of his late majesty King George the First, entitled, 'An Act to encourage building of Houses, and making other Improvements on Church Lands, and to prevent Dilapidations,' it shall and may be lawful to and for the person who is or shall be by the laws in being authorized and empowered to grant and issue such commission, and he is hereby required to insert a clause therein, empowering and authorizing the commissioners therein named and appointed, to return a true, just, and faithful account and estimate, of what sum or sums it shall be requisite and necessary to lay out and expend in finishing and completing such buildings or improvements, pursuant and agreeably to such memorial or memorials, so as to render the same fit and convenient for the residence of such archbishop, bishop, or other ecclesiastical person, or master of a free school, and his successors, according to the best of their skill and knowledge, and also empowering and authorizing such commissioners to examine witnesses upon oath, for the purpose of enabling them the better to ascertain the sum or sums it shall be requisite and necessary to lay out and expend, in so finishing and completing such buildings or improvements.

"II. And be it further enacted by the authority aforesaid, that such sum as shall by such return of said commissioners appear to be requisite and necessary to be laid out and expended in so finishing and completing such buildings or improvements, shall be deducted out of the sum which such archbishop, bishop, or other ecclesiastical person, or master of a free school, his executors, or administrators, who shall be removed or die before he shall have so finished and completed such new buildings or improvements, would have been entitled to receive, or be paid by his successors, his executors, or administrators, under and by virtue of the aforesaid acts, of the eleventh and twelfth years, and of the thirteenth and fourteenth years of his present majesty, in case he had finished and completed the same as aforesaid, before his death or removal; and every archbishop, bishop, or other ecclesiastical person, or master of a free school, his executors or administrators, who shall be removed or die before he shall have finished and completed such new buildings or improvements, shall obtain a certificate for such sum, as shall amount to the difference between the sum which he, his executors, or administrators, would have been entitled to receive from, and be paid by his successor, his executors, or administrators, in case he had so finished and completed such buildings or improvements, and such sum as shall be returned in the manner aforesaid, to be requisite and necessary to be laid out and expended in finishing and completing such buildings or improvements in the manner aforesaid, and for no greater or other sum.

"III. And be it further enacted by the authority aforesaid, that where any certificate has been already granted, or shall be hereafter granted to any archbishop, bishop, or other ecclesiastical person, or master of a free school, or to his executors or administrators, ascertaining the sum to be received and recovered for buildings or improvements erected and made by any such archbishop, bishop, or other ecclesiastical person or master of a free school, on his demesne, glebe, or mensal lands, and on a new site therein; which buildings or improvements have been left unfinished and incomplete at the time of the removal or death of such archbishop, bishop, or other ecclesiastical person, or master of a free school, by virtue of which certificate, any successor of such archbishop, bishop, or other ecclesiastical person, or master of a free school is now charged, or may hereafter become chargeable with the payment of any sum whatsoever, that such successor so charged or chargeable, who shall have finished and completed such buildings or improvements, pursuant and agreeable to a memorial or memorials presented, or

STAT. 31 GEO.
3, c. 19. [1R.]

or make improvements, as by 11 & 12 Geo. 3, and shall be removed, &c. before same shall be completed as herein, and when a commission shall issue, pursuant to 12 Geo. 1, the person authorized to issue such commission to insert as herein.

Such sum as shall be necessary to complete such buildings, to be deducted from the sum which such bishop, &c. would have been entitled to receive if finished. Persons who shall be removed, or die, to obtain a certificate as herein.

Certificate granted, or to be granted, for a sum for buildings;

which buildings shall have been left unfinished, by which certificate any successor is or may be chargeable, which successor shall

STAT. 31 GEO.
3, c. 19. [I.R.]
have finished,
&c. as herein;

such successor
deemed the
original
builder, &c.

and shall
receive as
herein.

Sum to be so
received not to
exceed two
years' income.
Proportions as
herein to be
paid by each
successor.

All bishops,
&c. who shall
have completed
buildings or
improvements,
to be entitled
to the propor-
tions hereafter
specified.
First successor
to pay three
fourths, at
times herein
specified;

to be presented by him to, and approved by the person who is or has been, by the laws in being, authorized and empowered to receive and approve of such memorial or memorials, so as to render the same fit and proper for the residence of himself and successors, and shall have obtained or shall obtain a certificate, as directed by the said act of parliament, passed in this kingdom in the twelfth year of the reign of King George the First, ascertaining the sum by him expended and laid out, in finishing and completing the said buildings or improvements in manner before mentioned, and the yearly value of such archbishopric, bishopric, ecclesiastical benefice, or free school; that then and in such case, such successor shall be considered as the first or original builder or improver on a new site on his demesne, glebe, or mensal lands, and be entitled to all advantages and emoluments provided for such first or original builder or improver, by the before-mentioned acts, passed in the eleventh and twelfth years, and in the thirteenth and fourteenth years of his present majesty, and such successor who shall have so finished and completed such buildings or improvements, or his executors or administrators, shall from his next and immediate successor, his executors, or administrators, have, receive, and recover the amount of the sum of money by him actually laid out and expended, added to the sum by him paid to his predecessor, his executors, or administrators.

“IV. Provided always, that the aggregate sum certified to be so received and recovered, shall not exceed the clear value of two years' income of such archbishopric, bishopric, ecclesiastical benefice or free school, and the first successor of the person who shall have so finished and completed such buildings or improvements, his executors or administrators having paid such sum last herein before mentioned, shall have, receive, and recover three-fourth parts thereof from his next and immediate successor, his executors, or administrators, which successor, his executors, or administrators, having paid the said three-fourth parts of the said sum, he, his executors or administrators, shall have, receive, and recover, from his next and immediate successor, his executors, or administrators, two-third parts of the said sum, that is, one moiety of the sum so certified, and such successor, his executors, or administrators, having paid the said two-third parts of said sum, shall have, receive, and recover from his next and immediate successor, his executors, or administrators, one-third part of said sum, that is one-fourth part of the sum so certified, the said several and respective sums to be recovered in such manner, and by such ways and means as ecclesiastical persons are enabled by former acts to recover any sum or sums of money laid out and expended in building, or making other improvements on their demesne, glebe, or mensal lands.

“V. And whereas doubts have arisen relative to the times of payments to be made by the successors of such archbishops, bishops, ecclesiastical persons, or masters of free schools, who shall have erected buildings, or made improvements on their demesne, glebe, or mensal lands, on a new site, and shall have finished and completed the same pursuant to the aforesaid acts passed in the eleventh and twelfth years, and in the thirteenth and fourteenth years of his present majesty; be it enacted by the authority aforesaid, that all such ecclesiastical persons and masters of free schools, or their successors, their executors or administrators respectively, who shall have finished and completed such buildings or improvements as aforesaid, pursuant to the aforesaid acts, and also to this act, shall be entitled respectively to receive from their successors, their executors or administrators respectively, the sum so certified as aforesaid, in such proportions, at such times, and in such manner as shall be herein after specified, that is to say, the first successor of the person who so finished and completed said buildings or improvements, his executors or administrators, shall pay three-fourth parts of the sum so certified, in the following proportions, and at the following times, namely, one moiety of the said three-fourth parts as soon as he is become a successor chargeable therewith, that is at the end and expiration of one year after the death or removal of his predecessor, and the other moiety of the said three-fourth parts by two equal half-yearly payments within the next year, but shall not be compellable to pay the last remaining fourth part of the sum so certified and made payable by

this and former acts until the end and expiration of two years, to be computed from the time he became chargeable with the payment of the whole sum of money so certified as aforesaid, that is, at the end and expiration of three years from the death or removal of his predecessor, and the other persons in succession, their executors, or administrators, who shall be chargeable with the payment of a proportional part of the sum so certified as aforesaid, shall pay the moiety of the said sum with which they are so chargeable as soon as they shall become successors chargeable therewith, (that is, at the end and expiration of one year from the death or removal of their predecessor,) and the other moiety of the said sum by two equal half-yearly payments within the next year.

“VI. And whereas it is reasonable and just to extend the relief provided by this act to the successors of all archbishops, bishops, and other ecclesiastical persons, and masters of free schools, who shall have begun, or shall begin to erect and make buildings or other improvements on their respective demesne, glebe, or mensal lands, though not on a new site therein, pursuant to a memorial or memorials by them respectively presented and approved of for that purpose, and which buildings or improvements last mentioned, have been or shall be left unfinished and incomplete at the times of the removals or deaths of such archbishops, bishops, or other ecclesiastical persons, or masters of free schools; be it therefore further enacted by the authority aforesaid, that in all cases where any archbishop, bishop, or other ecclesiastical person, or master of a free school, has heretofore begun to erect and make, or shall hereafter begin to erect and make any buildings, or other necessary improvements, though not on a new site, within his demesne, glebe, or mensal lands, pursuant to a memorial or memorials, presented and approved of in such manner, as is directed by the said several acts passed in this kingdom to encourage building of houses, and making other improvements on church lands, and to prevent dilapidations, and shall be removed, or shall die before he shall have finished and completed the same, agreeably to such memorial or memorials, and made them fit and proper for the residence of himself and his successors, and when any commission shall issue, or be granted for the purpose of estimating and valuing such buildings or improvements, pursuant to the said act passed in this kingdom in the twelfth year of his late majesty King George the First, entitled, ‘An Act to amend and explain an Act, entitled, An Act to encourage building of Houses, and making other Improvements on Church Lands, and to prevent Dilapidations,’ it shall and may be lawful to and for the person who is or shall be, by the laws in being, authorized and empowered to grant and issue such commission, and he is hereby required to insert a clause therein, empowering and authorizing the commissioners therein named and appointed, to return a true, just, and faithful account and estimate of what sum or sums it will be requisite and necessary to lay out and expend in completing and finishing such buildings or improvements, pursuant to such memorial or memorials, so as to render the same fit and proper for the residence of such archbishop, bishop, or other ecclesiastical person, or master of a free school, and his successors, according to the best of their skill and knowledge, and also empowering and authorizing such commissioners to examine witnesses upon oath, for the purpose of enabling them the better to ascertain the sum or sums it will be requisite and necessary to lay out and expend, in so finishing and completing such buildings or improvements.

“VII. And be it further enacted by the authority aforesaid, that such sum as shall by such return of said commissioners appear to be requisite and necessary to be laid out and expended, in so finishing and completing such buildings or improvements, shall be deducted out of the sum which such archbishop, bishop, or other ecclesiastical person, or master of a free school, his executors or administrators, beginning such buildings or improvements, not on a new site, and dying, or being removed before the same were so finished and completed, would have been entitled to receive from, or be paid by his successor, his executors or administrators, under and by virtue of the said several acts passed in this kingdom, to encourage the building of houses, and making other improvements on church lands, and to prevent dilapidations, in case he had finished and completed the same as aforesaid,

STAT. 31 GEO.
3, c. 19. [IR.]
other successors to pay in proportion.

Commissions may be issued for buildings or improvements, though not a new site, in the manner herein directed.

Sums to be expended in so finishing, &c. to be deducted as herein, &c.

STAT. 31 GEO.
3, c. 19. [1R.]

before his death or removal; and every archbishop, bishop, or other ecclesiastical person, or master of a free school, or his executors or administrators, who shall die, or shall be removed before he shall have so finished and completed such buildings or improvements, shall obtain a certificate for such sum as shall amount to the difference between the sum which he, his executors, or administrators, would have been entitled to have received from, and be paid by his successor, his executors or administrators, in case he had so finished and completed said buildings or improvements, and such sum as shall be returned in the manner aforesaid, to be requisite and necessary to be laid out and expended in finishing and completing such buildings or improvements, in the manner aforesaid, and for no greater or other sum.

Successors
who have
finished, or
who shall have
finished, works
begun by
others, on old
sites, con-
sidered as origi-
nal builders.

“VIII. And be it further enacted by the authority aforesaid, that where any certificate has been already granted, or shall be hereafter granted, to any archbishop, bishop, or other ecclesiastical person, or master of a free school, or to his executors or administrators, ascertaining the sum to be received and recovered for buildings or improvements erected and made by any such archbishop, bishop, or other ecclesiastical person, or master of a free school, on his demesne, glebe, or mensal lands, but not on a new site therein, which buildings or improvements have been left unfinished and incomplete, or shall be left unfinished and incomplete at the time of the removal or death of such archbishop, bishop, or other ecclesiastical person, or master of a free school, by which certificate any successor of such archbishop, bishop, or other ecclesiastical person, or master of a free school is now charged, or may hereafter become chargeable with the payment of any sum whatever, that such successor so charged or chargeable, who shall have finished and completed such buildings or improvements, pursuant and agreeably to a memorial or memorials presented, or to be presented by him to, and approved of by the person who is, or has been by the laws in being, authorized and empowered to receive and approve of such memorial or memorials, so as to render the same fit and proper for the residence of himself and his successors, and shall have obtained, or shall obtain a certificate as directed by the said act, passed in this kingdom in the twelfth year of the reign of King George the First, ascertaining the sum by him expended and laid out in finishing and completing the said buildings or improvements in manner before mentioned, and the yearly value of such archbishopric, bishopric, ecclesiastical benefice, or free school, that then, and in such case, such successor shall be considered as the first or original builder or improver who began said buildings or improvements, and be entitled to all advantages and emoluments provided for such original builder or improver, by the before-mentioned act of the twelfth year of King George the First, and such successor who shall have so finished and completed, or who shall so finish and complete such buildings or improvements, or his executors or administrators, shall from his next and immediate successor, his executors or administrators, have, receive, and recover a sum of money, amounting to three-fourth parts of the aggregate sum, composed of the sum he, his executors or administrators, actually paid to his predecessor, his executors or administrators, and of the sum ascertained to have been laid out and expended by him, in finishing and completing the said buildings or improvements.

Sum to be
recovered not
to exceed one
year and a
half's income.

“IX. Provided always, that the aggregate sum so to be paid and recovered, shall not exceed the clear value of one year and a half's income of such archbishopric, bishopric, ecclesiastical benefice or free school, and such first successor of the person who shall have finished and completed such buildings or improvements, his executors or administrators, having paid the said sum so to be received and recovered to his predecessor, his executors, or administrators, shall have, receive, and recover, from his next and immediate successor, his executors, or administrators, two-third parts thereof, and such successor, his executors or administrators, having paid the said two-third parts of said sum, shall have, receive, and recover, from his next and immediate successor, one moiety of what he has so paid, the said several and respective sums to be paid, received, and recovered, at such times and such manner, and by such ways and means, as ecclesiastical persons erecting buildings or making improvements, not on new sites, are enabled by former acts, and by this

act, to have, receive, and recover any sum of money laid out in buildings, and making other improvements on their demesne, glebe, or mensal lands.

“X. And be it further enacted by the authority aforesaid, when any archbishop, bishop, or other ecclesiastical person, or master of a free school shall die, or be removed, leaving any buildings or improvements as aforesaid, whether on a new or an old site, unfinished and incomplete, that the immediate and every other successor of such archbishop, bishop, ecclesiastical person, or master of a free school, his or their executors or administrators, who shall not finish and complete, as aforesaid, said buildings or improvements, shall have, receive, and recover, from their successors, their executors or administrators, such portions of the money paid by them, by virtue of a certificate granted under this act, to their predecessor or predecessors, or their executors or administrators, as are appointed to be paid to ecclesiastical persons making buildings or improvements on church lands, by the aforesaid act passed in the twelfth year of his late majesty King George the First, and at such times, and in such manner, as are directed by an act passed in the ninth year of his late majesty King George the Second, entitled, ‘An Act for making more effectual an Act, to amend and explain an Act, entitled, An Act to encourage building of Houses, and making other Improvements on Church Lands, and to prevent Dilapidations.’”

STAT. 31 GEO.
3, c. 19. [Ir.]

Where improvements, &c. for which certificates have been granted, shall remain unfinished, the portions paid by each successor may be recovered.

CXCVIII. STAT. 31 GEORGII 3, c. 31 (1). A.D. 1791.

“An Act to repeal certain Parts of an Act, passed in the fourteenth year of His Majesty's Reign, intituled, An Act for making more effectual Provision for the Government of the Province of Quebec, in North America, and to make further Provision for the Government of the said Province.”

STAT. 31 GEO.
3, c. 31.

“XXXV. And whereas, by the above-mentioned act, passed in the fourteenth year of the reign of his present majesty, it was declared, that the clergy of the church of Rome, in the province of Quebec, might hold, receive, and enjoy their accustomed dues and rights, with respect to such persons only as should profess the said religion; provided nevertheless, that it should be lawful for his majesty, his heirs or successors, to make such provision out of the rest of the said accustomed dues and rights, for the encouragement of the protestant religion, and for the maintenance and support of a protestant clergy within the said province, as he or they should from time to time think necessary and expedient; and whereas by his majesty's royal instructions, given under his majesty's royal sign manual, on the third day of January, in the year of our Lord one thousand seven hundred and seventy-five, to Guy Carleton, Esquire, now Lord Dorchester, at that time his majesty's captain-general and governor in chief in and over his majesty's province of Quebec, his majesty was pleased, amongst other things, to direct, ‘That no incumbent professing the religion of the church of Rome, appointed to any parish in the said province, should be entitled to receive any tithes for lands or possessions occupied by a protestant, but that such tithes should be received by such persons as the said Guy Carleton, Esquire, his majesty's captain-general and governor-in-chief in and over his majesty's said province of Quebec, should appoint, and should be reserved in the hands of his majesty's receiver-general of the said province, for the support of a protestant clergy in his majesty's said province, to be actually resident within the same, and not otherwise, according to such directions as the said Guy Carleton, Esquire, his majesty's captain-general and governor-in-chief, in and over his majesty's said province, should receive from his majesty in that behalf; and that in like manner all growing rents and profits of a vacant benefice should, during such vacancy, be reserved for and applied to the like uses. And whereas his majesty's pleasure has likewise been signified to the same effect in his majesty's royal instructions, given in like manner to Sir Frederick Haldimand, knight of the most honourable order of the Bath, late his majesty's captain-general and governor-in-chief in and over his majesty's said province of Quebec;

14 Geo. 3,
c. 83, and

instructions of
January 3,
1775, to Sir
Guy Carleton,
&c. and

instructions to
Sir Frederick
Haldimand,
and to Lord
Dorchester,
recited;

STAT. 31 GEO.
3, c. 31.

and the declaration and provisions therein respecting the clergy of the church of Rome, to continue in force.

His majesty's message to parliament recited.

His majesty may authorize the governor to make allotments of lands for the support of a protestant clergy in each province;

And the rents arising from such allotments to be applicable to that purpose solely.

His majesty may authorize the governor, with the advice of the executive council, to erect parsonages, and endow them;

and also in his majesty's royal instructions, given in like manner to the said Right Honourable Guy Lord Dorchester, now his majesty's captain-general and governor-in-chief in and over his majesty's said province of Quebec; be it enacted by the authority aforesaid, that the said declaration and provision contained in the said above-mentioned act, and also the said provision so made by his majesty in consequence thereof, by his instructions above recited, shall remain and continue to be of full force and effect in each of the said two provinces of Upper Canada and Lower Canada respectively, except in so far as the said declaration or provisions respectively, or any part thereof, shall be expressly varied or repealed by any act or acts which may be passed by the legislative council and assembly of the said provinces respectively, and assented to by his majesty, his heirs or successors, under the restriction hereinafter provided.

"XXXVI. And whereas his majesty has been graciously pleased, by message to both houses of parliament, to express his royal desire to be enabled to make a permanent appropriation of lands in the said provinces, for the support and maintenance of a protestant clergy within the same, in proportion to such lands as have been already granted within the same by his majesty; and whereas his majesty has been graciously pleased, by his said message, further to signify his royal desire that such provision may be made, with respect to all future grants of land within the said provinces respectively, as may best conduce to the due and sufficient support and maintenance of a protestant clergy within the said provinces, in proportion to such increase as may happen in the population and cultivation thereof; therefore, for the purpose of more effectually fulfilling his majesty's gracious intentions as aforesaid, and of providing for the due execution of the same in all time to come, be it enacted by the authority aforesaid, that it shall and may be lawful for his majesty, his heirs or successors, to authorize the governor or lieutenant governor of each of the said provinces respectively, or the person administering the government therein, to make, from and out of the lands of the crown within such provinces, such allotment and appropriation of lands, for the support and maintenance of a protestant clergy within the same, as may bear a due proportion to the amount of such lands within the same as have at any time been granted by or under the authority of his majesty; and that whenever any grant of lands within either of the said provinces shall hereafter be made, by or under the authority of his majesty, his heirs or successors, there shall at the same time be made, in respect of the same, a proportionable allotment and appropriation of lands for the above-mentioned purpose, within the township or parish to which such lands so to be granted shall appertain or be annexed, or as nearly adjacent thereto as circumstances will admit; and that no such grant shall be valid or effectual unless the same shall contain a specification of the lands so allotted and appropriated, in respect of the lands to be thereby granted; and that such lands, so allotted and appropriated, shall be, as nearly as the circumstances and nature of the case will admit, of the like quality as the lands in respect of which the same are so allotted and appropriated, and shall be, as nearly as the same can be estimated at the time of making such grant, equal in value to the seventh part of the lands so granted.

"XXXVII. And be it further enacted by the authority aforesaid, that all and every the rents, profits, or emoluments, which may at any time arise from such lands so allotted and appropriated as aforesaid, shall be applicable solely to the maintenance and support of a protestant clergy within the province in which the same shall be situated, and to no other use or purpose whatever.

"XXXVIII. And be it further enacted by the authority aforesaid, that it shall and may be lawful for his majesty, his heirs or successors, to authorize the governor or lieutenant-governor of each of the said provinces respectively, or the person administering the government therein, from time to time, with the advice of such executive council as shall have been appointed by his majesty, his heirs or successors, within such province, for the affairs thereof, to constitute and erect, within every township or parish which now is or hereafter may be formed, constituted, or erected within such province, one or more parsonage or rectory, or parsonages or rectories, according to the establishment of the church of England; and,

from time to time, by an instrument under the great seal of such province, to endow every such parsonage or rectory with so much or such part of the lands so allotted and appropriated as aforesaid, in respect of any lands within such township or parish, which shall have been granted subsequently to the commencement of this act, or of such lands as may have been allotted and appropriated for the same purpose, by or in virtue of any instruction which may be given by his majesty, in respect of any lands granted by his majesty before the commencement of this act, as such governor, lieutenant-governor, or person administering the government, shall, with the advice of the said executive council, judge to be expedient under the then existing circumstances of such township or parish.

“XXXIX. And be it further enacted by the authority aforesaid, that it shall and may be lawful for his majesty, his heirs or successors, to authorize the governor, lieutenant-governor, or person administering the government of each of the said provinces respectively, to present to every such parsonage or rectory an incumbent or minister of the church of England, who shall have been duly ordained according to the rites of the said church, and to supply from time to time such vacancies as may happen therein; and that every person so presented to any such parsonage or rectory, shall hold and enjoy the same, and all rights, profits, and emoluments thereunto belonging or granted, as fully and amply, and in the same manner, and on the same terms and conditions, and liable to the performance of the same duties, as the incumbent of a parsonage or rectory in England.

“XL. Provided always, and be it further enacted by the authority aforesaid, that every such presentation of an incumbent or minister to any such parsonage or rectory, and also the enjoyment of any such parsonage or rectory, and of the rights, profits, and emoluments thereof, by any such incumbent or minister, shall be subject and liable to all rights of institution, and all other spiritual and ecclesiastical jurisdiction and authority, which have been lawfully granted by his majesty's royal letters patent to the Bishop of Nova Scotia, or which may hereafter, by his majesty's royal authority, be lawfully granted or appointed to be administered and executed within the said provinces, or either of them respectively, by the said Bishop of Nova Scotia, or by any other person or persons, according to the laws and canons of the church of England, which are lawfully made and received in England.

“XLI. Provided always, and be it further enacted by the authority aforesaid, that the several provisions herein before contained, respecting the allotment and appropriation of lands for the support of a protestant clergy within the said provinces, and also respecting the constituting, erecting, and endowing parsonages or rectories within the said provinces, and also respecting the presentation of incumbents or ministers to the same, and also respecting the manner in which such incumbents or ministers shall hold and enjoy the same, shall be subject to be varied or repealed by any express provisions for that purpose, contained in any act or acts which may be passed by the legislative council and assembly of the said provinces respectively, and assented to by his majesty, his heirs or successors, under the restriction herein after provided.

“XLII. Provided nevertheless, and be it further enacted by the authority aforesaid, that whenever any act or acts shall be passed by the legislative council and assembly of either of the said provinces, containing any provisions to vary or repeal the above-recited declaration and provision contained in the said act passed in the fourteenth year of the reign of his present majesty; or to vary or repeal the above-recited provision contained in his majesty's royal instructions, given on the third day of January, in the year of our Lord one thousand seven hundred and seventy-five, to the said Guy Carleton, Esquire, now Lord Dorchester; or to vary or repeal the provisions herein before contained for continuing the force and effect of the said declaration and provisions; or to vary or repeal any of the several provisions herein before contained respecting the allotment and appropriation of lands for the support of a protestant clergy within the said provinces; or respecting the constituting, erecting, or endowing parsonages or rectories within the said provinces; or respecting the presentation of incumbents or ministers to the same; or

STAT. 31 GEO.
3, c. 31.

And the governor to present incumbents to them, who are to enjoy the same as incumbents in England.

Presentations to parsonages, and the enjoyment of them, to be subject to the jurisdiction granted to the Bishop of Nova Scotia, &c.

Provisions respecting the allotment of lands for the support of a protestant clergy, &c. may be varied or repealed by the legislative council and assembly.

Acts of the legislative council and assembly, containing provisions to the effect herein mentioned, to be laid before parliament, previous to receiving his majesty's assent, &c.

STAT. 31 GEO. 3, c. 31. respecting the manner in which such incumbents or ministers shall hold and enjoy the same: and also that whenever any act or acts shall be so passed, containing any provisions which shall in any manner relate to or affect the enjoyment or exercise of any religious form or mode of worship; or shall impose or create any penalties, burthens, disabilities, or disqualifications in respect of the same; or shall in any manner relate to or affect the payment, recovery, or enjoyment of any of the accustomed dues or rights herein before mentioned; or shall in any manner relate to the granting, imposing, or recovering any other dues, or stipends, or emoluments whatever, to be paid to or for the use of any minister, priest, ecclesiastic, or teacher, according to any religious form or mode of worship, in respect of his said office or function; or shall in any manner relate to or affect the establishment or discipline of the church of England, amongst the ministers and members thereof within the said provinces; or shall in any manner relate to or affect the king's prerogative touching the granting the waste lands of the crown within the said provinces; every such act or acts shall, previous to any declaration or signification of the king's assent thereto, be laid before both houses of parliament in Great Britain; and that it shall not be lawful for his majesty, his heirs or successors, to signify his or their assent to any such act or acts, until thirty days after the same shall have been laid before the said houses, or to assent to any such act or acts, in case either house of parliament shall, within the said thirty days, address his majesty, his heirs or successors, to withhold his or their assent from such act or acts; and that no such act shall be valid or effectual to any of the said purposes, within either of the said provinces, unless the legislative council and assembly of such province shall, in the session in which the same shall have been passed by them, have presented to the governor, lieutenant-governor, or person administering the government of such province, an address or addresses, specifying that such act contains provisions for some of the said purposes herein before specially described, and desiring that, in order to give effect to the same, such act should be transmitted to England without delay, for the purpose of being laid before parliament previous to the signification of his majesty's assent thereto."

STAT. 31 GEO. 3, c. 32. CXCI. STAT. 31 GEORGII 3, c. 32 (1). A.D. 1791.

"An Act to relieve, upon Conditions, and under Restrictions, the Persons therein described, from certain Penalties and Disabilities to which Papists, or Persons professing the Popish Religion, are by Law subject."

STAT. 31 GEO. 3, c. 41. [IR.] CC. STAT. 31 GEORGII 3, c. 41. [IRELAND.] A.D. 1791.

"An Act to continue an Act, to continue an Act, intituled, An Act to continue an Act, intituled, An Act to enable the Lord Lieutenant or other Chief Governor or Governors of this Kingdom, to appoint Commissioners for inquiring into the several Funds and Revenues granted by Public or Private Donations, for the Purposes of Education in this Kingdom, and into the State and Condition of all Schools in this Kingdom on Public or Charitable Foundations, and of the Funds appropriated for the Maintenance and Support thereof, and for the other Purposes herein mentioned."

STAT. 31 GEO. 3, c. 71. CCI. STAT. 31 GEORGII 3, c. 71. A.D. 1791.

"An Act for taking down and rebuilding the Parish Church of All Saints, within the Town and County of the Town of Southampton; and for purchasing Land for the Purpose of a Churchyard for the use of the said Parish."

STAT. 31 GEO. 3, c. 73. CCII. STAT. 31 GEORGII 3, c. 73. A.D. 1791.

"An Act for repairing the Parish Church of Saffron Walden, in the County of Essex."

(1) Vide Stat. 43 Geo. 3, c. 30. Stat. 10 145. *Jack d. M'Guirk v. Reilly*, 2 Hudson Geo. 4, c. 7. *Cary v. Abbot*, 7 Ves. 490. & Brooke, 301. 3 Burn's E. L. by Phillimore, 167.
Attorney-General v. Power, 1 Ball & Beatty,

CCIII. STAT. 31 GEORGII 3, c. 74. A.D. 1791.

STAT. 31 GEO.
3, c. 74.

"An Act for building a new Church in the Town of Wakefield, in the West Riding of the County of York, and for providing a proper Burial Ground, and making Provision for a Minister to officiate in the said Church."

CCIV. STAT. 31 GEORGII 3, c. 75. A.D. 1791.

STAT. 31 GEO.
3, c. 75.

"An Act for enlarging the Powers of an Act, passed in the twenty-ninth year of the Reign of His present Majesty, intituled, An Act for rebuilding the Parish Church of Saint Chad, in the Town of Shrewsbury, and County of Salop; and for providing a new Cemetery or Burial Ground, and making convenient Avenues and Passages to the said Church and Cemetery; and for raising a further sum of Money for fully effecting the general Purposes in the said Act mentioned."

CCV. STAT. 32 GEORGII 3, c. 12. [IRELAND.] A.D. 1792.

STAT. 32 GEO.
3, c. 12. [IR.]

"An Act to explain the Trusts for which certain Rectories Improprate, and Tithes forfeited, by reason of the Rebellion in this Kingdom in the year One thousand six hundred and eighty-eight, were conveyed to certain Trustees nominated by the several Bishops in whose Dioceses such Rectories Improprate and Tithes are situated."

CCVI. STAT. 32 GEORGII 3, c. 21 (1). [IRELAND.] A.D. 1792.

STAT. 32 GEO.
3, c. 21. [IR.]

"An Act to remove certain Restraints and Disabilities therein mentioned to which His Majesty's Subjects professing the Popish Religion are now subject."

"X. And be it further enacted, that so much of an act passed in this kingdom in the second year of Queen Anne, intituled, 'An Act to prevent the further Growth of Popery,' as subjects protestants intermarrying with papists, either within the kingdom, or in parts without the kingdom, to the pains, penalties, or disabilities inflicted by the said last-mentioned act of the ninth year of King William the Third, shall be, and the same are hereby repealed.

So much of
2 Ann. c. 6,
as relates to
intermarriages
repealed.

"XI. Provided always, and be it enacted, that nothing herein contained shall extend, or be construed to extend, to enable any protestant who now is or hereafter shall be married to a popish wife, to vote at any election of representatives to serve in parliament, other than as he may by the laws in being before the passing of this act.

Protestants
married to
popish wives
not enabled to
vote at elec-
tions, other
than as by
former laws.

"XII. And be it further enacted, that it shall and may be lawful to and for protestants and persons professing the Roman catholic religion to intermarry, and to and for archbishops, bishops, and all persons having lawful jurisdiction to grant licences for marriages, to be celebrated between protestants and persons professing the Roman catholic religion, and for clergymen of the established church, or protestant dissenting ministers, to publish the banns of marriage between such persons, and that clergymen of the established church, or other protestant ministers duly celebrating such marriages, shall not be liable to any pain, penalty, or censure for celebrating the same, any law to the contrary notwithstanding.

Protestants
and Roman
catholics may
be married by
clergymen of
the established
church.

"XIII. Provided always, that nothing herein contained shall extend, or be construed to extend, to authorize protestant dissenting ministers or popish priests to celebrate marriage between protestants of the established church and Roman catholics.

Dissenting
ministers, or
popish priests,
not authorized
to marry pro-
testants and
Roman catho-
lics.

"XIV. And whereas it is not any longer necessary to continue an act passed in the seventh year of the reign of King William the Third, intituled, 'An Act to restrain Foreign Education;' be it enacted, that the same act be, and is hereby repealed.

7 Gul. 3, to
restrain foreign
education,
repealed.

"XV. And whereas by an act passed in the twenty-first and twenty-second

Recital of 21

STAT. 32 GEO. 3, c. 21. [IR.] years of his present majesty's reign, intituled, 'An Act to allow Persons professing the Popish Religion to teach School in this Kingdom, and for regulating the Education of Papists;' and also to repeal parts of certain laws relative to the guardianship of their children, it is required, that any person of the popish religion who shall keep or teach school, shall first obtain the licence of the ordinary of the diocese, and it is not expedient any longer to make such licence necessary; be it enacted, that it shall not from the passing of this act be necessary that the licence of the ordinary shall be obtained, in order to authorize any person of the Roman catholic religion to keep or teach school; provided always, that such person shall in all other respects perform the requisites required by, and conform himself to the said last-mentioned act."

Not necessary to obtain a licence to keep school, provided requisites in said act are performed.

STAT. 32 GEO. 3, c. 28. [IR.]

CCVII. STAT. 32 GEORGII 3, c. 28. [IRELAND.] A.D. 1792.

"An Act further to promote the Building of New Churches."

Recital of 33 Geo. 2, c. 11.

"Whereas by an act passed in this kingdom in the thirty-third year of the reign of his late majesty King George the Second, intituled, 'An Act for reviving and amending an Act passed in the twenty-third year of his present Majesty's Reign, intituled, "An Act for amending, continuing, and making more effectual the several Acts now in force in this Kingdom, for the more easy Recovery of Tithes, and other Ecclesiastical Dues of small Value, and also for the more easy providing a Maintenance for Parish Clerks, so far only as the same relates to the more easy providing a Maintenance for Parish Clerks, and to encourage the building of new Churches;"' all persons seised in fee-simple, fee-tail, or for life, with immediate remainder over to his, her, or their own issue, of any land whereon any new church is intended to be built, are enabled to grant by deed, such land not exceeding one acre to the churchwardens of the parish wherein such new church is intended to be built, for a site of such new church and churchyard; and whereas it sometimes happens that the persons seised as aforesaid, of lands on which such new churches are intended to be built, are under the age of twenty-one years, by reason whereof such conveyances cannot be made, and the building of such new churches is delayed, to the great inconvenience both of the parishioners and the owners and dwellers on such lands; therefore be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that it shall and may be lawful to and for the guardian by testament or deed, or the guardian appointed by the court of Chancery, of any infant seised as aforesaid, by deed in the name and on the behalf of such infant, to grant to the churchwardens of any parish in which a new church shall be intended to be built, and their successors, one acre of the land of such infant for the site of a church and churchyard, in the same manner, and as effectual as such infant is by the said act enabled to do, if of full age."

Guardians may grant one acre to churchwardens to build a new church and churchyard on.

STAT. 32 GEO. 3, c. 30.

CCVIII. STAT. 32 GEORGII 3, c. 30. A.D. 1792.

"An Act for taking down the Church, Chancel, and Tower belonging to the Parish of Saint Mary Magdalen, in Bridgnorth, in the County of Salop, and for rebuilding the same, and for enlarging the Burial Ground of the said Parish."

STAT. 32 GEO. 3, c. 31. [IR.]

CCIX. STAT. 32 GEORGII 3, c. 31. [IRELAND.] A.D. 1792.

"An Act to empower His Majesty to grant Licences to alien Lands in Mortmain (1)."

Preamble.

The king and his successors may grant licences to alien or pur-

"Whereas it would be useful that the king, his heirs and successors, should be empowered to grant licences to alien and hold lands in mortmain; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that it shall and may be lawful to

(1) *Mortmain*:—Vide ante 795.

and for the king, and his heirs and successors, when and as often, and in such cases as his majesty, his heirs or successors, shall think fit, to grant to any person or persons, bodies politic or corporate, their heirs and successors, licence to alien in mortmain, and also to purchase, acquire, take, and hold in mortmain, in perpetuity or otherwise, any lands, tenements, rents, or hereditaments whatsoever, of whomsoever the same shall be holden. STAT. 32 GEO. 3, c. 31. [IR.] chase in mortmain as herein.

“II. And it is hereby declared, that lands, tenements, rents, or hereditaments, so to be aliened, or acquired, and licensed, shall not be subject to any forfeiture for or by reason of such alienation or acquisition.” Such lands, &c. not subject to forfeiture for alienation.

CCX. STAT. 32 GEORGHII 3, c. 34. [IRELAND.] A.D. 1792.

STAT. 32 GEO. 3, c. 34. [IR.]

“An Act to explain and amend an Act made in this Kingdom, in the eighth year of the Reign of King George the First, intituled, *An Act for the supplying a Defect in an Act passed in the second year of the Reign of Her late Majesty Queen Anne, intituled, An Act for the Exchange of Glebes belonging to Churches in this Kingdom.*”

CCXI. STAT. 32 GEORGHII 3, c. 39. A.D. 1792.

STAT. 32 GEO. 3, c. 39.

“An Act to enable the Inhabitants of the Parish of Saint Botolph Without, Aldersgate, in the City of London, to raise Money for paying and discharging the Debts that have been contracted in repairing their Parish Church, and building a new Workhouse.”

CCXII. STAT. 32 GEORGHII 3, c. 63. A.D. 1792.

STAT. 32 GEO. 3, c. 63.

“An Act for granting Relief to Pastors, Ministers, and Lay Persons of the Episcopal Communion of Scotland.”

CCXIII. STAT. 32 GEORGHII 3, c. 64. A.D. 1792.

STAT. 32 GEO. 3, c. 64.

“An Act for repairing, altering, and improving the Parish Church of Saint Bridget, otherwise Saint Bride, in the City of London; and for providing a Workhouse for the same Parish.”

CCXIV. STAT. 32 GEORGHII 3, c. 66. A.D. 1792.

STAT. 32 GEO. 3, c. 66.

“An Act for providing an additional Burying Ground for the use of the Parish of Saint Pancras, in the County of Middlesex; and for shutting up the present Footpath leading through the Churchyard, and making a commodious one in lieu thereof.”

CCXV. STAT. 32 GEORGHII 3, c. 76. A.D. 1792.

STAT. 32 GEO. 3, c. 76.

“An Act for building a new Church or Chapel within the Town and Parish of Liverpool, in the County Palatine of Lancaster.”

CCXVI. STAT. 32 GEORGHII 3, c. 87. A.D. 1792.

STAT. 32 GEO. 3, c. 87.

“An Act to enable the Dean and Chapter of Hereford to rebuild the west end of the Cathedral Church of Hereford, and to repair other parts thereof.”

CCXVII. STAT. 32 GEORGHII 3, c. 88. A.D. 1792.

STAT. 32 GEO. 3, c. 88.

“An Act for rebuilding the Chapel, and enlarging the Chapel-yard, of Lane End, within the Parish of Stoke-upon-Trent, in the County of Stafford.”

CCXVIII. STAT. 32 GEORGHII 3, c. 89. A.D. 1792.

STAT. 32 GEO. 3, c. 89.

“An Act for building a new Church or Chapel in the Town of Leeds, in the West Riding of the County of York.”

STAT. 33 GEO.
3, c. 21

CCXIX. STAT. 33 GEORGII 3, c. 21 (1). [IRELAND.] A.D. 1793.

"An Act for the Relief of His Majesty's Popish or Roman Catholic Subjects of Ireland."

No right of presentation to any ecclesiastical benefice. No penalty for not attending divine service in parish church. Popish priest not to celebrate marriage between protestants; unless first married by protestant clergyman. Penalty 500*l*.

"X. Provided also, and be it enacted, that nothing in this act contained shall enable any papist, or person professing the popish or Roman catholic religion, to exercise any right of presentation to any ecclesiastical benefice whatsoever.

"XI. And be it enacted, that no papist, or person professing the popish or Roman catholic religion, shall be liable to or subject to any penalty for not attending divine service on the sabbath-day, called Sunday, in his or her parish church.

"XII. Provided also, and be it enacted, that nothing herein contained shall be construed to extend to authorize any popish priest, or reputed popish priest, to celebrate marriage between protestant and protestant, or between any person who hath been, or professed himself or herself to be a protestant at any time within twelve months before such celebration of marriage, and a papist, unless such protestant and papist shall have been first married by a clergyman of the protestant religion; and that every popish priest, or reputed popish priest, who shall celebrate any marriage between two protestants, or between any such protestant and papist, unless such protestant and papist shall have been first married by a clergyman of the protestant religion, shall forfeit the sum of five hundred pounds to his majesty, upon conviction thereof."

STAT. 33 GEO.
3, c. 24.

CCXX. STAT. 33 GEORGII 3, c. 24. A.D. 1793.

"An Act for separating the Chapels of Chorley and Rafford from the Parish of Croston, in the County of Lancaster, and for making them two distinct Parish Churches."

STAT. 33 GEO.
3, c. 25. [IR.]

CCXXI. STAT. 33 GEORGII 3, c. 25 (2). [IRELAND.] A.D. 1793.

"An Act to encourage the Improvement of Barren Land."

[All barren heath and waste ground, which on that account never paid tithe, shall, if improved into arable or meadow, be tithe-free seven years. s. 1. But no prohibition grantable to suit in spiritual court for tithes, on the ground of any exemption under this act, without lodging in court above a true copy of the libel or petition signed by him who applies for it, with his suggestion at the foot; which he must prove by two witnesses in six months after, or a consultation with double costs and damages. s. 2. He who would claim such exception, must give six calendar months' written notice to the clergyman or impropiator, or their proctor or agent, in parish or union where the land lies, of the time from which he means to begin to claim it, specifying quantity, quality, and situation, with a map of it, verified on oath before a magistrate of the county by two surveyors, one chosen by each party; or, if parson or impropiator, on notice to choose such, neglect for a month, his own surveyor's oath sufficient. This notice and map to be registered by parson or impropiator, &c., in diocesan registry; and to be conclusive evidence of the quantity and situation, and of the time when the exemption, if entitled to any, is to begin; but not of the title to exemption. ss. 3, 4. If the land be burned, no part of it deemed improved, or exempted under this act, unless proprietor's consent under hand and seal previously had for burning it. s. 5.]

STAT. 33 GEO.
3, c. 27. [IR.]

CCXXII. STAT. 33 GEORGII 3, c. 27. [IRELAND.] A.D. 1793.

"An Act for confirming and establishing certain Articles of Agreement made between the Trustees named and appointed by the last Will and Testament of Richard Morgan, late of Newcastle, in the County of Dublin, Esquire, deceased. . . ."

[Morgan's charity schools, trustees of, incorporated, &c.]

(1) *Vide* Stat. 53 Geo. 3, c. 128. Stat. (2) *Vide* Stat. 1 & 2 Vict. c. 109. 3 & 4 Gul. 4, c. 102.

CCXXIII. STAT. 33 GEORGII 3, c. 43. A.D. 1793.

STAT. 33 GEO.
3, c. 43.

"An Act for enlarging the Powers of, and rendering more effectual, an Act made in the twenty-eighth year of the Reign of His present Majesty, intituled, An Act for rebuilding the Parish Church of Paddington, in the County of Middlesex, and for enlarging the Churchyard of the said Parish."

CCXXIV. STAT. 33 GEORGII 3, c. 45. A.D. 1793.

STAT. 33 GEO.
3, c. 45.

"An Act for taking down and rebuilding the Tower of the Parish Church of Hanbury, in the County of Worcester, and for repairing the said Church, and rendering the same more commodious for the Parishioners."

CCXXV. STAT. 33 GEORGII 3, c. 48. [IRELAND.] A.D. 1793.

STAT. 33 GEO.
3, c. 48. [IR.]

"An Act to explain and amend an Act passed in the last Session of Parliament, intituled, An Act to explain the Trusts for which certain Rectories Improprate, and Tithes, forfeited by reason of the Rebellion in this Kingdom in the year One thousand six hundred and eighty-eight, were conveyed to certain Trustees nominated by the several Bishops in whose Dioceses such Rectories Improprate and Tithes are situated?"

CCXXVI. STAT. 33 GEORGII 3, cap. xlix. A.D. 1793.

STAT. 33 GEO.
3, cap. xlix.

"An Act to disunite the Rectories of Gimingham and Trunch, in the County of Norfolk, and Diocese of Norwich."

CCXXVII. STAT. 33 GEORGII 3, c. 51. [IRELAND.] A.D. 1793.

STAT. 33 GEO.
3, c. 51. [IR.]

"An Act to remove some Doubts respecting Persons in Office taking the Sacramental Test."

CCXXVIII. STAT. 33 GEORGII 3, c. 54. A.D. 1793.

STAT. 33 GEO.
3, c. 54.

"An Act for the Encouragement and Relief of Friendly Societies (1)."

CCXXIX. STAT. 33 GEORGII 3, c. 56(2). [IRELAND.] A.D. 1793.

STAT. 33 GEO.
3, c. 56. [IR.]

"An Act respecting the Collection of Public Money, to be levied in the County of the City of Dublin by Presentment."

CCXXX. STAT. 33 GEORGII 3, c. 87. A.D. 1793.

STAT. 33 GEO.
3, c. 87.

"An Act for enlarging the Churchyard or Cemetery of the Parish Church of Saint Mary, Islington, in the County of Middlesex."

CCXXXI. STAT. 33 GEORGII 3, c. 101. A.D. 1793.

STAT. 33 GEO.
3, c. 101.

"An Act for amending and enlarging the Powers of an Act, made in the thirty-first year of the Reign of His present Majesty, intituled, An Act for taking down and rebuilding the Parish Church of All Saints, within the Town and County of the Town of Southampton, and for purchasing Land for the purpose of a Churchyard, for the use of the said Parish."

(1) *An Act for . . . Friendly Societies*:—Stat. 10 Geo. 4, c. 56, repealed Stat. 33 Geo. 3, c. 54; Stat. 35 Geo. 3, c. 111; Stat. 36 Geo. 3, c. 58(I.); Stat. 43 Geo. 3, c. 111; Stat. 49 Geo. 3, c. 58; Stat. 49 Geo. 3, c. 125; Stat. 59 Geo. 3, c. 128; and partly repealed Stat. 6 Geo. 4, c. 74.

(2) *Vide* Stat. 7 & 8 Geo. 4, c. 34.

STAT. 34 GEO.
3, c. 11.

CCXXXII. STAT. 34 GEORGII 3, c. 11. A.D. 1794.

"An Act for repealing the Duties on the Registry of Burials, Births, Marriages, and Christenings."

STAT. 34 GEO.
3, c. 20. [IR.]

CCXXXIII. STAT. 34 GEORGII 3, c. 20. [IRELAND.] A.D. 1794.

"An Act for securing a capital Stock, belonging to the Members of the Irish Musical Fund, applicable to Charitable Purposes."

STAT. 34 GEO.
3, cap. xxvii.

CCXXXIV. STAT. 34 GEORGII 3, cap. xxvii. A.D. 1794.

"An Act for amending an Act passed in the twelfth year of the Reign of His present Majesty, intituled, An Act for establishing and regulating a Charity, called Foxley Charity, in the County of Northampton, founded by Lady Katherine Leveson."

STAT. 34 GEO.
3, cap. lx.

CCXXXV. STAT. 34 GEORGII 3, cap. lx. A.D. 1794.

"An Act to empower the Lord Mayor and Aldermen of the City of London, Governors of Emanuel Hospital, in or near Westminster, to extend and increase the Objects of that Charity."

STAT. 34 GEO.
3, c. 61.

CCXXXVI. STAT. 34 GEORGII 3, c. 61. A.D. 1794.

"An Act for the better Observation of the Lord's Day, by Persons exercising the Trade of Bakers."

No baker
in London, &c.
to work on
Sunday, except
as herein
mentioned, on
penalty of 10s.

Penalty may
be levied by
distress, &c.

Application of
penalty.

Bread may be
sold, and meat,
&c. baked, on
Sunday be-
tween certain
hours.

"Whereas many persons exercising the trade of bakers do, under pretence of being employed in works of necessity or charity, carry on their trade or calling on the Lord's day, and are employed therein during a much greater part thereof than is requisite for such purposes; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that no master baker, journeyman baker, or other person carrying on the business of a baker in the city of London, or within twelve miles of the said city, shall, on any pretence whatsoever, make, bake, or expose to sale any household or or other bread, or rolls of any sort or kind, or bake any meat, puddings, pies, or tarts, or in any other manner exercise the trade or calling of a baker on the Lord's day, or any part thereof; (save and except as herein after is mentioned;) and every master baker, journeyman baker, or other person exercising the business of a baker on the Lord's day, contrary to the true intent and meaning of this act, and being thereof convicted before any justice of the peace of the county, city, or place where the offence shall be committed, either upon his own view, or confession of the party, or proof by one or more witness or witnesses, upon oath, shall forfeit and pay the sum of ten shillings; and if any person so convicted shall neglect or refuse to pay the said sum of ten shillings, such justice shall and may, by warrant under his hand and seal, direct the same to be levied by distress and sale of the offender's goods and chattels; and, in default or insufficiency of such distress, commit the offender to the house of correction for any time not exceeding fourteen, nor less than seven days, unless the penalty or forfeiture shall be sooner paid; and the said penalty or forfeiture shall, within seven days after payment thereof, be transmitted by such justice to the churchwardens or overseers of the poor of the parish where the offence shall be committed, to be employed and converted to the use of the poor of such parish.

"II. Provided always, that nothing herein contained shall extend, or be construed to extend, to prohibit the selling of bread, or to prohibit or make liable to the penalties of this act any master or journeyman baker, or other person, baking meat, puddings, or pies, only, on the Lord's day, between the hours of nine of the clock in the forenoon and one of the clock in the afternoon, so as the person requiring the baking thereof shall carry or send the same to and from the place where such meat, pudding, or pie is baked.

“III. Provided always, and be it enacted, that every complaint against any master baker, journeyman baker, or other person, for any thing by him or them done contrary to the provisions of this act, shall be made and prosecuted within six days after the offence committed.

“IV. And be it further enacted, that the justice before whom any person shall be convicted under this act, shall and may cause such conviction to be drawn up in the form or to the effect following :

“*To wit.* { Be it remembered, that on this day of
(*A. B.* is convicted before me one of his majesty’s
justices of the peace for the said county of [or, as the case may be,]
due proof being made before me, on the oath of or, upon the confes-
sion of, &c., [as the case may be,] that [specifying the offence, the
time when, and the place where]; and I do adjudge the said to pay
and forfeit for the same the sum of ten shillings. Given under my hand and seal,
this day of .”

STAT. 34 GEO.
3, c. 61.

Complaints to
be made within
six days.

Co victions to
be drawn up
in the following
form.

Form.

CCXXXVII. STAT. 34 GEORGH 3, cap. lxxv. A.D. 1794.

“*An Act for uniting the Rectory and Parish Church of Saint Nicholas, South Kelsey, in the County of Lincoln, with the adjoining Rectory and Parish Church of Saint Mary, South Kelsey, from and after the next Avoidance of either Benefice.*”

STAT. 34 GEO.
3, cap. lxxv

CCXXXVIII. STAT. 34 GEORGH 3, c. 88. A.D. 1794.

“*An Act for taking down and rebuilding the Parish Church of Saint Alkmond, in the Town of Shrewsbury, in the County of Salop.*”

STAT. 34 GEO.
3, c. 88.

CCXXXIX. STAT. 34 GEORGH 3, c. 107. A.D. 1794.

“*An Act for taking down and rebuilding the Parish Church of Tipton, otherwise Tibbington, in the County of Stafford, and for enlarging the Cemetery or Burial Ground belonging thereto.*”

STAT. 34 GEO.
3, c. 107.

CCXL. STAT. 35 GEORGH 3, c. 21(1). [IRELAND.] A.D. 1795.

“*An Act for the better Education of Persons professing the Popish or Roman Catholic Religion.*”

STAT. 35 GEO.
3, c. 21. [Ir.]

“Whereas by the laws now in force in this kingdom, it is not lawful to endow any college or seminary for the education exclusively of persons professing the Roman catholic religion, and it is now become expedient that a seminary should be established for that purpose ; be it therefore enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that the Right Honourable John Viscount Fitzgibbon, lord chancellor of Ireland, the Right Honourable John Earl of Clonmell, chief justice of his majesty’s court of King’s Bench in Ireland, the Right Honourable Hugh Lord Carleton, chief justice of his majesty’s court of Common Pleas in Ireland, and the Right Honourable Barry Yelverton, chief baron of the court of Exchequer in Ireland, and the chancellor, or lord keeper, chief justices, and chief baron of the said courts for the time being, together with Arthur James Plunkett, commonly called Earl of Fingall, Jenico Preston, commonly called Viscount Gormanstown, Sir Thomas Browne, baronet, commonly called Viscount Kenmare, Sir Edward Bellew, baronet, Richard Strange, of the city of Dublin, esquire, Sir Thomas

Preamble.

Persons herein
named shall be
trustees for
establishing,
endowing, and
maintaining an
academy for
the education
of Roman
catholics.

STAT. 35 GEO.
3, c. 21. [1R.]

Trustees empowered to receive subscriptions and donations, and to purchase and acquire lands not exceeding 1000*l.* per annum, and to erect buildings, &c.

Popish ecclesiastics may officiate.

Seven trustees may appoint a president, masters, fellows, professors, &c. &c. and make bye-laws, &c.

Bye-laws, not affecting religious discipline, to be laid before lord lieutenant, and to be binding if not disapproved by him in one month. Trustees to have visitatorial power. Trustees may assemble in one month after passing this act, and make rules, &c. Acts of the majority of trustees binding on the whole. When trustees die, &c. others shall be elected, being natural subjects.

French, baronet, the Reverend Richard O'Reilly of Drogheda, doctor in divinity, the Reverend John Thomas Troy, of the city of Dublin, doctor in divinity, the Reverend Thomas Bray of Thurles, doctor in divinity, the Reverend Boetius Egan of Tuam, doctor in divinity, the Reverend Patrick Joseph Plunkett of Navan, doctor in divinity, the Reverend Philip Mac Davett of Strabane, doctor in divinity, the Reverend Francis Moylan of Cork, doctor in divinity, the Reverend Gerald Tehan of Killarney, doctor in divinity, the Reverend Daniel Delany of Tullow, doctor in divinity, the Reverend Edmond French of Athlone, doctor in divinity, and the Reverend Thomas Hussey, of the city of Dublin, doctor in divinity, and the persons to be hereafter elected, as by this act is directed, shall be trustees for the purpose of establishing, endowing, and maintaining one academy, for the education only of persons professing the Roman catholic religion; and that the said trustees shall have full power and authority to receive subscriptions and donations to enable them to establish and endow an academy for the education of persons professing the Roman catholic religion, and to purchase and acquire lands, not exceeding the annual value of one thousand pounds, and to erect and maintain all such buildings as may be by the said trustees deemed necessary for the lodging and accommodation of the president, masters, professors, fellows and students, who shall from time to time be admitted into, or reside in such academy.

"II. And be it enacted, that it shall and may be lawful for any popish ecclesiastic, to officiate in a chapel or building, to be appointed for that purpose by the said trustees, or any seven or more of them, any law, statute, or provision to the contrary notwithstanding.

"III. And be it further enacted, that it shall and may be lawful for the said trustees, or any seven or more of them, to appoint one president and so many masters, fellows, professors and scholars on the foundation, and ministers, servants, and assistants of and in the said academy, with such pensions, salaries, exhibitions, wages and allowances, as to them shall seem fit; and also to make such bye-laws, rules, regulations and statutes, for the government of the said academy, and for the education and government of all such persons to be on the foundation thereof, or to be educated therein, and for the appointment and election of a president, masters, fellows, members and officers of the said academy, as to the trustees, or any seven or more of them, shall seem meet; provided that the same shall not be contrary to law.

"IV. Provided always, that all such bye-laws, rules, regulations and statutes, not affecting the exercise of the popish or Roman catholic religion, and the religious discipline thereof, be laid before the lord lieutenant, or chief governor of this kingdom, and shall be binding and valid, unless such lord lieutenant, or chief governor, shall disapprove thereof in one month from the time when such bye-laws shall be laid before such lord lieutenant, or other chief governor respectively.

"V. And be it further enacted, that the said trustees, or any seven or more of them, shall have the superintendence and visitatorial power over the said academy, and over all persons on the foundation, or educated therein.

"VI. And be it enacted, that the said trustees shall and may assemble within one month after the passing of this act, at such time and place as shall be appointed by any seven or more of the said trustees, by writing under their hands, and shall at such their first meeting, make such rules and regulations for their assembling in future, as to them shall seem expedient; and that the acts of the trustees so assembled at the said first meeting, or the major part of them, and of the trustees to be duly assembled at any future meeting, or the major part of them, shall be binding on, and be deemed the act of all the said trustees.

"VII. And be it enacted, that so often as a vacancy shall happen by the death, removal, or resignation of the said trustees, or any of them, (save the said chancellor or lord keeper, chief justices, and chief baron of the said courts,) the said trustees shall at their meeting elect a person, being a natural-born subject of his majesty, to fill such vacancy.

"VIII. Provided always, and be it enacted, that no person professing the Roman catholic religion shall act as a trustee to the said academy, and that no

person shall act as a president of the said academy, and that no person shall act as a master, fellow, professor, teacher or tutor, or enjoy any place on the foundation of the said academy, or be otherwise admitted into the same as a student, officer, or servant, until he shall have taken and subscribed the oath appointed by the act passed in the thirteenth and fourteenth years of his majesty's reign, intituled, 'An Act to enable his Majesty's Subjects, of whatever Persuasion, to testify their Allegiance to him.'

"IX. Provided always, that it shall not be lawful to receive into, or educate or instruct in the said academy, any person professing the protestant religion, or whose father professed the protestant religion; and that any president, master, professor, or teacher, who shall instruct any person in the said academy, professing the protestant religion, shall remain liable to such pains and penalties as he would have been liable to before the passing of this act.

"X. And whereas by an act of parliament, passed this session of parliament, intituled, 'An Act for securing the Payment of the Annuities, and of the Interest upon the principal Sums therein provided for, and towards the Discharge of such principal Sums in such manner as therein is directed, and for enabling the Officers of his Majesty's Treasury to receive certain Sums for a limited Time, in manner therein mentioned, and for granting to his Majesty a certain Sum of Money out of the Consolidated Fund, and for applying a certain Sum of Money therein mentioned, for the Service of the Year One thousand seven hundred and ninety-five,' a sum not exceeding two million four hundred and forty-nine thousand, six hundred pounds, sixteen shillings and nine pence farthing, is granted to his majesty for the service of the present year; be it enacted, that any sum or sums of money, not exceeding eight thousand pounds, part of the said sum of two million, four hundred and forty-nine thousand six hundred pounds sixteen shillings and nine pence farthing, shall and may be issued and paid by the commissioners of his majesty's treasury, or any three or more of them, towards establishing the said academy.

"XI. And be it enacted, that all sum and sums of money, from time to time issued and paid out of his majesty's treasury, on account of the said sum of eight thousand pounds, shall be paid to the trustees by this act constituted, or to any seven or more of them, and shall be accounted for before the commissioners of imprest accounts."

CCXLI. STAT. 35 GEORGII 3, c. 23. [IRELAND.] A.D. 1795.

"An Act to explain and amend (1) an Act passed in the tenth and eleventh years of the Reign of King Charles the First, intituled, An Act for the Preservation of the Inheritance, Rights, and Profits of Lands belonging to the Church, and Persons Ecclesiastical."

"Whereas doubts have arisen as to the validity of leases made under the powers given by an act passed in the tenth and eleventh years of the reign of King Charles the First, intituled, 'An Act for Preservation of the Inheritance, Rights, and Profits of Lands belonging to the Church, and Persons Ecclesiastical;' be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that it shall and may be lawful to and for archbishops, bishops, deans, deans and chapters, archdeacons, prebendaries, and other dignitaries ecclesiastical, parsons, vicars, and likewise masters or governors and fellows of colleges, and masters and guardians of hospitals, from time to time to accept of a surrender or surrenders of any lease or leases of any lands or hereditaments, and thereupon to demise such lands or other hereditaments belonging to their respective sees, churches, colleges, and hospitals, (the dwelling houses used for any their respective habitations, and demesne lands thereunto

STAT. 35 GEO. 3, c. 21. [IR.]

No Roman catholic shall act as trustee, president, master, &c. or be admitted as student or servant, until he takes the oath appointed by 13 & 14 Geo. 3. Protestants, or sons of protestant fathers, not to be received. Penalties to be suffered by any person who instructs a protestant in said academy. 8000*l.* may be issued from the treasury, towards establishing said academy.

Sums issued on said account to be paid to trustees, and accounted for before commissioners of im-accounts.

STAT. 35 GEO. 3, c. 23. [IR.]

Doubts respecting 10 & 11 Car. 1.

Persons herein may accept of surrender of leases; and may demise lands belonging to their sees, churches, &c. (dwelling houses and demesnes excepted),

(1) *Amend*:—The words "parsons and vicars" are used in this statute, but are not used in the enabling clauses of the original statute which is here amended.

STAT. 35 GEO.
3, c. 23. [IR.]
though equal
moiety of true
value of land
not reserved.

Leases hereto-
fore made are
valid, though
made before
twenty years
had expired of
preceding
leases, and
though a
moiety of the
true value of
the land was
not reserved;
provided re-
served rent be
not less than
rent paid for
last twenty
years preceding
the making of
lease.

Separate leases
as valid as
original lease.

Provided sepa-
rate reserved
rent be not
together less
than rent
reserved by
original lease.
No concurrent
lease to be
made.

STAT. 35 GEO.
3, cap. xxvii.

STAT. 35 GEO.
3, c. 32. [IR.]

belonging, and therewith used and occupied as the demesnes of their said houses only excepted,) unto the person or persons in such manner and form as by the said act, or any other act or acts now in force they are enabled so to do, notwithstanding that upon such lease and leases there shall not be reserved and continued due and payable unto the lessors, and their successors, during the term of twenty-one years, so much yearly rent or profits, or more, as the moiety of the true value of the lands or other hereditaments, *communibus annis*, at or immediately before the time of making such leases shall amount unto.

“II. And be it further enacted, that all leases heretofore made by any of the persons aforesaid, of any lands or other hereditaments belonging to their respective sees, churches, colleges, and hospitals, except as before excepted, unto any person or persons, in such manner and form, as by the said act, or any other act now in force they are enabled so to do, shall be valid and good, notwithstanding there was another lease, or estate then in being, which did not expire, nor was ended and determined within the time in said recited act mentioned, and also notwithstanding that upon such lease and leases they were not reserved and continued due and payable unto the lessors during the term of twenty-one years, so much yearly rent or profits, or more, as the moiety of the true value of the lands, or other hereditaments, *communibus annis*, at, or immediately before the time of making such leases, did amount unto; provided that the yearly rent or profits which have been, or shall be reserved upon every such lease heretofore made, or hereafter to be made, shall not be less than the yearly rent or profits paid, and payable thereout for the last twenty years preceding the making of such lease, whether such lands or hereditaments be augmentation lands or others.

“III. And whereas in many instances, lands and hereditaments belonging to archbishops, bishops, deans, deans and chapters, archdeacons, prebendaries, and other dignitaries ecclesiastical, parsons, vicars, and likewise masters or governors and fellows of colleges, and masters and guardians of hospitals, in right of their respective sees, churches, colleges and hospitals, upon surrender of the lease or leases then in being thereof, have heretofore been, and may hereafter be demised by one lease only, and have been, or may be afterwards separated and demised by two or more distinct leases, with separate and distinct rents reserved thereon respectively; be it enacted, that in all such cases, whether such lands and hereditaments are augmentation lands or others, or both, that each and every of such separate leases shall be as good and valid in law, as the said original one lease would have been.

“IV. Provided always, that the several yearly rents reserved, or to be reserved on such separate leases, do amount together to a yearly rent and profits, not less than the yearly rent and profits reserved and payable by such one original lease, any law, usage, or custom to the contrary notwithstanding; provided that nothing herein contained shall be construed to authorize any of the persons or bodies corporate aforesaid, to make any concurrent lease, other than what they could respectively have made before the passing of this act.”

CCXLII. STAT. 35 GEORGII 3, cap. xxvii. A.D. 1795.

“*An Act for effectuating an Exchange between the Rector of the Parish of Saint Leonard, in the County of Devon, and John Baring, Esquire, and also between the Vicar of the Parish of Heavitree, in the same County, and the said John Baring.*”

CCXLIII. STAT. 35 GEORGII 3, c. 32(1). [IRELAND.] A.D. 1795.

“*An Act to explain an Act passed in the seventh year of the Reign of His present Majesty, intituled, An Act to continue and amend an Act passed in the third year of His Majesty's Reign, intituled, An Act to amend and explain an Act made in the thirty-third year of the Reign of Henry the Eighth, intituled, An Act for Tithes, and for other Purposes therein mentioned.*”

[Title not to be deemed controverted within Stat. 7 Geo. 3, c. 21, s. 3, unless the plea denying it to be verified by pleader's oath, or affirmation, to best of knowledge or belief, as case may be, before the spiritual judge. s. 1. All who sue for predial tithes in spiritual court, whether clergy or lay, or whether in own right, or derived from or for use of another, may proceed as directed by Stat. 7 Geo. 3, c. 21, and be entitled to all rights and benefits thereby, or by this act. s. 2.] STAT. 35 GEO. 3, c. 32. [1R.]

CCXLIV. STAT. 35 GEORGII 3, c. 47. A.D. 1795.

STAT. 35 GEO. 3, c. 47.

"An Act for taking down the Chapel of the Chapelry of Haydon, in the Parish of Warden, in the County of Northumberland, and for building a new Chapel, in a convenient situation within the said Chapelry."

CCXLV. STAT. 35 GEORGII 3, cap. lxii. A.D. 1795.

STAT. 35 GEO. 3, cap. lxii.

"An Act for amending an Act passed in the tenth year of the Reign of His present Majesty, intituled, An Act to enable the Trustees of the Estates devised by William Hulme, Esquire, to grant Building Leases thereof, and to increase the number of Exhibitioners to Brazen-Nose College, in Oxford, founded by the said Testator, and for other Purposes therein mentioned; and to enable the Trustees to convey in Fee, or grant Leases for Lives, or for long Terms of Years, with or without Covenants for Renewal, or for perpetual Renewal, under reserved Yearly Rents, the said Trust Estates; and to enable the Trustees to apply the Trust Moneys in making such Allowance to the Exhibitioners as may be thought proper, and for other Purposes therein mentioned."

CCXLVI. STAT. 35 GEORGII 3, c. 67 (1). A.D. 1795.

STAT. 35 GEO. 3, c. 67.

"An Act for rendering more effectual an Act passed in the first year of the Reign of King James the First, intituled, An Act to restrain all Persons from Marriage, until their former Wives and former Husbands be dead."

CCXLVII. STAT. 35 GEORGII 3, c. 70. A.D. 1795.

STAT. 35 GEO. 3, c. 70.

"An Act for amending an Act passed in the thirtieth year of the Reign of His present Majesty, intituled, An Act for taking down the Church and Tower belonging to the Parish of Saint John at Hackney, in the County of Middlesex; and for building another Church and Tower for the use of the said Parish; and for making an additional Cemetery or Churchyard; and for raising a further sum of Money for completing the said Church, and other Works."

CCXLVIII. STAT. 35 GEORGII 3, c. 71. A.D. 1795.

STAT. 35 GEO. 3, c. 71.

"An Act for building a new Church or Chapel in the Town of Halifax, in the West Riding of the County of York."

CCXLIX. STAT. 35 GEORGII 3, c. 73 (2). A.D. 1795.

STAT. 35 GEO. 3, c. 73.

"An Act for repealing several Acts made in the eighth, tenth, thirteenth, and fifteenth years of the Reign of His present Majesty, for regulating the nightly Watch and Beadles, and for paving, repairing, cleansing, and lighting the Parish of Saint Mary-le-Bone, in the County of Middlesex, and for the better Relief and Maintenance of the Poor thereof, and for divers other Purposes therein mentioned; and for making more effectual Provision for those Purposes."

(1) Repealed by Stat. 9 Geo. 4, c. 31.

(2) By Stat. 35 Geo. 3, c. 73, for the government of the parish of St. Mary-le-bone, it was directed, that the vestrymen

should annually make a poor-rate and other assessments, and that the rates to be so made, should be entered in a book or books, which should state the names of the persons

STAT. 35 GEO.
3, cap. lxxiii.

CCL. STAT. 35 GEORGII 3, cap. lxxiii. A.D. 1795.

"An Act for dividing and inclosing the open and common Fields within the Hamlets of Upper Easington, and Fulready, in the Parish of Lower Easington, in the County of Warwick, and for taking down and rebuilding the Church of the said Parish."

STAT. 35 GEO.
3, cap. lxxxii.

CCLI. STAT. 35 GEORGII 3, cap. lxxxii. A.D. 1795.

"An Act for effectuating an Agreement entered into between Charles Chaplin, Esquire, and the Master of the Hospital of Saint Michael the Archangel, at Well, in the County of York, and the Vicar of the Parish of Well aforesaid, for making certain Lands, Tenements, and Hereditaments, in the said Parish, and in the Hamlet of Snape, within the same, subject to certain Trusts, Rights, or Interests, in favour of the said Hospital, and to an annual Portion or Payment to the Vicar of Well in lieu of other Lands and Tithes at Well and Snape aforesaid, and Masham, in the said County."

STAT. 35 GEO.
3, cap. lxxxiii.

CCLII. STAT. 35 GEORGII 3, cap. lxxxiii. A.D. 1795.

"An Act for enabling the Lord Bishop of London to grant a Lease with Powers of Renewal, of Lands, in the Parish of Paddington, in the County of Middlesex, for the purpose of building upon."

STAT. 35 GEO.
3, cap. lxxxix.

CCLIII. STAT. 35 GEORGII 3, cap. lxxxix. A.D. 1795.

"An Act for Sale of an Estate in the Parish of Bentworth, in the County of Southampton, which has been purchased with a Legacy given by the Will of Richard Aldworth, Esquire, deceased, for certain Charitable Purposes, and for applying the Money to arise by such Sale for the like Purposes."

STAT. 36 GEO.
3, c. 35.

CCLIV. STAT. 36 GEORGII 3, c. 35. A.D. 1796.

"An Act to enable the Trustees for executing an Act passed in the thirty-second year of the Reign of His present Majesty, for repairing, altering, and improving the Parish Church of Saint Bridget, otherwise Saint Bride, in the City of London; and for providing a Workhouse for the same; to raise a further sum of Money for completing the Purposes of the said Act."

STAT. 36 GEO.
3, c. 52.

CCLV. STAT. 36 GEORGII 3, c. 52(1). A.D. 1796.

"An Act for repealing (2) certain Duties on Legacies and Shares of Personal Estates, and for granting other Duties thereon, in certain Cases."

to be charged, the amount of assessment upon each person for each of such rates, and the arrears outstanding at the end of each year. The entry of the rate, made as above, was the original rate. The act said nothing as to inspection by the rate-payers. Such books were accordingly kept, and also books, under Sir John Hobhouse's act, (Stat. 1 & 2 Gul. 4, c. 60, s. 32,) containing accounts of all sums of money received and disbursed for parochial purposes, and of the articles, matters, and things for which the sums were received and disbursed; which latter books were open to inspection, and liberty given to take copies, according to the last-mentioned act; but these books did not contain the particulars stated in the book kept under the local act.

A rate-payer demanded liberty to inspect

and take copies of the first-mentioned books (not offering any payment); which liberty being refused, he obtained a rule *nisi* for a *mandamus*.

But the court held, that a rate-payer was not authorized by the above statutes, or by Stat. 17 Geo. 2, c. 3, or at common law, to compel the granting of such liberty: and therefore the rule was discharged. *Rex v. St. Mary-le-bone (Vestrymen of)*, 5 A. & E. 268.

(1) So much of this statute as applies to the amount of duties, has been superseded by Stat. 55 Geo. 3, c. 184.

(2) *Repealing*:—Duties imposed by Stat. 20 Geo. 3, c. 28; Stat. 23 Geo. 3, c. 58; and Stat. 29 Geo. 3, c. 51, on receipts and discharges for legacies, were repealed by this statute.

CCLVI. STAT. 36 GEORGII 3, cap. lix. A.D. 1796.

STAT. 36 GEO.
3, cap. lix.

"An Act for vesting the Rectory of Lyth in Trustees, for the purpose of completing the Sale thereof."

CCLVII. STAT. 36 GEORGII 3, c. 65. A.D. 1796.

STAT. 36 GEO.
3, c. 65.

"An Act for rebuilding the Parish Church of Saint Paul, Covent Garden, within the Liberty of Westminster, in the County of Middlesex, and the Vestry Rooms belonging thereto; for repairing and reinstating the Iron Rails inclosing the Site of the said Church, and the Gates leading thereto; and for making several Regulations relating to the said Parish."

CCLVIII. STAT. 36 GEORGII 3, c. 83 (1). A.D. 1796.

STAT. 36 GEO.
3, c. 83.

"An Act for the further Support and Maintenance of Curates within the Church of England, and for making certain Regulations respecting the Appointment of such Curates, and the Admission of Persons to Cures augmented by Queen Anne's Bounty with respect to the Avoidance of other Benefices."

CCLIX. STAT. 36 GEORGII 3, c. 103. A.D. 1796.

STAT. 36 GEO.
3, c. 103.

"An Act for rebuilding the Parish Church of Saint Martin Outwich, in Threadneedle Street within the City of London."

CLX. STAT. 37 GEORGII 3, cap. xix. A.D. 1797.

STAT. 37 GEO.
3, cap. xix.

"An Act to enable the Governors of the Hospital of King James, founded in Charter House, to sell and convey a Messuage, Cottages, and divers Lands, Tenements, and Hereditaments, in Fulstow Marsh, Chappel, and Tetney, in the County of Lincoln; and for laying out the Money arising from such Sale in the Purchase of other Lands and Tenements, or Hereditaments, for the Benefit of the said Hospital."

CCLXI. STAT. 37 GEORGII 3, cap. xx. A.D. 1797.

STAT. 37 GEO.
3, cap. xx.

"An Act to explain and amend an Act, passed in the fourth and fifth years of the Reign of Her late Majesty Queen Anne, intituled, An Act for augmenting the number of Canons Residentiary in the Cathedral Church of Lichfield, and for improving the Deanery and Prebends of the said Cathedral, and to make further Provision for the Canons Residentiary in the said Cathedral Church, and an Addition to the Fabric Fund thereof."

CCLXII. STAT. 37 GEORGII 3, c. 37 (2). [IRELAND.] A.D. 1797.

STAT. 37 GEO.
3, c. 37. [IR.]

"An Act for amending an Act passed in this Kingdom, in the eleventh and twelfth years of His present Majesty, intituled, An Act for erecting Parochial Chapels of Ease, in Parishes of large extent, and making such Chapels and those that are already erected perpetual Cures, and for making a proper Provision for the Maintenance of perpetual Curates to officiate in the same, and also in like manner for making appropriate Parishes perpetual Cures."

CCLXIII. STAT. 37 GEORGII 3, cap. xxxviii. A.D. 1797.

STAT. 37 GEO.
3, cap. xxxviii.

"An Act to enable the Rector of the Parish Church of Hitcham, in the County of Bucks, to exchange part of his Glebe Lands there for other Lands, in the same Parish, belonging to the Right Honourable William Wyndham Lord Grenville."

(1) This statute; Stat. 47 Geo. 3, Sess. 2, c. 75; and Stat. 48 Geo. 3, c. 5, were for the temporary purpose of quieting persons in the possession of benefices held with augmented curacies, there having been an erroneous doubt as to whether they fell within the Statute of Pluralities. 3 Burn's E. L.

by Phillimore, 128.

This statute was partly repealed by Stat. 57 Geo. 3, c. 99. *Vide etiam* Stat. 53 Geo. 3, c. 149. Stat. 1 & 2 Vict. c. 31. Stat. 1 & 2 Vict. c. 106. Stat. 2 & 3 Vict. c. 49.

(2) *Vide ante* 874, n. (1)

STAT. 57 GEO.
3, c. 43.

CCLXIV. STAT. 37 GEORGII 3, c. 43. A.D. 1797.

"An Act for building a new Chapel at Plymouth Dock, in the Parish of Stoke Damerel, in the County of Devon."

STAT. 37 GEO.
3, c. 44. [1R.]

CCLXV. STAT. 37 GEORGII 3, c. 44. [IRELAND.] A.D. 1797.

"An Act for the Preservation of Estates belonging to Parishes."

Preamble.

"Whereas there are several parishes in this kingdom which are endowed with estates in lands, tenements, and hereditaments, of which the respective incumbents of said parishes are seised in fee, in trust for the said parishes, and the said estates are usually let, and demised by the said incumbents, with the consent of the parishioners of said parishes in vestry assembled, testified by the churchwardens of said parishes, or other persons appointed for that purpose by the said parishioners so assembled, being parties to, and executing the leases, by which the said estates, or any parts or parcels thereof, are demised, and let to farm, and the annual rents of the said estates are applicable to, and ought to be applied by respective incumbents and churchwardens of said parishes, in repairing the churches of said parishes, and in support of poor and indigent persons within the said parishes respectively, and in payment and discharge of parochial expenses usually defrayed by parish cesses, and in other pious and charitable uses: and whereas divers abuses and frauds have been committed, as well in the leasing of several parts of the said estates for such long terms of years, as in effect to prevent any increase in the rents of the parts so demised for ages to come, as also at low rents, greatly under the real value of the said estates, or the parts thereof so demised, and the rents of said estates have been frequently fraudulently misapplied, in so much, that there are just grounds to apprehend that the pious and charitable purposes to which the incomes of the said estates are applicable, may, by such fraudulent practices, be utterly defeated: and whereas doubts have arisen, whether any leases executed of the said estates, or any parts or parcels thereof, by the respective incumbents of said parishes, and the churchwardens, or other persons appointed for that purpose by the respective parishioners of said parishes, in vestry assembled, are good and valid in law: for remedy whereof, be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that it shall and may be lawful to and for every incumbent of any parish in this kingdom, who is, or shall be seised of any estate in lands, tenements, or hereditaments in fee-simple, to him and his successors, in trust for such parish, to let and demise the said estate, or any part and parcel thereof, for any term of years not exceeding forty-one years, with the consent of the ordinary of the diocese, and of the majority of the protestant parishioners of such parish in vestry assembled, without taking anything by way of fine, at the full improved yearly rent of the said estate, or the part and parts thereof then demised, at the peril of the lessees who shall take the same, so as such lease or leases be not made to commence *in futuro*, and so as in such lease or leases shall not be contained any power, liberty, or privilege for the lessee or lessees to commit waste, or to be dispunishable of waste, and so as that there shall not be any other lease or leases of the said estate, or any part or parcel thereof so demised, which shall not expire, or be ended and determined within the space of one year next coming from the commencement of such new lease or leases, and so as counterparts of such new lease or leases be entered in the registry-book of the ordinary of the diocese, and in the vestry-book of the parish.

Incumbents possessed of fee-simple estates, in trust for parishes, may, under certain restrictions, let for forty-one years, &c.; counterparts to be entered in registry books of ordinaries, and in vestry books.

Consent of ordinary to be written and sealed, and consent of majority of protestant

"II. And be it enacted by the authority aforesaid, that the consent of the ordinary of the diocese shall be written at the foot, or on the back of all and every such lease and leases, or in a schedule or schedules to be annexed thereto, subscribed with his hand, and sealed with his archiepiscopal or episcopal seal, and that the consent of the majority of the protestant parishioners of the said parish, in vestry assembled, shall be written at the foot, or on the back of such lease or

leases, or in a schedule or schedules to be annexed thereto, and subscribed by the churchwardens for the time being, and by two other protestant parishioners, to be elected by the majority of the protestant parishioners in vestry assembled, and appointed as their attorneys or proctors for that purpose, and sealed with their seals respectively, and that they shall therein specify the year, month, and day, on which the protestant parishioners of such parish, in vestry assembled, consented to the said lease or leases; and on which such consent was entered in the vestry-book of said parish.

“III. And be it further enacted by the authority aforesaid, that all and every lease and leases of any estate, in lands, tenements, or hereditaments, held in trust for or belonging to any parish or parishes in this kingdom, or of any part or parcel thereof, which are, or have been executed, or shall be executed at any time or times subsequent to the first day of August, last past, in any particular differing from, or contrary to, the several clauses and provisoes, and the true intent and meaning of this act, shall be null and void, to all intents and purposes whatsoever.

“IV. And be it further enacted by the authority aforesaid, that no person whatsoever, who, by the laws and statutes now in force in this kingdom, is incapacitated and disqualified to vote at any vestry or vestries, for rebuilding or repairing of churches, shall be capable of giving his or her vote, at any vestry or vestries, in any matter or business to be hereafter transacted in such vestry or vestries, respecting the letting or demising of the estate or estates in lands, tenements, or hereditaments, or of any part or parcel thereof, belonging to, or held in trust for any parish or parishes in this kingdom, or in any matter or business respecting the disposing of the income, or any part of the income of such estates.

“V. And be it further enacted by the authority aforesaid, that the incumbent of every parish which is endowed with any estate in lands, tenements, and hereditaments, in manner hereinbefore mentioned, shall furnish, and give to the ordinary of the diocese in which such parish is situated, or his vicar-general, every year, at the annual visitation of said diocese, an account or schedule, fairly written, and subscribed by the said incumbent and churchwardens of said parish, stating the several tenants' names of the said estates, their occupations, and places of abode, the terms demised by their respective leases, together with the dates of the respective commencements thereof, the rents payable by them respectively, and the sums received by the said incumbent and churchwardens, and their immediate predecessors, out of the said estate, during the year ending on the first day of May immediately preceding such visitation, and stating particularly the expenditure of the said annual income of said estate, during the said year, and the items of such expenditure; said account to be deposited in the registry of the diocese in which such parish is situated.”

STAT. 37 GEO. 3, c. 44. [Ir.]

inhabitants subscribed by churchwardens and by two protestant inhabitants, shall specify the day, &c.

Lease executed since the 1st of August, 1796, differing in any manner from this act, shall be void.

Persons disqualified to vote at vestries for repairs of churches, shall not vote for letting or demising parish estates.

Incumbents to furnish accounts annually to ordinaries, signed by themselves and churchwardens, stating particulars herein mentioned.

CCLXVI. STAT. 37 GEORGII 3, c. 55. A.D. 1797.

“An Act for taking down and rebuilding the Parish Church of Milbrooke, in the County of Southampton, and for enlarging the Churchyard of the said Parish.”

STAT. 37 GEO. 3, c. 55.

CCLXVII. STAT. 37 GEORGII 3, cap. lxx. A.D. 1797.

“An Act for enabling the Governors of the Free Grammar School of Queen Mary, at Walsall in the County of Stafford, to sell certain Mines under part of their Lands, and to sell or exchange certain parts of their Lands lying dispersed, for improving and extending the Benefits of the Foundation of the said School, for enlarging the Trusts and Powers of the said Governors, and for enabling them to build a Chapel, and for other Purposes.”

STAT. 37 GEO. 3, cap. lxx.

CCLXVIII. STAT. 37 GEORGII 3, cap. lxxviii. A.D. 1797.

“An Act for enabling Thomas Stinton, Doctor in Divinity, and his Successors, to grant, in manner therein mentioned, a Lease of a certain part of the Prebendal Lands, situate in the several Parishes therein mentioned.”

STAT. 37 GEO. 3, cap. lxxviii.

STAT. 37 GEO.
3, cap. lxxxiii.

CCLXIX. STAT. 37 GEORGII 3, cap. lxxxiii. A.D. 1797.

"An Act for vesting several Messuages and Hereditaments in the Parish of All-hallows Steyning, in the City of London, in the Corporation of the Trinity House, subject to several perpetual yearly Rent Charges payable to the Rector, Clerk, Sexton, and Churchwardens, of the same Parish."

STAT. 37 GEO.
3, c. 90.

CCLXX. STAT. 37 GEORGII 3, c. 90. A.D. 1797.

"An Act for granting to His Majesty certain Stamp Duties on the several Matters therein mentioned. . . ."

Persons administering personal estates without proving the will, or taking out letters of administration within six months after the death of the party, to forfeit 50*l*.

"X. And be it further enacted, that every person who shall administer the personal estate of any person dying after the passing of this act, or any part thereof, without proving the will of the deceased, or taking out letters of administration of such personal estate, within six calendar months after the death of the person so dying, shall forfeit (1) and pay the sum of fifty pounds, to be recovered in his majesty's court of Exchequer at Westminster, for offences committed in England, or in his majesty's court of Exchequer in Scotland, for offences committed in Scotland, by action of debt, bill, plaint, or information, wherein no essoign, privilege, wager of law, or more than one imparlance, shall be allowed; and that one moiety of such penalty or forfeiture shall, if sued for within the space of six calendar months, be to his majesty, his heirs or successors, and the other moiety thereof to the person or persons who shall inform or sue for the same."

STAT. 37 GEO.
3, cap. cxvi.

CCLXXI. STAT. 37 GEORGII 3, cap. cxvi. A.D. 1797.

"An Act for effectuating an Exchange between the Governors of the Free Grammar School of Harrow-on-the-Hill, in the County of Middlesex, and John Hunter of Gubbins, in the County of Hertford, Esquire, of a Farm and certain Lands, in the Parishes of North and South Mims, in the said Counties of Hertford and Middlesex, for a Farm and certain Lands in the Parish of Harrow-on-the-Hill aforesaid."

STAT. 37 GEO.
3, cap. cxxi.

CCLXXII. STAT. 37 GEORGII 3, cap. cxxi. A.D. 1797.

"An Act for exchanging the Advowson of the Vicarage of the Abbey Church otherwise Holy Cross, with Saint Giles annexed, in the County of Salop, belonging to His Majesty, for the Advowsons of the Churches of Risby and Fornham Saint Genovesse, otherwise Saint Genoveve, in the County of Suffolk, belonging to the Right Honourable Thomas Noel Lord Berwick."

STAT. 38 GEO.
3, cap. xxxv.

CCLXXIII. STAT. 38 GEORGII 3, cap. xxxv. A.D. 1798.

"An Act to alter and enlarge the Powers of an Act, passed in the twenty-seventh year of the Reign of His present Majesty, intituled, An Act for dividing the Parish of Saint James, in the City and County of Bristol, and County of Gloucester, and for building a Church, and providing a Cemetery or Churchyard and Parsonage House, within the new Parish."

STAT. 38 GEO.
3, c. 39. [IR.]

CCLXXIV. STAT. 38 GEORGII 3, c. 39 (2). [IRELAND.] A.D. 1798.

"An Act for the better ascertaining the Amount, and securing the Payment of the Bills of Cost of Proctors, employed in carrying on and defending Suits and transacting Business in the High Court of Admiralty, in His Majesty's Court of Prerogative, in the Court of Delegates, and in all Ecclesiastical Courts within the Kingdom of Ireland."

(1) *Forfeit*:—Vide Stat. 55 Geo. 3, c. 50*l*. to 100*l*.
184, where the forfeiture is increased from (2) Amended by Stat. 5 Geo. 4, c. 27.

CCLXXV. STAT. 38 GEORGII 3, c. 56. A.D. 1798.

STAT. 38 GEO.
3, c. 56.

"An Act for repealing so much of an Act, [37 Geo. 3, c. 90,] made in the last Session of Parliament, intituled, *An Act for granting to His Majesty certain Stamp Duties on the several Matters therein mentioned; and for better securing the Duties on Certificates to be taken out by Solicitors, Attorneys, and Others practising in certain Courts of Justice in Great Britain, as imposes a Duty on Licences granted to Stipendiary Curates to perform the Office of Curate in any Church or Chapel.*"

CCLXXVI. STAT. 38 GEORGII 3, CAP. LXVIII. A.D. 1798.

STAT. 38 GEO.
3, CAP. LXVIII.

"An Act for the better Government and Regulation of the Free Grammar School of King Edward the Sixth, at Shrewsbury, in the County of Salop."

CCLXXVII. STAT. 38 GEORGII 3, c. 72. [IRELAND.] A.D. 1798.

STAT. 38 GEO.
3, c. 72. [IR.]

"An Act for the Sale of His Majesty's Quit Rents, Crown and other Rents, and of the Lands forfeited in the years One thousand six hundred and forty-one, and One thousand six hundred and eighty-eight, and other Lands yet remaining undisposed of, in such Manner and under such Provisions as are therein mentioned."

[For sale of tithes vested in the crown, &c.]

CCLXXVIII. STAT. 38 GEORGII 3, cap. lxxxiv. A.D. 1798.

STAT. 38 GEO.
3 cap. lxxxiv.

"An Act to establish and confirm an Exchange made by and between the Rector of the Parish Church of Kirk Deighton and Thomas Thornton, Esquire, of part of his Glebe Lands, for other Lands there, the Property of the said Thomas Thornton, which are more conveniently situated for the said Rector and his Successors."

CCLXXIX. STAT. 38 GEORGII 3, c. 87 (1). A.D. 1798.

STAT. 38 GEO.
3, c. 87.

"An Act for the Administration of Assets in cases where the Executor to whom Probate has been granted is out of the Realm."

"Whereas the laws now existing are not sufficient to enforce a speedy distribution of the assets of deceased persons where the executor to whom probate of the

If, at the expiration of

(1) Vide Stat. 44 Geo. 3, c. 98, s. 1. Stat. 55 Geo. 3, c. 184.

If the spiritual court exercise its discretion by making a grant of administration *durante absentia*, it is upon the principle, that there is no legal representative, and then it is grantable by law. Nothing but an absence out of the realm can authorize the appointment of an administrator *durante absentia*. STEPHENS ON NISI PRIUS, tit. EXECUTORS AND ADMINISTRATORS, 1879.

It was held in *Woolley v. Green*, (3 Phill. 314,) that under this statute, administration may be granted to a creditor, but to avail himself of its provisions, he must, like every other person, file a bill in equity.

Where persons entitled to administration were resident in France, (*Goddard v. Cressonier*, Ibid. 637,) and in the West Indies, (*Miller v. Washington*, 3 Hagg. 277,) the court required that they should receive notice, previously to administration being granted to other parties.

The authority of the administration *durante absentia* ceases on the appearance of the executor or next of kin, and his taking out probate or administration. 1 Rol. Abr.

Executors (C), 907. *Clare v. Hedges*, 1 Lutw. 342, n. *Slaughter v. May*, 1 Salk. 42. In *Clare v. Hedges*, (1 Lutw. 342, n.) in the case of a common law administration *durante absentia*, if any of the debtors of the deceased paid his debt to the temporary administrator, though it was after the return of the executor next of kin, yet if the debtor had no notice of such return, it was a good payment. Vide etiam *In re Cassidy*, 4 Hagg. 360.

If an administrator have been appointed under the statute, and the executor die to whom the probate had been granted, the administration, notwithstanding, continues until the appointment of a new representative. *Taynton v. Hannay*, 3 B. & P. 26.

In an action by a person to whom administration *durante absentia* is granted, the declaration must aver the absence of the executor beyond the seas at the time, that the administration was granted, and that his absence then continued. *Slater v. May*, 2 Ld. Raym. 1071.

In an action by a special administrator, under Stat. 38 Geo. 3, c. 87, the declarations of the executor named in the will,

STAT. 38 GEO.
3, c. 87.

twelve months
from a testa-
tor's decease,
the executor to
whom probate
is granted,
shall not reside
within the
jurisdiction of
his majesty's
courts, a cre-
ditor, &c. may
obtain special
administration
on a 5s. stamp.

The party
applying to
make the
following
affidavit.

Administration
to be granted
in the follow-
ing form.

will hath been granted is out of the jurisdiction of his majesty's courts of law and equity; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that, at the expiration of twelve calendar months from the death of any testator, if the executor or executors to whom probate of the will shall have been granted, are or is then residing out of the jurisdiction of his majesty's courts of law and equity, it shall be lawful for the ecclesiastical court which hath granted probate of such will, upon the application of any creditor, next of kin, or legatee, grounded on the affidavit hereinafter mentioned, to grant such special administration as hereinafter is also mentioned; which administration shall be written or printed upon paper or parchment stamped only with one five-shilling stamp, and shall pay no further or other duty to his majesty, his heirs or successors.

"II. And be it further enacted, that the party applying to the spiritual court to grant such administration as aforesaid, shall make an affidavit in the following words, or to the purport and effect following:

"I, *A. B.*, of do swear, that there is due and owing to me, upon bond or simple contract, or upon account unsettled, as the case may happen to be, (in which latter case he shall swear to the best of his belief only,) from the estate and effects of deceased, the sum of and that *C. D.*, the only executor capable of acting, and to whom probate hath been granted, hath departed this kingdom, and is now out of the jurisdiction of his majesty's courts of law and equity, and that this deponent is desirous of exhibiting a bill in equity in his majesty's court of for the purpose of being paid his demand out of the assets of the said testator."

"III. And be it further enacted, that the administration to be granted pursuant to this act shall be in the form hereinafter mentioned; that is to say,

" by Divine Providence, Archbishop of Canterbury, primate of all England and metropolitan, to our well beloved in Christ greeting: Whereas it hath been alleged before the worshipful doctor of laws, surrogate of doctor of laws, master keeper, or commissary of our prerogative court of Canterbury, lawfully constituted by you the said that did, whilst living, and of sound mind, memory, and understanding, make and duly execute his last will and testament in writing, and did therefore nominate, constitute, and appoint his executors, (or, sole executor,) who in the month of proved the said will by the authority of our said court, and now reside (or, resides) out of this kingdom, and out of the jurisdiction (1) of his majesty's courts of law and equity: (as in and by an affidavit duly made and sworn to by and brought into and left in the registry of our said court, reference being thereunto had will more fully and at large appear:) and whereas the surrogate aforesaid, having duly considered the premises, did, at the petition of the said decree letters of administration of all and singular the goods, chattels, and credits of the said deceased, to be committed and granted to you the said named by or on the behalf of the said a creditor (legatee) or (one of the next kin) of the said deceased, (as the case may be,) limited for the purpose, to become and be made a *party to a bill* (2) or bills to be exhibited against you in any of his majesty's

made by him whilst he was the acting executor, are not admissible against the plaintiff. *Rush v. Peacock*, 2 M. & Rob. 162.

(1) *Out of the jurisdiction*:—In *Hannay v. Taynton*, (2 Add. 505.) Sir William Wynne stated, that Stat. 38 Geo. 3, c. 87, "was equally applicable to the case of an executor resident out of the jurisdiction, and out of the reach of the process of (*Done's case*, 1 P. Wms. 262.) his majesty's English courts of law and equity, as to that of an executor resident, 'out of the realm.' In-

deed, upon reference to the act itself, it should seem to admit, this, of but little question; although, the 'title' of the act is only 'An Act for the administration of Assets in cases where the Executor to whom Probate has been granted, is out of the realm.'"

(2) *Party to a bill*:—The act, as previously observed, applies only to cases where there are proceedings in chancery, and it cannot be extended to the renewal of leases or other matters. In *the goods of Davies*, 2 Hagg. 79. *Woolley v. Green*, 3 Phill. 314.

courts of equity, and to *carry the decree* or decrees of any of the said court or courts *into effect* (1), but no further or otherwise (justice so requiring): and we being desirous that the said goods, chattels, and credits, may be well and faithfully administered, applied, and disposed of, according to law, do therefore, by these presents, grant full power and authority to you, in whose fidelity we confide, to administer and faithfully dispose of the said goods, chattels, and credits, according to the tenor and effect of the said will, limited as aforesaid, so far as such goods, chattels, and credits of the deceased will thereto extend, and the law requires, you having been already sworn, well and faithfully to administer the same, and to make a true and perfect inventory of all and singular the said goods, chattels, and credits, so far as the same may come to your hands, and to exhibit the same into the registry of our said prerogative court of Canterbury, on or before the

STAT. 38 GEO.
3, c. 87.

next ensuing, and also to render a just and true account thereof: and we do by these presents ordain and constitute you administrator of all and singular the goods, chattels, and credits of the said deceased, limited as aforesaid, but no further, or otherwise.

“Given at London, the day of in the year of our
Lord and in the year of our translation.’

“IV. And be it further enacted, that it shall be lawful for the court of equity in which such suit shall be depending, to appoint (if it shall be needful) any persons or person to collect in any outstanding debts or effects due to such estate, and to give discharges for the same, such persons or person giving security in the usual manner duly to account for the same.

**Court of equity
may appoint
persons to
collect out-
standing debts.**

“V. And be it further enacted, that it shall be lawful for the accountant-general of the high court of Chancery, or for the secretary, or deputy secretary, of the governor and company of the Bank of England, to transfer, and for the governor and company of the Bank of England to suffer a transfer to be made of any stock belonging to the estate of such deceased person, into the name of the accountant-general, in trust, for such purposes as the court shall direct, in any suit in which the person to whom such administration hath been granted, shall be, or may have been, a party: provided nevertheless, that if the executors or executor capable of acting as such, shall return to and reside within the jurisdiction of any of the said courts pending such suit, such executors or executor shall be made party to such suit, and the costs incurred by granting such administration, and by proceeding in such suit against such administrator, shall be paid by such person or persons, or out of such fund as the court where such suit is depending shall direct.

Stock belonging to the estate of the deceased, may be transferred into the name of the accountant general in Chancery. Executor, returning to reside, to be made a party in such suit.

“VI. And whereas inconveniences arise from granting probate to infants under the age of twenty-one; be it enacted, that where *an infant* is *sole executor*(2)(3), administration, with the will annexed, shall be granted to the guardian of such infant, or to such other person as *the spiritual court shall think fit*(4), until such infant shall have attained the full age of twenty-one years, at which period, and not before, probate of the will shall be granted to him(5).

Where an infant is sole executor, administration, with the will annexed, to be granted to the guardian, &c. till the infant is twenty-one.

“VII.(5) And be it enacted, that the person to whom such administration shall be granted, shall have the same powers vested in him as an administrator now hath

(1) *To carry the decree . . . into effect*.—In *Warburton v. Hill*, (5 Sim. 532,) where an administrator had been appointed under Stat 38 Geo. 3, c. 87, the vice-chancellor, on motion before a decree, ordered stock standing in testator's name to be transferred to the accountant-general.

(2) *Infant . . . executor*.—If before this act administration had been granted during the minority of an executor, it ceased at the age of seventeen; but if granted to a minor, not as an executor, but as an administrator, it did not cease until twenty-one. *Piggot's case*, 5 Co. 29. *Reek v. Thomas*, 12 Mod. 500. 1 Ld. Raym. 667.

(3) *Sole executor*.—Before this act, it was held, that where there are several infant executors, administration determined on any one of them coming of age. *Bennet v. Baud*, 1 Sid. 185. *Joyner v. Wats*, Jon. (Sir T.), 48. *Willy v. Poulton*, Mos. 99.

(4) *As the spiritual court shall think fit*:—Administration *durante minore etate* not within Stat. 21 Hen. 8, c. 5 (*antè* 119); and consequently is is discretionary in the ordinary to grant it. *Briers v. Goddard*, Hob. 250. *Vide* Stephens on Nisi Prius, tit. EXECUTORS AND ADMINISTRATORS, 1877.

(5) Sections 6 & 7 extended to Ireland by Stat. 58 Geo. 3, c. 81.

STAT. 38 GEO. 3, c. 87. by virtue of an administration granted to him *durante minore etate* of the next of kin."

STAT. 39 GEO. 3, c. 14. [IR.] CCLXXX. STAT. 39 GEORGII 3, c. 14 (1). [IRELAND.] A.D. 1799.

"An Act to enable all Ecclesiastical Persons and Bodies, Rectors, Vicars and Curates, and Impropiators, and those deriving by, from, or under them, to recover a just Compensation for the Tithes withheld from them in the years One thousand seven hundred and ninety-seven, and One thousand seven hundred and ninety-eight, against such Persons as were liable to the same."

[If lessee of tithes, after 7th May, 1799, demise over, save to occupier of land, subject to payment of same, the demise to be void. s. 23.]

STAT. 39 GEO. 3, c. 19. [IR.] CCLXXXI. STAT. 39 GEORGII 3, c. 19 (2). [IRELAND.] A.D. 1799.

"An Act for the repairing of Cathedral Churches in cases where the Parish Churches have been long in Ruins."

Several parish churches have been in ruins, and cathedrals have been made use of, and doubts have occurred as to legality of levying for repairs of such cathedrals. Money shall be applotted for such cathedrals, and churchwardens appointed as for parish churches.

"Whereas in several instances in this kingdom, the mother churches of certain parishes or unions situate, lying, and being in towns and cities which are the sees of bishops, have been in ruins for many years past, and the cathedral churches of such dioceses have been made use of from their convenient situation to serve for all legal purposes of parish churches in the parishes or unions wherein they are situated. And whereas doubts have occurred, whether under such circumstances it be legal to assess, applot, or levy from, or upon the inhabitants of such parishes for the repair of such cathedral churches; be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that in all such cases as before mentioned, it shall and may be lawful to assess, applot, and levy money on all such parishes and unions to repair such cathedral churches, in like manner, to all intents and purposes whatsoever, as if such cathedral churches were the parish churches of said parishes or unions, and that churchwardens shall be annually chosen or appointed in like manner, and with like powers, and subject to the same rules and regulations as churchwardens for parishes or unions now are in all respects.

All acts heretofore or hereafter done in such cathedrals shall be valid, as if in parish churches, without prejudice to rights of cathedrals, bishops, deans, and chapters.

"II. And be it further enacted, that all acts heretofore had and done in such cathedral churches shall be, and are hereby declared to be as good and valid in law, to all intents and purposes, as if such cathedral churches had been the parish churches of such parishes or unions respectively; and that for the future, all acts done in such cathedrals, and all vestries held therein, shall be deemed legal, as if they had been performed in the parish church of such parish or union, and such cathedral churches shall be deemed and taken to be the parish churches of such parishes or unions respectively, without prejudice to the rights, privileges, and immunities of such cathedrals, and saving to the bishops of such sees, and to the deans and chapters of such cathedrals, their several and respective and distinct rights, privileges, and immunities in such cathedrals; anything in this act to the contrary in any wise notwithstanding."

STAT. 39 GEO. 3, c. 73. CCLXXXII. STAT. 39 GEORGII 3, c. 73. A.D. 1799.

"An Act for exempting certain specific Legacies which shall be given to Bodies Corporate, or other Public Bodies, from the Payment of Duty, and also the Legacy of Books and other Articles given by the Will of the late Reverend Clayton Mordaunt Cracherode to the Trustees of the British Museum."

"Whereas it is expedient that certain specific legacies given to bodies corporate, and other public bodies and societies, should be exempted from the duties imposed on legacies: be it enacted by the king's most excellent majesty, by and

with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that, from and after the passing of this act, no legacy, consisting of books, prints, pictures, statues, gems, coins, medals, specimens of natural history, or other specific articles, which shall be given or bequeathed to or in trust for any body corporate, whether aggregate or sole, or to the society of Serjeants' Inn, or any of the inns of court or chancery, or any endowed school, in order to be kept and preserved by such body corporate, society, or school, and not for the purposes of sale, shall be liable to any duty imposed on legacies by any law now in force.

"II. And whereas the late Reverend Clayton Mordaunt Cracherode, Master of Arts, and one of the trustees of the British Museum, hath bequeathed to the said trustees and their successors, a very valuable collection of books, drawings, and prints, and also of gems, coins, medals, and specimens of natural history, together with the cabinets in which the same are contained; all which articles have been collected with the greatest care and judgment, and at an expense amounting to a very considerable sum: be it therefore further enacted, that the said legacy shall be exempted from the payment of any duty to which the same is now liable."

STAT. 39 GEO. 3, c. 73.

No legacy of books, &c. bequeathed to any body corporate, &c. to be preserved, shall be liable to any duty.

The legacy of the Reverend Clayton Mordaunt Cracherode to the British Museum of books, &c. shall be exempted from duty.

CCLXXXIII. STAT. 39 GEORGII 3, CAP. LXXX. A.D. 1799.

"An Act for confirming and rendering effectual a Partition and Division between the late Honourable Penn Asheton Curzon, deceased, and the Right Honourable Thomas Lord Ribblesdale, (then Thomas Lister, Esquire,) of the Rectory of Whalley, and of the Chapels, Glebe Lands, Messuages, Tenements, Tithes, Obventions, Profits, and Hereditaments thereto belonging, now held under a Lease from the Lord Archbishop of Canterbury and his Successors, at all times hereafter, to grant the said Rectory and Premises by two several Leases, according to the said Partition and Division."

STAT. 39 GEO. 3, CAP. LXXX.

CCLXXXIV. STAT. 39 GEORGII 3, CAP. LXXXII. A.D. 1799.

"An Act to amend an Act, made in the eighteenth year of the Reign of His present Majesty, for erecting a Building for holding the Courts, and exercising the Jurisdiction, of the Dean and Chapter of the Collegiate Church of Saint Peter, in Westminster, and for holding the Quarter Sessions of the Peace, and transacting the other Public Business of the said City and Liberty."

STAT. 39 GEO. 3, CAP. LXXXII.

CCLXXXV. STAT. 39 GEORGII 3, cap. xciv. A.D. 1799.

"An Act for effecting an Exchange of Lands between the Trustees of the Free Grammar School in Watton-under-Edge, in the County of Gloucester, and Nicholas Owen Smythe Owen, Esquire."

STAT. 39 GEO. 3, cap. xciv.

CCLXXXVI. STAT. 39 & 40 GEORGII 3, c. 41 (1). A.D. 1800.

"An Act for explaining and amending several Acts made in the thirty-second year of King Henry the Eighth, and the first, thirteenth, and fourteenth years of the Reign of Queen Elizabeth, so far as respects Leases granted by Archbishops, Bishops, Masters and Fellows of Colleges, Deans and Chapters of Cathedral and Collegiate Churches, Masters and Guardians of Hospitals, and Others having any Spiritual or Ecclesiastical Living or Promotion."

STAT. 39 & 40 GEO. 3, c. 41.

"Whereas doubts have arisen whether archbishops, bishops, masters and fellows of colleges, deans and chapters of cathedral and collegiate churches, masters and guardians of hospitals, and others having any spiritual or ecclesiastical living or promotion, who are by several acts, passed in the reigns of their late majesties King Henry the Eighth and Queen Elizabeth, restrained from granting any leases of their estates whereon the accustomed yearly rent is not reserved, can lawfully grant separate leases of parts of lands or tenements, which have been

STAT. 39 & 40
GEO. 3, c. 41.

Where any part of the possessions of any archbishop, &c. or person having any ecclesiastical living, shall be demised by several leases, which was formerly demised by one, or where a part shall be demised for less than the ancient rent, and the residue shall be retained in the possession of the lessor, the several rents reserved on the separate demises of the specific parts shall be taken to be the ancient rents within the meaning of 32 Hen. 8, c. 28; 1 Eliz. c. 19; 13 Eliz. c. 10; and 14 Eliz. c. 11.

Demise made before passing this act not valid, unless the rents reserved be equal to or more than the rents accustomedly reserved, &c.

Where the whole of such premises shall in future be demised in parts, the aggregate rents reserved shall not be less

usually demised by one lease and under one rent, reserving on the several parts so demised less than the rent anciently reserved on the demise of the whole, though the aggregate amount of the rents so reserved on such separate demises should be equal to or exceed the amount of the annual accustomed rent for the whole; and whereas many such separate leases have been granted, and great inconvenience may arise to persons claiming under such leases, if such leases should not be deemed valid and effectual, in case the amount of the rent anciently reserved on demises of the whole shall appear to have been reserved on the separate demises of the different parts; and the power of dividing tenements, anciently so demised, in one parcel at one rent, may in many cases tend to improve the value of the estates belonging to such ecclesiastical persons and bodies respectively, as well as to the benefit of their lessees and the public: may it therefore please your majesty that it may be enacted; and be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that in all cases where any honours, castles, manors, messuages, lands, tithes, tenements, or other hereditaments, being parcel of the possessions of any archbishop, bishop, master and fellows, dean and chapter, master or guardian of any hospital, or any other person or persons, or body or bodies politic or corporate, having any spiritual or ecclesiastical living or promotion, and having been anciently or accustomedly demised by one lease under one rent, or divers rents issuing out of the whole, now are or shall hereafter be demised by several leases to one or several persons under an apportioned or several rents, or where a part only of such honours, manors, messuages, lands, tithes, tenements, or other hereditaments as last mentioned, are or shall be demised by a separate lease or leases, under a less rent or less rents than was or were accustomedly reserved for the whole by such former lease, and the residue thereof is or shall be retained in the possession or occupation of the lessor or lessors, the several and distinct rents reserved on the separate demises of the several specific parts thereof comprised in and demised by such several leases, shall be deemed and taken to be the ancient and accustomed rents for such specific parts respectively, within the intent and meaning of an act, passed in the thirty-second year of the reign of his late majesty King Henry the Eighth, intituled, 'Lessees to enjoy the Farm against the Tenant in Tail;' and of an act passed in the first year of the reign of her late majesty Queen Elizabeth, intituled, 'An Act giving Authority to the Queen's Majesty, upon the Avoidance of any Archbishop or Bishop, to take into her Hands certain of the Temporal Possessions thereof, recompensing the same with Parsonages impropriate, and Tithes;' and of another act, passed in the thirteenth year of the same queen, intituled, 'Fraudulent Deeds made by Spiritual Persons, to defeat their Successors of Remedy for Dilapidations, shall be void, &c.;' and of another act, passed in the fourteenth year of the reign of the same queen, intituled, 'An Act for the continuation, explanation, perfecting, and enlarging of divers Statutes.'

"II. Provided always, that nothing herein contained shall extend to confirm or render valid any demise made before the passing of this act, unless the several rents reserved upon the separate demises of separate parts of tenements, theretofore accustomedly demised under one entire lease, shall be equal to or more than the rent or rents theretofore accustomedly reserved on the entire demise of the whole, or in case the whole should not be demised, but part reserved in the possession of the lessor or lessors, unless the rents reserved on the parts demised should be so far equal to or more than the whole amount of the ancient rent or rents, that the part not demised should be sufficient to answer the difference.

"III. Provided also, that where the whole of any such honours, castles, manors, messuages, lands, tithes, tenements, or other hereditaments, accustomedly demised by one lease, shall be demised in parts by several leases, after the passing of this act, the aggregate amount of the several rents which shall be reserved by such separate leases, be not less than the old accustomed rent or rents theretofore reserved by such entire lease; and that where a part only shall be so demised by any such separate lease, and the residue shall be retained in the possession of the

lessor or lessors, the rent or rents to be reserved by such separate lease or leases, shall not be less in proportion to the fine or fines to be received on granting such lease or leases, than the rent or rents accustomed to be reserved for the whole of the said premises, was in proportion to the fine received on granting the last entire lease.

“IV. Provided also, that no greater proportion of the accustomed rent be reserved by any separate lease hereby confirmed or allowed to be granted, than the part of the premises thereby severally demised will reasonably bear and afford a competent security for.

“V. Provided also, that where any specific thing, incapable of division or apportionment shall have been reserved or made payable to the lessor or lessors, his or their heirs or successors, either by way of rent, or by any covenant or agreement contained in any such entire lease, the same may be wholly reserved and made payable out of a competent part of such lands or tenements demised by any such several lease as aforesaid; and in case, in any lease already granted, and intended hereby to be confirmed, any such provision shall appear to have been made for the payment and delivery of any such sum or sums of money, stipends, augmentations, or other things as aforesaid, the same shall be deemed and taken to have been lawfully made, in case the lands and tenements charged therewith shall be of a greater annual value than the payment or other things so charged, exclusive of the rent or other annual payment reserved to the lessor or lessors.

“VI. Provided further, that nothing herein contained shall extend to authorize or confirm any lease whereon no annual rent is or shall be reserved to the lessor or lessors, his or their successors or assigns.

“VII. Provided also, and be it further enacted, that this act, or anything herein contained, shall not authorize the reservation or payment of any rent or rents upon any such several lease made or to be made under authority of this act, by any master, provost, president, warden, dean, governor, rector, or chief ruler of any college, cathedral church, hall, or house of learning, in the Universities of Oxford and Cambridge, or by the warden or other head officer of the Colleges of Winchester and Eton, in any other manner or proportions than is required by an act passed in the eighteenth year of the reign of her said late majesty Queen Elizabeth, intituled, ‘An Act for the Maintenance of the Colleges in the Universities, and of Winchester and Eton.’

“VIII. Provided also, that where any such accustomedly entire leases as aforesaid shall have usually contained covenants on the part of the lessee or lessees for the payment or delivery, or shall have in any other manner subjected or charged such lessee or lessees to or with the payment or delivery, of any sum or sums of money, stipend, augmentation, or other thing, to or for the use of any vicar, curate, schoolmaster, or other person or persons, other than and besides the lessor or lessors, and his or their heirs or successors, all or any such leases as shall hereafter be granted of the same lands or tenements in severalty as aforesaid, shall and may lawfully provide for the future payment and delivery of such sum or sums of money, stipends, augmentations, or other things, by and out of any part or parts of the lands or tenements accustomedly charged therewith, not being of less annual value than three times the amount of the payment so to be charged thereon, exclusive of the proportion of rent or other annual payments to be reserved to the lessor or lessors.

“IX. Provided always, that nothing in this act shall extend to establish or confirm the claim of any vicar, curate, schoolmaster, or other person or persons, to any such sum or sums, salary, stipend, or other thing as aforesaid, the payment and continuance whereof shall depend only on the will of the person or persons, or body or bodies politic or corporate, granting or renewing such lease or leases respectively.

“X. And be it further enacted, that where any person or persons now holding, or who shall hereafter hold, any such lease or leases as in this act mentioned, shall or may hold the same, or any specific part of the lands or tenements thereby demised, in trust for any other person or persons, or for any

STAT. 39 & 40
GEO. 3, c. 41.
than the old
accustomed
rent, &c.

No greater
proportion of
the accustomed
rent shall be
reserved by
any separate
lease than the
part of the
premises de-
mised will bear.

Where any
specific thing
shall have been
reserved by the
lessor, it may
be charged on
a competent
part of the
premises, &c.

No lease con-
firmed whereon
no annual rent
to the lessor
is reserved.

Not to autho-
rize the re-
servation of
any rent on
any such lease,
&c. in any
other manner
than is required
by 18 Eliz. c. 6.

Where pay-
ments have
been reserved
to vicars, &c.
other than the
lessors, provi-
sion shall be
made in leases
for the future
payment there-
of out of pre-
mises of three
times the an-
nual value,
exclusive of
the rent.

Not to confirm
the claim of
any vicar, &c.
to such pay-
ment, where it
depends only on
the will of the
person granting
or renewing
the lease.

Persons hold-
ing such leases

STAT. 39 & 40 GEO. 3, c. 41. body or bodies politic or corporate, or shall have granted any under lease or under leases of any specific part or parts of his, her, or their respective holdings, and be under any covenant or engagement for renewal thereof, to any other person or persons, body or bodies politic or corporate, when and as often as his, her, or their own lease or leases shall be renewed, it shall and may be lawful for such person or persons as first mentioned, at any time or times after the passing of this act, to surrender his, her, or their lease or leases, in order that separate and distinct leases may be granted by the original lessor or lessors of such specific parts of the same premises as shall have been held in trust, or subject to such covenants or engagements for renewal as aforesaid, to the respective under lessees and cestuique trusts, upon fair and reasonable terms, subject to an apportionment of the accustomed rent or rents, and other payments, according to the intent and meaning of this act; and every such surrender so made, and the new leases to be granted thereon, according to the intent and meaning of this act, shall be good and effectual in law and equity, notwithstanding such under lessees and cestuique trusts, or any of them, shall or may be infants, issue unborn, femmes covert, persons absent from the realm or otherwise incapacitated to act for themselves, provided that such new leases respectively be for the benefit of the several persons entitled to the benefit of such surrendered lease or leases respectively, and be expressly so declared in the body of each such new leases respectively."

STAT. 39 & 40 GEO. 3, c. 42.

CCLXXXVII. STAT. 39 & 40 GEORGII 3, c. 42(1). A.D. 1800.

"An Act for the better Observance of Good Friday, in certain Cases therein mentioned."

Where bills of exchange and promissory notes become payable on Good Friday, the same shall be payable on the day before, and the holders thereof may protest the same for non-payment on such preceding day.

"Whereas the Bank of England and bankers in general are often under the necessity of transacting business on Good Friday, for the purpose of receiving money for bills of exchange and promissory notes becoming payable on that day, in consequence whereof many persons are prevented observing the same with due solemnity; now, therefore, for the better observance of Good Friday, be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that where bills of exchange and promissory notes become due and payable on Good Friday, the same shall, from and after the first day of June next ensuing, be payable on the day before Good Friday; and the holder or holders of such bills of exchange or promissory notes, may note and protest the same for non-payment on the day preceding Good Friday, in like manner as if the same had fallen due and become payable on the day preceding Good Friday; and such noting and protests shall have the same effect and operation at law as if such bills and promissory notes had fallen due and become payable on the day preceding Good Friday, in the same manner as is usual in the cases of bills of exchange and promissory notes coming due on the day before any Lord's day, commonly called Sunday, and before the feast of the Nativity or Birth Day of our Lord, commonly called Christmas Day."

STAT. 39 & 40 GEO. 3, CAP. LX.

CCLXXXVIII. STAT. 39 & 40 GEORGII 3, CAP. LX. A.D. 1800.

"An Act for establishing and well governing the Charitable Institution commonly called The Asylum, or House of Refuge for the Reception of Orphan Girls, the Settlements of whose Parents cannot be found, and for incorporating the Subscribers thereto; and for the better empowering and enabling them to carry on their Charitable and Useful Designs."

STAT. 39 & 40 GEO. 3, c. 67.

CCLXXXIX. STAT. 39 & 40 GEORGII 3, c. 67(2). A.D. 1800.

"An Act for the Union of Great Britain and Ireland."

The churches of England and

"ART. V. That it be the fifth article of union, that the churches of England and Ireland, as now by law established, be united into one protestant episcopal church,

(1) *Vide* Stat. 9 Geo. 4, c. 24. Stat. 7 & 8 Geo. 4, c. 15.

(2) *Vide* Stat. 40 Geo. 3, c. 38. Stat. 3 & 4 Gul. 4, c. 37, ss. 51 & 52.

to be called 'The United Church of England and Ireland;' and that the doctrine, worship, discipline, and government of the said united church shall be, and shall remain in full force for ever, as the same are now by law established for the church of England; and that the continuance and preservation of the said united church, as the established church of England and Ireland, shall be deemed and taken to be an essential and fundamental part of the union; and that in like manner the doctrine, worship, discipline, and government of the church of Scotland, shall remain and be preserved as the same are now established by law, and by the acts for the union of the two kingdoms of England and Scotland."

STAT. 39 & 40
GEO. 3, c. 67.

Ireland shall be united into one protestant episcopal church, and the church of Scotland shall remain as now established.

CCXC. STAT. 39 & 40 GEORGII 3, c. 72. A.D. 1800.

"An Act to amend several Laws relating to the Duties on Stamped Vellum, Parchment, and Paper."

STAT. 39 & 40
GEO. 3, c. 72.

"XVI. And whereas it is expedient that the said commissioners of stamps should be empowered to allow to any person or persons, who shall have taken out any probates of any will or letters of administration, through any inadvertence or mistake, in any ecclesiastical court or courts, the full value in other stamped vellum, parchment, or paper, of the amount of the stamp duty on any of such probates or letters of administration that shall have been rendered wholly useless and of no effect whatever, so as that no person or persons shall pay the stamp duty granted upon probates of wills or letters of administration, by any act or acts now in force, more than once upon any one will, or on the same property of any person dying intestate: be it therefore enacted, that where due proof on oath shall be made to such commissioners of stamps, to the satisfaction of the said commissioners, (which oath the said commissioners, or any one of them, is hereby authorized to administer,) that any will hath, through any inadvertence or mistake, been proved, or that any letters of administration have been taken out on the same property, in more than one ecclesiastical or prerogative court, or more than once in any such ecclesiastical court, and that by reason thereof more than one stamp duty shall have been paid thereupon, then and in every such case it shall be lawful for such commissioners, and they are hereby authorized, upon delivery to them of any such useless probate or letters of administration as aforesaid, to be cancelled, and on production of the valid probate or letters of administration that shall have been granted on any such will or property as aforesaid, to cancel such useless probate or letters of administration, and to stamp or mark, or cause to be stamped or marked, or deliver any vellum, parchment, or paper, stamped with stamps of the like denomination and value with the amount of any such probate or probates or letters of administration, without demanding or taking, directly or indirectly for the same, any sum of money or other consideration whatsoever."

Commissioners of stamps may cancel useless probates of wills and letters of administration, and allow such stamps.

CCXCI. STAT. 39 & 40 GEORGII 3, CAP. LXXX. A.D. 1800.

"An Act for effecting an Exchange between the Dean and Chapter of the Cathedral Church of the Holy Trinity of Chichester, and the Right Honourable James Lord Selsey, and the Honourable John Peachey, of certain Messuages, Lands, and Hereditaments, in the County of Sussex."

STAT. 39 & 40
GEO. 3, CAP.
LXXX.

CCXCII. STAT. 39 & 40 GEORGII 3, c. 98. A.D. 1800.

"An Act to restrain all Trusts and Directions in Deeds or Wills, whereby the Profits or Produce of Real or Personal Estate shall be accumulated, and the Beneficial Enjoyment thereof postponed beyond the Time therein limited."

STAT. 39 & 40
GEO. 3, c. 98.

"Whereas it is expedient that all dispositions of real or personal estates, whereby the profits and produce thereof are directed to be accumulated, and the beneficial enjoyment thereof is postponed, should be made subject to the restrictions herein-after contained: may it therefore please your majesty that it may be enacted, and be it enacted by the king's most excellent majesty, by and with the advice and

No person, by deed or will, &c. shall settle

STAT. 39 & 40
GEO. 3, c. 98.

or dispose of any real or personal property, in such manner that the rents or produce shall be accumulated for a longer term than the life of the settler; or twenty-one years after his decease; or during the minority of any party living at his decease; or the minorities of persons beneficially entitled.

Nothing herein to extend to any provision for payment of debts, for raising portions for children, or touching the produce of timber.

When restrictions shall take effect with respect to wills made before the passing of this act.

consent of the lords spiritual and temporal, and commons, in parliament assembled, and by the authority of the same, that no person or persons shall, after the passing of this act, by any deed or deeds, surrender or surrenders, will, codicil, or otherwise howsoever, settle or dispose of any real or personal property, so and in such manner that the rents, issues, profits, or produce thereof, shall be wholly or partially accumulated; for any longer term than the life or lives of any such grantor or grantors, settler or settlers; or the term of twenty-one years from the death of any such grantor, settler, deviser, or testator; or during the minority or respective minorities of any person or persons who shall be living, or in *ventre sa mère* at the time of the death of such grantor, deviser, or testator; or during the minority or respective minorities only of any person or persons who, under the uses or trusts of the deed, surrender, will, or other assurances, directing such accumulations, would, for the time being, if of full age, be entitled unto the rents, issues, and profits, or the interest, dividends, or annual produce so directed to be accumulated; and in every case where any accumulation shall be directed otherwise than as aforesaid, such direction shall be null and void, and the rents, issues, profits, and produce of such property so directed to be accumulated, shall, so long as the same shall be directed to be accumulated contrary to the provisions of this act, go to and be received by such person or persons as would have been entitled thereto if such accumulation had not been directed.

“II. Provided always, and be it enacted, that nothing in this act contained shall extend to any provision for payment of debts of any grantor, settler, or deviser, or other person or persons, or to any provision for raising portions for any child or children of any grantor, settler, or deviser, or any child or children of any person taking any interest under any such conveyance, settlement, or devise, or to any direction touching the produce of timber or wood upon any lands or tenements; but that all such provisions and directions shall and may be made and given as if this act had not passed.

“III. Provided also, and be it enacted, that nothing in this act contained shall extend to any disposition respecting heritable property within that part of Great Britain called Scotland.

“IV. Provided also, and be it enacted, that the restrictions in this act contained shall take effect and be in force with respect to wills and testaments made and executed before the passing of this act, in such cases only where the deviser or testator shall be living, and of sound and disposing mind, after the expiration of twelve calendar months from the passing of this act.”

STAT. 40 GEO.
3, c. 23. [IR.]

CCXCIII. STAT. 40 GEORGII 3, c. 23. [IRELAND.] A.D. 1800.

“An Act to quiet and bar all Claims of Tithe Agistment for dry and barren Cattle.”

[No claim to be allowed, nor suit entertained for tithe agistment for dry and barren cattle in civil or ecclesiastical court; but not to exempt any kind of cattle from tithe in any place where such tithe now is, or has been usually paid within the last ten years.]

STAT. 40 GEO.
3, c. 27. [IR.]

CCXCIV. STAT. 40 GEORGII 3, c. 27 (1). [IRELAND.] A.D. 1800.

“An Act for the further Support and Maintenance of Curates within the Church of Ireland.”

Ordinaries may license curates employed, although no nomination shall be made to ordinaries by rectors, &c.

“IV. And whereas it is expedient that the authority of ordinaries to license curates, and to remove licensed curates, should be further explained, enlarged, and confirmed, be it enacted and declared, that it shall be lawful for the ordinary to license any curate who is or shall be actually employed by the rector, vicar, or other incumbent of any parish church or chapel, although no express nomination of such curate shall have been made either in words or in writing to the ordinary,

by the said rector, vicar, or other incumbent; and that the ordinary shall have power to revoke summarily, and without process, any licence granted to any curate employed within his jurisdiction, and to remove such curate for such good and reasonable cause as he shall approve, subject nevertheless to an appeal, as well in the case of a grant of a licence to a curate who has not been nominated, as in the revocation of a licence granted to a curate, such appeal to be made in either case to the archbishop of the province, and to be determined in a summary manner."

STAT. 40 GEO.
3, c. 27. [IR.]

Ordinaries
may revoke
licences sum-
marily.
Appeal to
archbishop.

CCXCV. STAT. 40 GEORGII 3, c. 29. [IRELAND.] A.D. 1800.

STAT. 40 GEO.
3, c. 29. [IR.]

"An Act to regulate the mode by which the Lords Spiritual and Temporal, and the Commons to serve in the United Kingdom on the part of Ireland, shall be summoned and returned to the said Parliament."

"Whereas it is agreed by the fourth article of union, that four lords spiritual of Ireland, by rotation (1) of sessions, and twenty-eight lords temporal of Ireland, elected for life by the peers of Ireland, shall be the number to sit and vote on the part of Ireland in the house of lords of the parliament of the united kingdom, and one hundred commoners, (two for each county of Ireland, two for the city of Dublin, two for the city of Cork, one for the college of the Holy Trinity of Dublin, and one for each of the thirty-one most considerable cities, towns, and boroughs,) be the number to sit and vote on the part of Ireland in the house of commons of the parliament of the united kingdom; be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that the said four lords spiritual shall be taken from among the lords spiritual of Ireland in the manner following, that is to say, that one of the four archbishops of Ireland, and three of the eighteen bishops of Ireland, shall sit in the house of lords of the united parliament in each session thereof, the said right of sitting being regulated as between the said archbishops respectively by a rotation among the archiepiscopal sees from session to session, and in like manner that of the bishops by a like rotation among the episcopal sees, that the primate of all Ireland for the time being shall sit in the first session of parliament of the united kingdom; the Archbishop of Dublin, for the time being, in the second; the Archbishop of Cashel, for the time being, in the third; the Archbishop of Tuam, for the time being, in the fourth, and so by rotation of sessions for ever; such rotation to proceed regularly and without interruption from session to session, notwithstanding any dissolution or expiration of parliament; that three suffragan bishops shall in like manner sit according to rotation of their sees, from session to session, in the following order; the Lord Bishop of Meath, the Lord Bishop of Kildare, the Lord Bishop of Derry, in the first session of the parliament of the united kingdom; the Lord Bishop of Raphoe, the Lord Bishop of Limerick, Ardfert, and Aghadoc, the Lord Bishop of Dromore, in the second session of the parliament of the united kingdom; the Lord Bishop of Elphin, the Lord Bishop of Down and Connor, the Lord Bishop of Waterford and Lismore, in the third session of the parliament of the united kingdom; the Lord Bishop of Leighlin and Ferns, the Lord Bishop of Cloyne, the Lord Bishop of Cork and Ross, in the fourth session of the parliament of the united kingdom; the Lord Bishop of Killaloe and Kilfenora, the Lord Bishop of Kilmore, the Lord Bishop of Clogher, in the fifth session of the parliament of the united kingdom; the Lord Bishop of Ossory, the Lord Bishop of Killala and Achonry, the Lord Bishop of Clonfert and Kilmacduagh, in the sixth session of the parliament of the united kingdom; the said rotation to be nevertheless subject to such variation therefrom, from time to time, as is hereinafter provided. . . .

"IV. For the due election of the persons to be chosen to sit in the respective houses of the parliament of the united kingdom on the part of Ireland, be it enacted,

By fourth
article of union,
four lords
spiritual, and
twenty-eight
temporal, and
one hundred
commoners,
are to sit and
vote on the
part of Ireland
in the imperial
parliament.

How the four
lords spiritual
shall be re-
turned for each
session in
rotation.

On the day
following royal
assent for union

(1) *Rotation*.—Vide Stat. 3 & 4 Gul. 4, c. 37, ss. 51 & 52.

STAT. 40 GEO.
3, c. 29. [IR.]
the primate, Bishops of Meath, Kildare, and Derry, shall be representatives for first session. When a lord spiritual, being a temporal peer, shall be chosen one of the representatives of the lords temporal, the representatives of the lords spiritual shall proceed to the next in rotation.

that on the day following that on which the act for establishing the union shall have received the royal assent, the primate of all Ireland, the Lord Bishop of Meath, the Lord Bishop of Kildare, and the Lord Bishop of Derry, shall be, and they are hereby declared to be, the representatives of the lords spiritual of Ireland in the parliament of the united kingdom for the first session thereof. . . .

“V. And be it enacted, that in case any lord spiritual, being a temporal peer of the united kingdom, or being a temporal peer of that part of the united kingdom called Ireland, shall be chosen by the lords temporal to be one of the representatives of the lords temporal, in every such case during the life of such spiritual peer, being a temporal peer of the united kingdom, or being a temporal peer of that part of the united kingdom called Ireland, so chosen to represent the lords temporal, the rotation of representation of the spiritual lords shall proceed to the next spiritual lord, without regard to such temporal lord so chosen a temporal peer, that is to say, if such spiritual lord shall be an archbishop, then the rotation shall proceed to the archbishop whose see is next in rotation; and if such spiritual lord shall be a suffragan bishop, then the rotation shall proceed to the suffragan bishop whose see is next in rotation.”

STAT. 40 GEO.
3, c. 35. [IR.]

CCXCVI. STAT. 40 GEORGII 3, c. 35. [IRELAND.] A.D. 1800.

“An Act for vesting in Trustees the real Estates situate in the Counties of Meath and Longford, which belong to Thomas Charleton, late of Curratoun, in the County of Meath, Esquire, deceased, and for making them a Corporation for the purpose of carrying into effect the Charitable Purposes and Intentions of the Will of the said Thomas Charleton, and for other Purposes.”

STAT. 40 GEO.
3, c. 38. [IR.]

CCXCVII. STAT. 40 GEORGII 3, c. 38. [IRELAND.] A.D. 1800.

“An Act for the Union of Great Britain and Ireland.”

Four spiritual and twenty-eight temporal lords to sit for Ireland, and one hundred commons. Rotation and election of lords spiritual and temporal. How the parliament of the united kingdom shall be constituted.

“ART. IV. That it be the fourth article of union that four lords spiritual of Ireland, by rotation (1) of sessions, and twenty-eight lords temporal of Ireland, elected for life by the peers of Ireland, shall be the number to sit and vote on the part of Ireland in the house of lords of the united kingdom. . . .

“That all questions touching the rotation or election of lords spiritual or temporal of Ireland to sit in the parliament of the united kingdom, shall be decided by the house of lords thereof. . . .

“That when his majesty, his heirs or successors, shall declare his, her, or their pleasure for holding the first, or any subsequent parliament of the united kingdom, a proclamation shall issue under the great seal of the united kingdom, to cause the lords spiritual and temporal, and commons, who are to serve in the parliament thereof on the part of Ireland, to be returned in such manner as by any act of this present session of the parliament of Ireland shall be provided, and that the lords spiritual and temporal, and commons of Great Britain, shall, together with the lords spiritual and temporal, and commons so returned as aforesaid on the part of Ireland, constitute the two houses of the parliament of the united kingdom.

“That the lords of parliament on the part of Ireland, in the house of lords of the united kingdom, shall at all times have the same privileges of parliament which shall belong to the lords of parliament on the part of Great Britain, and the lords spiritual and temporal respectively on the part of Ireland, shall at all times have the same rights in respect of their sitting and voting upon the trial of peers as the lords spiritual and temporal respectively on the part of Great Britain; and that all lords spiritual of Ireland shall have rank and precedence next, and immediately after the lords spiritual of the same rank and degree of Great Britain, and shall enjoy all privileges as fully as the lords spiritual of Great Britain do now, or may hereafter enjoy the same, the right and privilege of sitting in the house of lords

Privileges, rights, rank, and precedence of lords spiritual and temporal in the imperial parliament.

(1) Rotation:—Vide Stat. 3 & 4 Gul. 4, c. 37, ss. 51 & 52.

and the privileges depending thereon, and particularly the right of sitting on the trial of peers, excepted. . . .

“ART. V. That it be the fifth article of union, that the churches of England and Ireland, as now by law established, be united into one protestant episcopal church, to be called, ‘The United Church of England and Ireland;’ and that the doctrine, worship, discipline, and government of the said united church shall be, and shall remain in full force for ever, as the same are now by law established for the church of England; and that the continuance and preservation of the said united church, as the established church of England and Ireland, shall be deemed and taken to be an essential and fundamental part of the union; and that in like manner the doctrine, worship, discipline, and government of the church of Scotland shall remain, and be preserved as the same are now established by law, and by the acts for the union of the two kingdoms of England and Scotland.

“ART. VIII. That it be the eighth article of the union, that all laws in force at the time of the union, and all the courts of civil and ecclesiastical jurisdiction within the respective kingdoms, shall remain as now by law established within the same, subject only to such alterations and regulations from time to time as circumstances may appear to the parliament of the united kingdom to require; provided that all writs of error and appeals depending at the time of the union, or hereafter to be brought, and which might now be finally decided by the house of lords of either kingdom, shall from and after the union be finally decided by the house of lords of the united kingdom, and provided that from and after the union there shall remain in Ireland an instance court of admiralty for the determination of causes civil and maritime only; and that the appeal from sentences of the said court shall be to his majesty’s delegates in his court of Chancery in that part of the united kingdom called Ireland; and that all laws at present in force in either kingdom, which shall be contrary to any of the provisions which may be enacted by any act for carrying these articles into effect, be from and after the union repealed.”

STAT. 40 GEO. 3, c. 38. [Ir.]

Churches of England and Ireland united into one.

Church of Scotland to continue as at present established.

All civil and ecclesiastical laws and courts shall remain as now established, subject to future alterations.

Writs of error and appeals decided by lords of united kingdom; court of Admiralty in Ireland, with appeal to Chancery in Ireland; all contrary laws repealed.

CCXCVIII. STAT. 40 GEORGII 3, c. 46 (1). [IRELAND.] A.D. 1800.

“*An Act for amending an Act, intituled, An Act for confirming the several Grants made by Her late Majesty of the First-fruits and Twentieth Parts, payable out of the Ecclesiastical Benefices in this Kingdom, and also for giving Archbishops and other Ecclesiastical Persons four years’ Time for the Payment of First-fruits, and for incorporating the Trustees and Commissioners of the said First-fruits.*”

STAT. 40 GEO. 3, c. 46. [Ir.]

CCXCIX. STAT. 40 GEORGII 3, c. 65. [IRELAND.] A.D. 1800.

“*An Act for incorporating the Governors and Governesses of the Female Orphan House in the Circular Road near Dublin.*”

STAT. 40 GEO. 3, c. 65. [Ir.]

CCC. STAT. 40 GEORGII 3, c. 66. [IRELAND.] A.D. 1800.

“*An Act for incorporating the Association for discountenancing Vice, and promoting the Knowledge and Practice of the Christian Religion.*”

STAT. 40 GEO. 3, c. 66. [Ir.]

CCCI. STAT. 40 GEORGII 3, c. 75. [IRELAND.] A.D. 1800.

“*An Act to amend an Act passed in the third year of his present Majesty King George the Third, intituled, An Act for the better Discovery of Charitable Donations and Bequests.*”

STAT. 40 GEO. 3, c. 75. [Ir.]

CCCII. STAT. 40 GEORGII 3, c. 81. [IRELAND.] A.D. 1800.

“*An Act to enable all Ecclesiastical Persons and Bodies, Rectors, Vicars and Curates, and Impropiators, and those deriving by, from, or under them, to recover a just Compensation for the Tithes withheld from them in the year One thousand seven hundred and ninety-nine, against such Persons as were liable to the same.*”

STAT. 40 GEO. 3, c. 81. [Ir.]

STAT. 40 GEO.
3, c. 82. [IR.]

CCCIII. STAT. 40 GEORGH 3, c. 82. [IRELAND.] A.D. 1800.

"An Act for the further Encouragement of building and improving on Glebe Lands."

Preamble.

"Whereas several archbishops and bishops of this kingdom are at times obliged to absent themselves therefrom, and no persons are empowered during such their absence, to approve of and sign writings containing accounts of the nature and extent of buildings and improvements intended to be erected and made on glebe lands, or to sign or execute certificates, charging the successors of such ecclesiastical persons as may intend to build or improve, or who have built or improved on their glebe lands, within the respective dioceses of such archbishops and bishops as are or may be absent from this kingdom, during their absence respectively, with the payment of any sum of money on account of such buildings and improvements, pursuant to the laws now in being, for the encouragement of building and improving on glebe lands in this kingdom, whereby many ecclesiastical persons are delayed, impeded, and prevented from building and improving on glebe lands; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that it shall and may be lawful for the vicar general of each diocese within this kingdom, during the absence of any archbishop or bishop of such diocese from this kingdom, to receive, approve of, and sign a writing, tendered to him by any ecclesiastical person holding a benefice within such diocese, subscribed by such ecclesiastical person in the manner prescribed and directed by an act of parliament, passed in this kingdom in the twelfth year of the reign of his late majesty King George the First, entitled, 'An Act to amend and explain an Act, entitled, An Act to encourage building of Houses, and making other Improvements on Church Lands, and to prevent Dilapidations,' and containing such account of the nature and extent of the buildings and improvements proposed to be made by such ecclesiastical person on his glebe lands, as are by said act prescribed and directed; and that it shall and may be lawful for the vicar general of each diocese of this kingdom, during the absence from this kingdom of the archbishop or bishop of such diocese, to issue commissions for the viewing and estimating the value of all buildings and improvements erected and made on glebe lands within such diocese; and such commissions, on complaints of dilapidations in such buildings and improvements as are by said act directed and appointed, and to ascertain such sums as he shall judge reasonable to be allowed for such dilapidations, and to make out, execute, and sign such certificates, as by the said act of the twelfth of George the First, and also by an act passed in this kingdom in the tenth year of the reign of the late King William the Third, entitled, 'An Act to encourage building of Houses, and making other Improvements on Church Lands, and to prevent Dilapidations,' are directed and appointed to be made out, signed, and executed, by the several archbishops and bishops of the several dioceses of this kingdom, and all such writings, commissions, and certificates so as aforesaid signed, executed, and issued by the several vicars general of the several dioceses of this kingdom, during the absence from this kingdom of the archbishops and bishops of said dioceses respectively, shall be as good and valid in law, to all intents and purposes, and shall create and establish as good and effectual charges on the successors of ecclesiastical persons who shall build and improve on their glebe lands, and shall as effectually bind such successors to the payment and discharge of the several proportions of such charges as are limited, directed, and appointed by the several acts of parliament in this kingdom for the encouragement of building and improving on glebe lands, as if such writings, commissions, and certificates had been approved of, signed, issued, and executed by the said archbishops and bishops of said dioceses, had they been present and residing within this kingdom.

Vicars general, in absence of archbishops or bishops, may receive, approve of, and sign writings tendered by beneficed clergy, in manner prescribed by 12 Geo. 1.

Vicars general may issue commissions for viewing and estimating buildings, and may sign certificates, as by said act, and by 10 Gul. 3, are directed.

Recital of 11 & 12 Geo. 3.

"II. Whereas by an act passed in the eleventh and twelfth years of his present majesty's reign, entitled, 'An Act for rendering more effectual the several Laws for the better enabling the Clergy having cure of Souls to reside upon their

Benefices, and to build on their respective Glebe Lands, and to prevent Dilapidations, and for the Encouragement of Protestant Schools within this Kingdom of Ireland,' it is amongst other things enacted, that in all cases where any archbishop, bishop, or other ecclesiastical person shall, after the passing of said act, obtain a certificate for erecting new buildings, or for making other necessary improvements on a new site within his demesne, glebe, or mensal lands, in such manner as is directed by an act passed in the twelfth year of King George the First, entitled, 'An Act to explain and amend an Act, entitled, An Act to encourage the building of Houses, and making other Improvements on Church Lands, and to prevent Dilapidations,' such archbishop, bishop, or other ecclesiastical person, his executors or administrators respectively, shall from his next immediate successor, instead of three fourths of such sum, have and receive the full sum comprised and specified in such certificate; provided always, that such sum shall not exceed the clear value of two years' income; and provided also, that nothing in said act contained should extend, or be construed to extend to any repairs, additions, or improvements, which should be made to any buildings or other improvements which had been formerly made: and whereas doubts have arisen whether the mansion house erected on the see lands of Meath can be considered as built on a new site, notwithstanding it was so certified, according to the provisions of the said recited act; be it therefore enacted, that the certificate so granted shall be deemed good and valid in law, to all intents and purposes, and that the said see shall stand charged with the sum so certified, according to the provisions of the said recited act, and that the present bishop of the said see, and his successors, shall stand charged therewith, in the manner and in the proportions in the said act specified and set forth."

STAT. 40 GEO.
3, c. 82. [IR.]

Doubts relative to the mansion house on the see of Meath. Said see shall stand charged with the sum certified

CCCIV. STAT. 40 GEORGII 3, c. 83. [IRELAND.] A.D. 1800.

"An Act to facilitate the building and rebuilding of Churches and Chapels."

STAT. 40 GEO.
3, c. 83. [IR.]

"Whereas by lapse of time and other means, churches and chapels have become, and do from time to time become so decayed and ruinous, that they cannot be repaired; and whereas the modes of compelling churchwardens and parishioners to rebuild their parish churches are tedious and insufficient; be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that from and after the passing of this act, all parishes and unions may be cessed for the building and rebuilding of churches and chapels, in like manner as they may for repairing churches and chapels by the laws now in being, and that all archbishops, bishops, rectors, vicars, and curates, and all churchwardens and vestries, shall have the like powers to cess all parishes and unions, and to applot and levy such cesses, and be accountable for the same, and to do all other matters and things for the building and rebuilding of churches, and shall have and exercise all other powers touching and concerning the building and rebuilding of the same in all respects whatsoever, which they now have respectively, touching and concerning the repairing of churches and chapels; provided always, that nothing in this act contained shall alter and change, or be construed to alter or change, the laws now in being relating to the changing the sites of churches."

Preamble.

Parishes and unions may be cessed for building and rebuilding churches, as they may for repairs of churches.

Not to affect the changing of sites of churches.

CCCV. STAT. 40 GEORGII 3, c. 85 (1). [IRELAND.] A.D. 1800.

"An Act for the better Government of the Seminary established at Maynooth, for the Education of Persons professing the Roman Catholic Religion, and for amending the Laws now in force respecting the said Seminary."

STAT. 40 GEO.
3, c. 85. [IR.]

"Whereas an act passed in the thirty-fifth year of the reign of his present majesty, entitled, 'An Act for the better Education of Persons professing the

STAT. 40 GEO.
3, c. 85. [1r.]

Since passing
the act of 35
Geo. 3, for
education of
Roman catho-
lics, a college
was established
at Maynooth.

Persons herein
shall be visi-
tors of said
college.

Triennial visi-
tations to be
made by visi-
tors; the first
within twelve
months after
passing this
act.

Additional
visitations,
when ordered
by lord lieute-
nant.

Visitors not to
affect the exer-
cise of the Ro-
man catholic
religion, save
as hereafter.

Lord chancel-
lor and chief
judges, and
chancellor of
exchequer,
shall cease to
be trustees for
carrying recited
act into execu-
tion, but the
others shall
continue.

So much of
recited act as

Popish or Roman Catholic Religion,' and since the passing of the said act a college or seminary has been established at Maynooth, in the county of Kildare, for the education of persons professing the popish or Roman catholic religion, and large sums of money have been granted to the trustees named in the said act, to enable them to improve and extend the said institution; and it is therefore become necessary to make further provision for the good government of the said college or seminary; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that the lord chancellor, or lord keeper of the great seal of Ireland for the time being, the lord chief justice of his majesty's court of king's bench in Ireland for the time being, the lord chief justice of his majesty's court of common pleas in Ireland for the time being, the chancellor of the exchequer, and the lord chief baron of his majesty's court of exchequer in Ireland for the time being, and their successors in the said offices respectively, together with Arthur James, earl of Fingal, the Reverend Richard O'Reilly, of Drogheda, doctor in divinity, and the Reverend John Thomas Troy, of the city of Dublin, doctor in divinity, shall be, and they are hereby nominated and appointed, visitors of the said college or seminary, with full visitatorial powers to superintend the same.

"II. And be it further enacted, that the said visitors, or any three or more of them, shall once in every three years from the passing of this act, visit the said college or seminary, and call before them the president, vice-president, professors, tutors, and all other members thereof, and the officers and servants of the said college or seminary, and diligently inquire into the government and management of the said college or seminary, and if necessary, examine on oath every member thereof, in all matters touching the management, government, and discipline of the same, or any violation of the statutes or ordinances which have been or shall be made for the admission of any member of the said college or seminary, or for the government or discipline of the same, and that the first visitation of the said college shall be held as aforesaid, within twelve months after the passing this act.

"III. And be it further enacted, that in addition to such triennial or ordinary visitation, the said visitors, or any three of them, shall in like manner visit the said college whensoever and so often as they shall be thereunto required by the lord lieutenant, or other chief governor or governors of Ireland for the time being, by warrant or order, signed by him or them; provided always, and be it enacted, that the authority of the said visitors shall not extend to, or in any manner affect, the exercise of the Roman catholic religion, or the religious doctrine or discipline thereof within the said college or seminary, otherwise than as hereinafter is provided, and that in visiting the said college or seminary, the said visitors shall judge and determine, according to such bye-laws, rules, and regulations, as have been or shall be made for the government and discipline thereof, pursuant to the provisions of the said recited act, or of this act respectively.

"IV. And be it enacted, that from and after the passing of this act, the lord chancellor, or lord keeper of the great seal, the lord chief justice of the court of king's bench, the lord chief justice of the court of common pleas, the chancellor of the exchequer, and the lord chief baron of the court of exchequer, shall cease to be trustees for carrying the said recited act into execution, and that their successors in the said offices respectively shall not hereafter be trustees by virtue of the said recited act for carrying it into execution, and the other persons named in the said act in that behalf, or such other persons as have been elected, or hereafter shall be elected to fill any vacancy occasioned by the death, removal, or resignation, of any such persons respectively, shall continue trustees for the execution of the said recited act, as fully and effectually, to all intents and purposes, as if this act had not been enacted.

"V. And be it further enacted, that so much of the said recited act as enacts, that the trustees therein named, or any seven or more of them, shall have visitatorial

power over the said academy or college, and over all persons on the foundation, or educated therein, shall be, and the same is hereby repealed.

“VI. And be it further enacted, that any person who has been, or shall be elected president of the said college or seminary, pursuant to the provisions of the said act, shall before he shall be capable of continuing or exercising his said office, be approved by the lord lieutenant, or other chief governor or governors of Ireland for the time being, and shall some time in the first term which shall follow such his election and approbation, or if now elected, which shall follow such approbation, publicly make and subscribe the following oath in the high court of Chancery, that is to say :

“I having been elected and approved as president of the Roman catholic college or seminary of Maynooth, do swear that I will diligently, faithfully, and conscientiously execute the said office to the best of my skill and judgment, and that I will, so far as in me lies, enforce a due observance of the bye-laws, rules, and statutes, made for the government and discipline thereof, and that I will bear faithful and true allegiance, and to my utmost endeavours inculcate the duties of faithful and true allegiance to his majesty King George the Third, and his successors, in every member of the said college or seminary. ‘So help me God.’

“VII. And be it further enacted, that all bye-laws, rules, regulations, and statutes, which have been heretofore made for the government and discipline of the said college or seminary, and all bye-laws, rules, and regulations, hereafter to be made for the government and discipline of the same, shall, in order to give them validity, be approved by the lord lieutenant, or other chief governor or governors of Ireland for the time being, and that all such bye-laws, rules, and regulations, shall be fairly transcribed on parchment, signed by the president of the said college, and secretary of the said board of trustees for the time being, and lodged from time to time in the office of the chief secretary of the lord lieutenant, or other chief governor or governors of Ireland; provided always, that all such bye-laws, rules, regulations, and statutes hereafter to be made, shall be binding and valid, unless such lord lieutenant, or other chief governor or governors shall disapprove thereof, in one month from the time such bye-laws shall be laid before such lord lieutenant, or other chief governor or governors respectively, and that until such disapprobation shall have been expressed, all such bye-laws, rules, regulations, and statutes, already made, shall be deemed valid, and of full force.

“VIII. And be it enacted, that nothing herein contained shall extend, or be construed to extend to any bye-laws, rules, and regulations, affecting the exercise of the Roman catholic religion, or the doctrine or discipline, or worship thereof, within the said college or seminary.

“IX. And be it further enacted, that in all matters which relate to the exercise, doctrine, and discipline, of the Roman catholic religion, the visitatorial power over the said college shall be exercised exclusively by such of the said visitors as are or shall be of the Roman catholic religion, in the presence of the lord chancellor, or lord keeper of the great seal, and of the three chief judges, and the chancellor of the exchequer, if they, or any of them, shall think proper to attend.

“X. And be it enacted, that on the death or resignation of the said Arthur, earl of Fingall, the said Reverend Richard O'Reilly, and the said Reverend John Thomas Troy, or any of them, the trustees for carrying the said recited act into execution, or any seven or more of them, shall at their first meeting after such vacancy as aforesaid, elect a fit and proper person, being of the Roman catholic religion, and a natural born subject of his majesty, to succeed to the office of a visitor, whenever it shall be so vacant, and shall return the name of the person so elected to the lord lieutenant, or other chief governor or governors of Ireland for the time being, within ten days from such election, for his or their approbation, and such person, if approved of by such lord lieutenant, or other chief governor or governors, shall immediately become one of the visitors of the said college; but if he shall not be so approved in one month after his being so returned, then and in every such case, the said trustees, or any seven or more of them, shall in like manner proceed to elect and return a fit and proper person to succeed to the said

STAT. 40 GEO. 3, c. 85. [I.R.]

grants visitatorial powers to trustees, is hereby repealed. President to be approved of by lord lieutenant, and to take the following oath in Chancery, before he exercises his office. President's oath.

Bye-laws to be approved of by lord lieutenant, and deposited in chief secretary's office, as herein directed.

Bye-laws shall be binding unless disapproved of within one month by lord lieutenant.

Not to extend to bye-laws affecting the Roman catholic religion.

Visitatorial powers in matters relating to religion.

Election of Roman catholic visitors.

STAT. 40 GEO. 3, c. 85. [IR.] office in like manner, subject to such approbation as aforesaid, and so on as often from time to time as such vacancy shall happen, by the death or resignation of any of the persons so to be elected in the place of any of them the said Arthur James, earl of Fingal, the said Richard O'Reilly, or the said John Thomas Troy, so as that there shall be a continual succession of three fit and proper persons professing the Roman catholic religion, as visitors of the said college.

Trustees may sue and be sued in the name of their secretary.

"XI. And be it further enacted, that it shall and may be lawful for the said trustees to sue and be sued, either at law, or in equity, by and in the name of their secretary, and that in any suit to be instituted against the said trustees, in any court of law or equity, touching the said college or seminary, or any estate, real or personal, claimed by the said trustees in right of their said trust, it shall and may be sufficient to serve their secretary with the process, or any other order of such court."

STAT. 41 GEO. 3, c. 40.

CCCVI. STAT. 41 GEORGII 3, c. 40 (1). A.D. 1801.

"An Act to permit Persons in Holy Orders to keep one Horse only for the purpose of Riding, without being subject to the Duty granted by an Act of the thirty-eighth year . . . of his present Majesty under certain Limitations."

STAT. 41 GEO. 3, c. 63.

CCCVII. STAT. 41 GEORGII 3, c. 63 (2). A.D. 1801.

"An Act to remove Doubts respecting the Eligibility of Persons in Holy Orders to sit in the House of Commons."

Preamble.
No person ordained a priest or deacon, or being a minister of the church of Scotland, shall be capable of being elected a member of the house of commons.
The election of such person shall be void, and if any person after his election shall be ordained a priest, &c. he shall vacate his seat.
Penalty for sitting or voting in either case.

"Whereas it is expedient to remove doubts which have arisen respecting the eligibility of persons in holy orders to sit in the house of commons, and also to make effectual provision for excluding them from sitting therein; be it therefore declared and enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that no person having been ordained to the office of priest or deacon, or being a minister of the church of Scotland, is or shall be capable of being elected to serve in parliament as a member of the house of commons.

"II. And be it further declared and enacted, that if any person, having been ordained to the office of priest or deacon, or being a minister of the church of Scotland, shall hereafter be elected to serve in parliament as aforesaid, such election and return shall be void; and that if any person, being elected to serve in parliament as a member of the house of commons, shall, after his election, be ordained to the office of priest or deacon, or become a minister of the church of Scotland, then and in such case the seat of such person shall immediately become void; and if any such person shall, in any of the aforesaid cases, presume to sit or vote as a member of the house of commons, he shall forfeit the sum of five hundred pounds for every day in which he shall sit or vote in the said house, to any person or persons who shall sue for the same in any of his majesty's courts at Westminster; and the money so forfeited shall be recovered by the person or persons so suing, with full costs of suit, in any of the said courts, by any action of debt, bill, plaint, or information, in which no essoin, privilege, protection, or wager of law, or more than one imparlance, shall be allowed; and every person against whom any such penalty or forfeiture shall be recovered by virtue of this act, shall be from thenceforth incapable of taking, holding, or enjoying any benefice, living, or promotion ecclesiastical, and of taking, holding, or enjoying any office of honour or profit under his majesty, his heirs or successors: provided always, that nothing in this act contained shall extend, or be construed to extend, to make void any election of a person to serve as a member of the house of commons, which election shall have taken place before the passing of this act.

Elections before the passing of this act not to be void.
Limitation of actions.

"III. Provided also, and be it enacted, that no person shall be liable to any

forfeiture or penalty inflicted by this act, unless a prosecution shall be commenced within twelve calendar months after such penalty or forfeiture shall be incurred. STAT. 41 GEO. 3, c. 63.

“IV. And be it further enacted, that proof of the celebration of divine service, according to the rites of the church of England, or of the church of Scotland, in any church or chapel consecrated or set apart for public worship, shall be deemed and taken to be *prima facie* evidence of the fact of such person having been ordained to the office of a priest or deacon, or of his being a minister of the church of Scotland, within the intent and meaning of this act.” What proof shall be necessary.

CCCVIII. STAT. 41 GEORGII 3, CAP. LXIV. A.D. 1801.

STAT. 41 GEO. 3, CAP. LXIV.

“*An Act for establishing a new Church or Chapel, lately erected in or near Kirkgate Street, within the Town and Parish of Leeds, in the West Riding of the County of York.*”

CCCIX. STAT. 41 GEORGII 3, c. 79(1). A.D. 1801.

STAT. 41 GEO. 3, c. 79.

“*An Act for the better Regulation of public Notaries in England.*”

CCCX. STAT. 41 GEORGII 3, c. 86. A.D. 1801.

STAT. 41 GEO. 3, c. 86.

“*An Act for granting to His Majesty additional Stamp Duties (2) . . . on Probates of Wills. . . .*”

“III. And whereas it is expedient, that the duties payable in respect of probates or letters of administration should not be paid more than once on the same estate; be it therefore enacted, that it shall be lawful for the said commissioners of stamps, and they are hereby authorized and required to provide a stamp or mark distinguishable from all other stamps or marks used in relation to any stamp duties, for the purpose of stamping or marking any piece of vellum, parchment, or paper, whereon any probate of any will or letters of administration shall be engrossed, printed, or written, in relation to any estate in respect whereof any probate or letters of administration shall have been before taken out, and the full amount of the duties payable thereon, by any act or acts of parliament then in force, according to the full value of such estate, shall have been duly paid and discharged; and in every case where any probate or probates or letters of administration, shall have been taken out, duly stamped according to the full value of the estate in respect whereof the same shall have been granted, then, and in such case, any further or other probate or letters of administration as aforesaid, which shall be at any time thereafter applied for or in respect of such estate, shall and may be issued and granted upon any piece of vellum, parchment, or paper, stamped or marked with the stamp or mark provided by the said commissioners by virtue of this act, for such other probates or letters of administration as aforesaid; and every such other probate or letters of administration which shall be duly stamped or marked with such stamp or mark as last aforesaid, shall be as available in the law, and of the like force and effect in all respects whatever, as if the vellum, parchment, or paper whereon the same shall be engrossed, printed, or written, had been duly stamped with the stamp or mark denoting the full amount of the duties payable in respect of the probate or letters of administration taken out on the full value of such estate; anything in any act or acts, or this act, before contained, to the contrary thereof in any wise notwithstanding.” The commissioners to provide a stamp for marking probates of wills or letters of administration relating to any estate in respect whereof any probates or letters of administration shall have been before taken out, and the duties then payable discharged.

CCCXI. STAT. 41 GEORGII 3, c. 102(3). A.D. 1801.

STAT. 41 GEO. 3, c. 102.

“*An Act to stay, until the twenty-fifth day of March One thousand eight hundred and two, Proceedings in Actions under the Statute of King Henry the Eighth, for abridging Spiritual Persons from having Pluralities of Livings, and from taking of Firms.*”

(1) Amended by Stat. 3 & 4 Gul. 4, c. 70.

(3) Continued by Stat. 42 Geo. 3, cc. 30

(2) Duties:—*Vide* Stat. 55 Geo. 3, c.

& 86, and Stat. 43 Geo. 3, c. 34, but which have now expired.

STAT. 41 GEO.
3, c. 109.

CCCXII. STAT. 41 GEORGII 3, c. 109(1). A.D. 1801.

"An Act for consolidating in one Act certain Provisions usually inserted in Acts of Inclosure; and for facilitating the Mode of Proving the several Facts usually required on the passing of such Acts."

The rector or vicar, with the consent of the bishop of the diocese, and of the patron of the living, may lease allotments for twenty-one years, upon certain conditions.

"XXXVIII. And be it further enacted, that it shall be lawful for the rector or vicar for the time being of any parish wherein the lands and grounds intended to be inclosed shall be situate, by indenture or indentures, under his hand and seal, with the consent and approbation of the bishop of the diocese, and of the patron of the said rectory or vicarage, to lease or demise all or any part or parts of the allotment or allotments to be set out and allotted to any such rector or vicar, by virtue of any such act, to any person or persons whomsoever, for any term not exceeding twenty-one years, to commence within twelve calendar months next after the executing the award; so that the rent or rents for the same shall be thereby reserved to the rector or vicar for the time being, by four equal quarterly payments in every year; and so that there be thereby also reserved and made payable to such rector or vicar, the best and most improved rent or rents that can reasonably be had or gotten for the same, without taking any fine, foregift, premium, sum of money, or other consideration, for the making or granting any such lease or demise; and so that no such lessee by any such lease or demise be made dispunishable for waste, by any express words to be therein contained; and so that there be inserted in every such lease power of re-entry on non-payment of the rent or rents to be thereby reserved, within a reasonable time, to be therein limited, after the same shall become due; and so that a counterpart of such lease be duly executed by the lessee or lessees to whom such lease shall be so made as aforesaid; and every such lease shall be valid and effectual, any law or usage to the contrary notwithstanding."

STAT. 41 GEO.
3, CAP. CXII.

CCCXIII. STAT. 41 GEORGII 3, CAP. CXII. A.D. 1801.

"An Act to enable the Curate of the Chapelry of Saint Hilds, in the Parish of Jarrow, in the County of Durham, to grant a Building Lease of a certain Parcel of Ground lying contiguous to the Town of South Shields, in the said County, and belonging to the said Chapelry."

STAT. 41 GEO.
3, CAP. CXX.

CCCXIV. STAT. 41 GEORGII 3, CAP. CXX. A.D. 1801.

"An Act for the Establishment of Schools for the Education of Poor Children, in the County Palatine of Durham."

STAT. 42 GEO.
3, c. 30.

CCCXV. STAT. 42 GEORGII 3, c. 30. A.D. 1802.

"An Act to continue, until the twenty-fifth day of July, One thousand eight hundred and two, an Act made in the last Session of Parliament, intituled, An Act to stay, until the twenty-fifth day of March, One thousand eight hundred and two, Proceedings in Actions under the Statute of King Henry the Eighth, for abridging Spiritual Persons from having Pluralities of Livings, and from taking of Firms."

STAT. 42 GEO.
3, c. 86.

CCCXVI. STAT. 42 GEORGII 3, c. 86(2). A.D. 1802.

"An Act to continue, until the eighth day of April, One thousand eight hundred and three, an Act, passed in the last Session of Parliament for staying Proceedings in Actions under the Statute of King Henry the Eighth, for abridging Spiritual Persons from having Pluralities of Livings, and of taking of Firms; and also to stay Proceedings in Actions under an Act of the thirteenth year of Queen Elizabeth, touching Leases of Benefices, and other Ecclesiastical Livings, with Cure."

CCCXVII. STAT. 42 GEORGII 3, c. 90. A.D. 1802.

STAT. 42 GEO.
3, c. 90.

"An Act for amending the Laws relating to the Militia in England, and for augmenting the Militia."

"XLIII. . . . No person being a resident member of either of the universities, nor any clergyman, nor any teachers, licensed within the county, riding, or place, to teach in some separate congregation, whose place of meeting shall have been duly registered within twelve months previous to the general meeting appointed to meet in October, for the purposes of this act, . . . shall be liable to serve personally, or provide a substitute to serve in the militia."

"CLXXIV. And be it further enacted, that no serjeant, corporal, or drummer of the militia, nor any private man, from the time of his enrolment until he shall be regularly discharged from the militia, shall be compelled to serve as a peace officer or parish officer, or to perform any highway duty, commonly called Statute work."

CCCXVIII. STAT. 42 GEORGII 3, c. 99. A.D. 1802.

STAT. 42 GEO.
3, c. 99.

"An Act for . . . amending an Act, passed in the thirty-sixth year of the Reign of His present Majesty, relating to Duties on Legacies and Shares of Personal Estates; for exempting certain Legacies from the payment of Duty (1). . . ."

"II. And be it further enacted, that in every case in which any executor or executors, or administrator or administrators, shall not have paid the duties granted and payable upon or in respect of any legacies, or any personal estate, or any share or shares of any personal estate, of any persons dying intestate, by and in pursuance of an act passed in the thirty-sixth year of the reign of his present majesty, or any other act or acts of parliament relating to duties on legacies or shares of personal estates, within proper and reasonable time, it shall be lawful for his majesty's court of Exchequer, upon application to be made for that purpose on behalf of the commissioners appointed for managing the duties on stamped vellum, parchment, or paper, on such affidavit or affidavits as to the said court may appear to be sufficient, to grant a rule, requiring such executor or executors, administrator or administrators, to show cause why he, she, or they should not deliver to the said commissioners an account, upon oath, of all the legacies, or of the personal property, respectively paid, or to be paid, or administered by him, her, or them, as the case may be, and why the duties on any such legacies, or any shares or residue of any such personal estate, have not been paid or should not be forthwith paid according to law, and to make any such rule of court absolute in every case in which the same may appear to the said court to be proper and necessary for the better enforcing the payment of any of the said duties.

Where executors, &c. shall not have paid the duties payable on legacies in proper time, the court of Exchequer, on application from the commissioners for stamps, may grant a rule to show cause why such executors, &c. should not deliver in an account upon oath of the legacies paid, &c.

"III. And be it further enacted, that it shall be lawful for the commissioners for managing the duties on stamped vellum, parchment, or paper, to require of every register or other officer of any ecclesiastical court having the custody or care of any wills proved in any such court, or account or register of any administrations granted in any such court, an account of all such wills and letters of administration, together with the particulars relating thereto, and extracts from any such wills as may seem necessary to such commissioners, on payment of such fees as shall be agreed upon for the same, or as, in case of any dispute, shall be settled and allowed by the ecclesiastical court for that purpose; and every such officer as aforesaid is hereby authorized and required, within one month after any such requisition so made by the said commissioners, or any three or more of them, or by any person authorized by them for that purpose, to make out and deliver such account as aforesaid; and if any such register or other officer as aforesaid shall refuse or neglect to make out and deliver any such account as aforesaid, within one month after any demand made as aforesaid, or shall knowingly or wilfully make out and deliver any false account, every such register or other officer shall forfeit for every such offence fifty pounds, to be recovered by information in the name of his majesty's attorney-general, to the use of his majesty, his heirs and successors."

Registers of ecclesiastical courts, within one month after being required, shall deliver an account of wills and administrations in their custody to the commissioners of stamps, on penalty of 50l.

STAT. 42 GEO.
3, c. 116.

CCCXIX. STAT. 42 GEORGII 3, c. 116. A.D. 1802.

"An Act for consolidating the Provisions of the several Acts passed for the Redemption and Sale of the Land Tax (1), into one Act, and for making further Provisions for the Redemption and Sale (2) thereof. . . ."

"Whereas the powers and provisions of the several acts passed in his present majesty's reign for the redemption and purchase of land tax would be more easily carried into execution if the same were varied and amended in some respects, and were comprised in one act; and it is expedient that further provision should be made for facilitating the redemption and purchase of the land tax: be it therefore enacted by the king's most excellent majesty, by and with the advice and consent

(1) *Several Acts passed for the Redemption and Sale of the Land Tax*:—In consequence of the length of the Land-tax Acts, the principal sections which relate to the redemption of the land tax on ecclesiastical property, have only been published in this

collection of statutes. The following table has, however, been settled, which it is hoped will serve as an index to those, who are desirous of consulting the principal Land-tax Acts that have been enacted since A.D. 1800.

LAND-TAX ACTS:—			
Application of monies arising in certain cases of assessments	6 Geo. 4, c. 32.	G. B.	
Appropriation of sums arising from the redemption thereof	4 & 5 Gul. 4, c. 11.	G. B.	
Bodies corporate and persons, extending the period of preference granted for the redemption of the land tax to	41 Geo. 3, c. 72.	G. B.	
Charitable institutions, providing further for exonerating	46 Geo. 3, c. 133.	G. B.	
	49 Geo. 3, c. 67.		
	50 Geo. 3, c. 58.	G. B.	
	53 Geo. 3, c. 123.		
	54 Geo. 3, c. 173.		
..... renewing the powers for exonerating charitable institutions	57 Geo. 3, c. 100.	G. B.	
	1 & 2 Vict. c. 58.		
	45 Geo. 3, c. 48.	4 Geo. 4, c. 68.	
	48 Geo. 3, c. 102.	7 & 8 Geo. 4, c. 75.	
	49 Geo. 3, c. 55.	9 Geo. 4, c. 38.	
Commissioners, appointing	54 Geo. 3, c. 190.	2 & 3 Gul. 4, c. 127.	G. B.
	55 Geo. 3, c. 150.	3 & 4 Gul. 4, c. 95.	
	59 Geo. 3, c. 138.	6 & 7 Gul. 4, c. 80.	
	1 & 2 Geo. 4, c. 123.	1 & 2 Vict. c. 57.	
	3 Geo. 4, c. 14.		
	46 Geo. 3, c. 107.		
..... rectifying mistakes in the commissioners' names, and indemnifying such as have acted without due authority	49 Geo. 3, c. 55.	G. B.	
	55 Geo. 3, c. 150.		
	3 Geo. 4, c. 14.		
	4 Geo. 4, c. 68.		
	9 Geo. 4, c. 38.		
Deeds respecting redemption of the land tax, extending the period for enrolling	52 Geo. 3, c. 80.	G. B.	
Division in which lands are to be rated, court of Exchequer to determine disputes as to	1 & 2 Vict. c. 58.	G. B.	
Double assessments, explaining and amending acts relative to	1 & 2 Gul. 4, c. 21.	G. B.	
Elections, parliamentary; removing doubts as to the right of persons to vote in respect of messuages, &c. upon which the land tax has been redeemed	42 Geo. 3, c. 116.	G. B.	
<i>Vide etiam</i>	4 & 5 Gul. 4, c. 60.	G. B. & I.	
..... removing doubts as to the registering of property purchased or sold under the Land-tax Redemption Act, (42 Geo. 3, c. 116,) in right of which persons claim to vote	51 Geo. 3, c. 99.	G. B.	
<i>Vide etiam</i>	4 & 5 Gul. 4, c. 60.	G. B. & I.	
Laws for the redemption and sale of the land tax, amending	41 Geo. 3, c. 72.	G. B.	
	53 Geo. 3, c. 142.		
..... consolidating laws for the redemption and sale thereof	42 Geo. 3, c. 116.	G. B.	
	43 Geo. 3, c. 51.	53 Geo. 3, cc. 123, 142.	
	45 Geo. 3, c. 77.	54 Geo. 3, c. 173.	
<i>Amended by</i>	46 Geo. 3, c. 133.	3 Geo. 4, c. 88.	G. B.
	49 Geo. 3, c. 67.	4 & 5 Gul. 4, c. 60.	
	50 Geo. 3, c. 58.	5 & 6 Gul. 4, c. 20.	
Receivers-general; their duties transferred to the inspectors of taxes	1 & 2 Gul. 4, c. 18.	E.	

Scotland; placing the management of the land tax under the commissioners of taxes	3 & 4 Gul. 4, c. 13.	S.	STAT. 42 GEO. 3, c. 116.
Small livings exonerated from the land tax	46 Geo. 3, c. 133.	G. B.	
Amended by	49 Geo. 3, c. 67.	G. B.	
other small livings exonerated	50 Geo. 3, c. 58.	G. B.	
renewing powers of exoneration	53 Geo. 3, c. 123.	G. B.	
	57 Geo. 3, c. 100.	G. B.	
Stock transferred to the commissioners of the national debt on account of the redemption of the land tax, authorized to be cancelled	7 Gul. 4 & 1 Vict. c. 17.	U. K.	
Treasury, vesting powers of the land-tax commissioners for certain purposes, in	1 & 2 Vict. c. 58.	G. B.	
Powers vested in land-tax commissioners, for executing the Property and Income-tax Act	5 & 6 Vict. c. 35.	G. B.	
Certain detached parishes and places transferred to the jurisdiction of commissioners of land and assessed taxes, for the counties in or near to which they are locally situated	6 & 7 Vict. c. 24.	G. B.	
Amending proceedings upon collectors' bonds	6 & 7 Vict. c. 24.	G. B.	

The Land-tax Acts of 2 & 3 Gul. 4, c. 127; 3 & 4 Gul. 4, c. 95; 4 & 5 Gul. 4, c. 60; 6 & 7 Gul. 4, c. 80; and 1 & 2 Vict. c. 58; do not affect ecclesiastical property.

Charitable property is liable to the land tax, unless excepted by statute.

The Land-tax Acts contain exemptions in favour of the universities of Oxford and Cambridge; the colleges of Windsor, Eton, Winton, Westminster, or Bromley, and any of the buildings within the walls or limits thereof; any houses, which, previous to the 26th of March, 1693, belonged to the sites of any college or hall; Christ's Hospital, St. Bartholomew's Bridewell, St. Thomas's, and Bethlehem; or any other hospitals or almshouses, in respect of any rents or revenues, which, before that time, were payable to them, in order to be received and disbursed for the immediate use and relief of the poor of such hospitals and almshouses.

Buildings of a college in one of the universities, taken into and made part of the college, between the passing of the first Land-tax Act, and the act which made that tax perpetual, are exempted from the land tax. But where a college, soon after the passing of the first Land-tax Act, purchased land of a parish under a private act of parliament, which provided, that the college should pay all taxes which the premises then were, or should thereafter be, subject to; it was held, that the lands purchased were not exempted from the land tax. *All Souls' College, Oxford, v. Costar*, 3 B. & P. 635. *Downing College, Cambridge, v. Purchas*, 3 B. & Ad. 162. *Shelford on Mortmain*, 792.

The clause exempting hospitals and "any of the buildings within the walls or limits of such hospitals," extends to buildings newly added to an hospital on land not forming part of its original site, and which had previously paid land tax. *Harrison v. Bulcock*, 1 Hen. Black. 68, cit. 3 B. & Ad. 170.

The land tax charged upon hereditaments belonging to ecclesiastical benefices and charitable institutions, when the clear annual income did not exceed 150*l.* has, in many cases, been exonerated and discharged without the transfer or payment of any consideration, by the commissioners appointed under Stat. 46 Geo. 3, c. 133. Stat. 49 Geo. 3, c. 67. Stat. 50 Geo. 3, c. 58. Stat. 53 Geo. 3, c. 123. Stat. 57 Geo. 3, c. 100.

Where any tenant at a rack-rent, holding lands, tithes, or other hereditaments belonging to any ecclesiastical benefice or charitable institution, exonerated from the land tax by Stat. 46 Geo. 3, c. 133; Stat. 49 Geo. 3, c. 67; Stat. 50 Geo. 3, c. 58; Stat. 53 Geo. 3, c. 123, shall be bound by agreement to pay the land tax, the amount will be considered in every respect as rent reserved. Stat. 57 Geo. 3, c. 100, s. 9.

By Stat. 53 Geo. 3, c. 123, s. 38, sales of tithes or other hereditaments which had been sold by any corporation or trustees, &c., for charitable purposes, were made valid, and the property therein described discharged of land tax, notwithstanding, at the time of sale, it was not rated to the land tax, and the land tax had not been previously redeemed or purchased.

When lands, &c. are proposed to be sold by any eleemosynary institution, for the purpose of redeeming the land tax, a memorial must be presented to the commissioners, stating the particulars of such proposed sale, for the approbation of the commissioners, and two of whom must certify their approbation. Stat. 57 Geo. 3, c. 100, s. 15.

All corporations and trustees can contract for the redemption of the land tax, by sale, mortgage, or rent-charge of real and personal property. Stat. 42 Geo. 3, c. 116, ss. 9, 41, 69, 70. Stat. 53 Geo. 3, c. 123, s. 31.

The governors of a charity for the relief of widows and children of clergymen can sell lands given by will, for the purpose of redeeming the land tax vested in them for the purposes of their charity. Stat. 42 Geo. 3, c. 116, s. 77.

The land tax may also be redeemed out of the poor or church rates, (*Ibid.* s. 46,) or out of any property applicable to charities derived from act of parliament, deed, or will. *Ibid.* ss. 47, 48.

Corporations and trustees can also redeem the land tax charged on glebe lands, or on any living in their patronage, and they, upon redeeming such land tax, will be entitled to an annual rent-charge, issuing out of such living, equivalent to the amount of the land tax redeemed, unless they are desirous that the lands shall not be subject to any annual rent or other charge in their favour. Stat. 57 Geo. 3, c. 100, ss. 12, 13, 14.

In *Warner v. Potchell (Clerk)*. (3 B. & 3 R

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3, c. 116.

Ad. 921,) it appeared, that a prebendary agreed by writing, in consideration of a sum in three per cent. stock, (of the amount necessary for redeeming the land tax,) to convey to a lessee then in possession, a part of the reversion in the prebendal estate, such part to be set out and valued by A. B., and approved by the king's commissioners. The lessee furnished the sum required for purchasing the stock, and the prebendary concluded the necessary contract with the land-tax commissioners, transferred the stock into the names of the commissioners for reducing the national debt, and had the contracts duly registered; the land was also set out and valued; but the lessee then refused to sign the necessary memorial for the purpose of obtaining the approbation of the king's commissioners, pursuant to s. 76. The prebendary afterwards distrained upon an under tenant of the land for the amount of the redeemed land-tax, as additional rent, pursuant to s. 88. It was held, that there had been no valid sale of the land, for want of the assent of the commissioners, and because, in order to comply with the provisions of s. 69, the prebendary ought to have sold, not only the fee simple of the lands demised, but also the rents, services, and other profits: and it was also held, that he had no right by s. 88, to distrain until the precise quantity of land, and the portion of reserved rent, to be sold, were ascertained by the commissioners.

Lord *Tenterden* observing (after stating the facts of the case):

"This appears to be a sale by an ecclesiastical corporation, and the question substantially is, whether the defendant was authorized to distrain for the arrears of the land tax, under the 88th section of the 42 Geo. 3, c. 116, which provides, 'that where the land tax charged on any manors, &c. belonging to any bishop or other ecclesiastical corporation, shall have been redeemed by such bishop or ecclesiastical corporation with any monies which shall have been raised for that purpose, by virtue of any of the powers or provisions of the recited acts, or that act, such land tax shall be considered as yearly rent, payable to such bishop or other ecclesiastical corporation, his and their successors, over and above the reserved rent (if any) during the demise existing at the time of such sale, and shall be recovered and paid as such.' The mode of raising money for this purpose is pointed out by the 69th section. That part of this section which is applicable to the present case, empowers a body corporate to sell, not merely the fee-simple and inheritance of lands granted by it for a beneficial lease for lives, but also the rents and services and other profits reserved on such demises; and in the case of a spiritual corporation sole, it is highly reasonable, and must have been intended by the legislature, that *both* should be sold together; for if the reversion expectant on a lease for lives could be sold without the present rents, a prebendary or other ecclesiastical corporation sole, might, by a purchase of the land tax, increase his own income during the lives in being, altogether at

the expense of his successor: whereas, if the rents as well as the reversion were sold, he would contribute a part to the purchase from which he derives a benefit. In the one case a much larger portion of the estate of the church would be necessarily disposed of than in the other; and the facts of this particular case show to what extent the successor may suffer from such a bargain; as land to the value of 65*l.* a year will be taken from him in order to redeem an annual charge upon it of 21*l.* 10*s.* only. The 76th section requires the consent of the commissioners there mentioned to a sale, and provides, that no sale shall be valid or effectual, unless two at least of the commissioners shall certify their assent by signing and sealing the deed of sale; and this requisite of the statute has not been complied with. The sale therefore of the reversionary interest in the prebendal estate, described in the case, to Lord Huntingtower, was not in our opinion authorized by the act of parliament.

"It also appears to us to be clear, that the prebendary had no right to distrain under the 88th section, until after the precise quantity of land, and the portion of the reserved rent to be sold, were ascertained, which should, under the 83rd section, be done by the commissioners, who, it is to be presumed, would take care to settle the proportion in such a manner, as not to allow the party selling to enjoy an undue share of the benefit, or cast an undue share of the loss upon his successor. This previous apportionment is necessary to authorise a distress, because the land tax redeemed is to be considered as yearly rent payable to the prebendary, over and above the reserved rent, and to be recovered and paid as such; but until the *quantum* of the remaining rent is ascertained, how can the whole rent to be distrained for be rendered certain? And no proposition is more clear, than that there can be no distress for a rent of uncertain amount.

"It is no answer to this objection to say, that the distress was made for the land tax only, by way of additional rent, for if a person cannot distrain for an entire rent, because it is not ascertained, it is equally clear, that he cannot for a part of it; and in our opinion a distress is given for the land-tax, only as forming an *addition to and part of the rent*, for otherwise the tenant of the land would be subject to two distresses.

"It may be further observed, that the defendant cannot, in this case, insist on his right to distrain as for a rent-charge, on the ground, that he was the purchaser of the land tax with his own money, or what is the same thing, money which he had borrowed on his own credit, and entitled to distrain under the 154th section, or the 123rd and 125th sections, for the pleadings do not raise that question. The question raised by them is substantially, whether he be entitled under the 88th section.

"For these reasons, we are of opinion, that the plaintiff is entitled to recover, and the *postea* is to be delivered to him."

(2) *Redemption and Sale*.—From the accounts of the land tax made up to the year ending 25th March, 1843, it appeared that

of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that all and every the provisions, powers, rules, directions, and clauses contained in an act passed in the thirty-eighth year of his present majesty's reign, intituled, 'An Act for making perpetual, subject to Redemption and Purchase in the Manner therein stated, the several Sums of Money now charged in Great Britain as a Land Tax for One Year from the Twenty-fifth day of March, One thousand seven hundred and ninety-eight;' and in an act passed in the thirty-ninth year of his said majesty's reign, intituled, 'An Act to enlarge the Time limited for the Redemption of the Land Tax, and to explain and amend an Act, made in the last Session of Parliament, intituled, "An Act for making perpetual, subject to Redemption and Purchase in the Manner therein stated, the several Sums of Money now charged in Great Britain as a Land Tax for One Year from the Twenty-fifth day of March, One thousand seven hundred and ninety-eight;"' and in another act, also passed in the thirty-ninth year of his said majesty's reign, intituled, 'An Act to amend and render more effectual Two Acts, passed in the Thirty-eighth year of His present Majesty's Reign and the present Session of Parliament, for the Redemption and Purchase of the Land Tax;' and in another act, also passed in the thirty-ninth year of his said majesty's reign, intituled, 'An Act to amend so much of Three Acts, made in the last and present Session of Parliament, for making perpetual, subject to Redemption and Purchase, the several Sums of Money charged as a Land Tax, as relates to that part of Great Britain called Scotland;' and in another act, also passed in the thirty-ninth year of his said majesty's reign, intituled, 'An Act for enlarging the Time limited by certain Acts, passed for the Redemption of the Land Tax, for receiving Contracts, and making Transfers of Stock thereon, and for explaining and amending the said Acts;' and in another Act, also passed in the thirty-ninth year of his said majesty's reign, intituled, 'An Act to amend and render effectual several Acts for the Redemption and Purchase of the Land Tax;' and also in an act passed in the thirty-ninth and fortieth years of his said majesty's reign, intituled, 'An Act for extending, from the Twenty-fifth day of March, One thousand eight hundred and one, the Period of Preference granted and continued by several Acts to Bodies Corporate and Persons for the Redemption of Land Tax, and for enlarging the Powers contained in the said Acts;' and also in an act passed in the forty-first year of his present majesty's reign, intituled, 'An Act to explain, amend, and render more effectual the several Acts made in the Thirty-eighth and Thirty-ninth Years of the Reign of His present Majesty and in the last session of Parliament, for the Redemption and Purchase of the Land Tax;' and in another act, also passed in the forty-first year of his said majesty's reign, intituled, 'An Act for extending the Period of Preference granted and continued by several Acts to Bodies Corporate and Persons for the Redemption of the Land Tax, and to amend an Act of the Thirty-eighth Year of the Reign of His present Majesty, for granting an Aid to His Majesty by a Land Tax;' shall, from and after the twenty-fourth day of June, one thousand eight hundred and two, cease and determine, (save and except, in the cases herein after mentioned, and also save and except such parts of the said first-recited act as continue for ever, subject to redemption and purchase, the several and respective sums of money charged by virtue of an act passed in the thirty-eighth year of his present majesty's reign, intituled, 'An Act for granting an Aid to His Majesty by a Land Tax to be raised in Great Britain, for the Service of the Year One thousand seven hundred and ninety-eight,' in the respective counties, ridings, stewartries, cities, boroughs, cinque ports, towns, and places in Great Britain, in respect of the manors, messuages, lands, tenements, and hereditaments lying therein respectively, and the powers, rules, directions, provisions, articles, clauses, matters, and things in the said last-mentioned act contained, for putting

STAT. 42 GEO. 3, c. 116.

Provisions of 38 Geo. 3, c. 60,

39 Geo. 3, c. 6,

39 Geo. 3, c. 21,

39 Geo. 3, c. 40,

39 Geo. 3, c. 43,

39 Geo. 3, c. 108,

39 & 40 Geo. 3, c. 30,

41 Geo. 3, c. 28, and

41 Geo. 3, (U. K.) c. 72,

to cease from 24th June, 1802, except in certain cases

the gross total amount of the land tax in all the counties of England and Wales, both redeemed and unredeemed, was 1,858,924*l.* 6*s.* 14*d.*; the total amount of the land tax

redeemed was 724,463*l.* 19*s.* 2½*d.*; and that of the land tax unredeemed was 1,134,460*l.* 6*s.* 10½*d.* *Vide* Stat. 53 Geo. 3, c. 123, *post.* 1046, n. (2).

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3, c. 116.

the same in execution; save also and except as to the commissions already granted by his majesty, by his royal letters patent under the great seal, or under the royal sign manual, to the several persons therein respectively named, for the purpose of executing the said acts according to the tenor thereof, and also as to all appointments by virtue and under the authority of the said acts, or any of them, of any officer or officers to act in the execution thereof;) and every contract which shall be entered into after the said twenty-fourth day of June, one thousand eight hundred and two, for the redemption or purchase of any land tax, shall be entered into and made according to the provisions and directions of this act.

The governors of the charity for the relief of the widows and children of clergymen, with the consent of the said commissioners, may sell lands given by will for redeeming the land tax on other lands vested in them.

Where the land tax on any glebe, &c. of any living belonging to colleges, &c. shall be redeemed, it may be provided for by sale of any lands belonging thereto, or grant of a rent charge, but such college, &c. shall be entitled to a rent charge out of the living, unless it be declared otherwise at the time of presentation.

Where any rector shall be entitled to the patronage of any vicarage or perpetual curacy, and the land tax on the glebe, &c. shall be redeemed by him, he may

“LXXVII. And be it further enacted, that it shall be lawful for the governors of the charity for the relief of the poor widows and children of clergymen, with the consent and under the direction and authority of the said last-mentioned commissioners, to sell and dispose of any manors, messuages, lands, tenements, or hereditaments given to them by any will, either generally for the relief of such poor widows or children as aforesaid, or subject to any qualifications or restrictions as to the mode of applying such relief, in the extent of the allowance to be made to individuals, and to apply the money arising by such sale or sales for the purpose of redeeming land tax charged on any other manors, messuages, lands, tenements, or hereditaments, vested in such governors for the purposes of their charity.

“LXXVIII. And be it further enacted, that where the land tax charged upon the glebe lands, tithes, or other profits of any living or livings in the patronage of any college, cathedral church, hall, or house of learning, in either of the universities of Oxford and Cambridge, or in the patronage of either of the colleges of Eton or Winchester, or of any trustee or trustees for any such college, cathedral church, hall, or house of learning, or in the patronage of any other corporation aggregate, shall have been or shall be redeemed by or on the behalf of any such college, cathedral church, hall, or house of learning, or by any such corporation aggregate, by virtue of any of the provisions of the said recited acts or of this act, it shall be lawful for any such college, cathedral church, hall, or house of learning, or for any such trustee or trustees thereof respectively as aforesaid, or for any such corporation aggregate, to provide for such redemption by sale of any lands, tenements, or hereditaments belonging to such corporations respectively, or by the grant of any rent-charge which they could or might respectively lawfully make for the redemption of any land tax charged on the lands belonging to such corporations, and the land tax so redeemed shall be forthwith extinguished; but every such college, cathedral church, hall, or house of learning respectively, or such corporation aggregate, shall nevertheless be entitled to an annual rent-charge issuing out of such living equivalent to the amount of the land tax redeemed, unless it shall be declared in writing under the common seal of the body or bodies having such right of patronage or nomination, at the time of presenting or nominating any clerk or clerks to such living or livings, that such rent-charge shall be suspended during his or their incumbency or respective incumbencies, which declaration the body or bodies entitled to nominate to such living or livings shall from time to time be competent to make: provided always, that such suspension shall be without prejudice to the right of the said body or bodies respectively to recover such rent-charge after the next or any future avoidance: provided also, that any declaration made by any such body at the time of redeeming the said land tax shall be as available during the incumbency of the then rector, vicar, or curate, as if it had been made at the time of his being preferred to such living.

“LXXIX. And be it further enacted, that where any ecclesiastical rector shall in right of his rectory be entitled to the patronage or donation of or to any vicarage or perpetual curacy, and there shall not be any glebe land belonging to such vicarage or perpetual curacy which shall be eligible or proper to be sold for the purpose of redeeming the land tax charged on the glebe lands, tithes, or other profits thereof, and such land tax shall have been or shall be redeemed by such ecclesiastical rector, then and in such case it shall be lawful for such ecclesiastical rector, whether he shall be also incumbent of the vicarage or perpetual curacy or not, to provide for the redemption of such land tax by sale of part of the glebe

lands belonging to such rectory in the same manner in all respects as he could or might provide for the redemption of the land tax charged on the glebe lands, tithes, or other profits thereof, and the land tax so redeemed shall be forthwith extinguished; but whenever and so long as such rectory and vicarage or perpetual curacy respectively shall be held by different incumbents, the incumbent for the time being of such ecclesiastical rectory shall be entitled to an annual rent charge issuing out of the vicarage or perpetual curacy, equivalent to the amount of the land tax charged thereon at the time of such redemption as aforesaid.

“LXXX. Provided always, and be it further enacted, that no mines or minerals, or seams or veins of coal, metals, or other profits of the like nature, belonging to any manors, messuages, lands, tenements, or hereditaments, which shall be sold by any bishop or other ecclesiastical corporation aforesaid, for the purpose of redeeming any land tax, whether the same shall be opened or unopened, nor any right, title, or claim to open or work the same, nor any advowson or right of patronage or presentation to any living or ecclesiastical benefice, or right of nomination to any perpetual curacy, shall pass by any conveyance of such manors, messuages, lands, tenements, or hereditaments, either by express or general words in such conveyance, although such advowson, right of patronage or presentation, or nomination, may be appendant or appurtenant to such manors, messuages, lands, tenements, or hereditaments; and such mines or minerals, seams or veins of coal, metal, or other profits aforesaid, together with all proper and necessary powers for opening and working the same, and such advowsons, rights of patronage or presentation, or nomination, shall be always absolutely excepted and reserved to such bishops or other ecclesiastical corporations aforesaid, as fully and effectually, to all intents and purposes, as if the same were in such conveyance expressly excepted and reserved.

“LXXXI. And be it further enacted, that no deed or instrument whatever, whereby any sale, enfranchisement, mortgage, or grant, shall be made of or out of any manors, messuages, lands, tenements, or hereditaments, under the authority of the said last-mentioned commissioners, by virtue of this act, shall be liable to any stamp duty whatever.

“LXXXII. And be it further enacted, that where any manors, messuages, lands, tenements, or other hereditaments of or belonging to any bodies politic or corporate, or companies, or feoffees or trustees for charitable or other public purposes, which shall be sold by virtue of this act, shall be, either exclusively, or in common with other manors, messuages, lands, tenements, or hereditaments, subject to or charged with any yearly sum or sums, stipend or stipends, or other profit or emolument, to or for the use of any rector, vicar, curate, or other person or persons, it shall be lawful for the said last-mentioned commissioners to direct how and in what manner and proportions, and out of what part or parts of the manors, messuages, lands, tenements, or hereditaments, originally liable thereto, such sum or sums, stipend or stipends, or other profits or emoluments as aforesaid, or any specific part or parts thereof, shall respectively be paid or borne in future; and in every such case, and from thenceforth, the manors, messuages, lands, tenements, or other hereditaments, or such specific part or parts thereof by or out of which the same shall be so directed to be paid or borne, shall be exclusively subject thereto, and to such powers and remedies for the recovery thereof as the law has provided for the recovery of rent reserved on leases.

“LXXXIII. And be it further enacted, that where part only of divers manors, messuages, lands, tenements, or hereditaments, which may have been usually demised together by any such bodies politic or corporate, or companies, or feoffees or trustees for charitable or other public purposes, by one lease upon which an entire ancient and accustomed rent or rents hath or have been reserved or made payable, shall be sold for any of the purposes of this act, it shall be lawful for the said last-mentioned commissioners to apportion such ancient rent or rents, and to settle and adjust the proportion thereof which shall from thenceforth be paid or payable in respect of such of the manors and other hereditaments comprised in the said lease which shall not be sold for the purposes aforesaid, or to settle out of

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provide for such redemption by sale of part of the glebe belonging to the rectory, but the incumbent of the rectory, when not holding the vicarage, &c. shall be entitled to an annual rent charge out of the vicarage.

Mines, &c. shall not pass by conveyance of land sold, nor advowsons, &c. though appendant to the land.

No deed under authority of the last mentioned commissioners, shall be liable to stamp duty. Where any lands belonging to corporations, &c. shall be sold, which are subject to any charge, the said commissioners shall direct how the same shall be paid in future

Where part of lands usually demised together by corporations, &c. upon which an ancient rent has been reserved, shall be sold, the said commissioners shall settle how it shall be paid in future.

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what part or parts of the manors, messuages, lands, tenements, or hereditaments, liable thereto, the whole of such rent or rents, (if the nature of the reservation will not admit of apportionment,) shall be reserved or paid in future; and in all leases which shall thereafter be granted of such last-mentioned manors and other hereditaments, the sum or other article or thing which shall have been so settled and apportioned shall be the rent to be reserved thereon, any law to the contrary notwithstanding.

The commissioners shall adjust all questions between corporations, &c. and their lessees, with respect to enfranchisement of lands.

“LXXXIV. And be it further enacted, that where any bodies politic or corporate, or companies, or feoffees or trustees for charitable or other public purposes, shall enfranchise any copyhold or customary messuages, lands, tenements, or hereditaments, which are or shall be holden of any manor belonging to them which shall be under lease, it shall be lawful for the said last-mentioned commissioners to settle and adjust all questions that may arise between any such bodies politic or corporate, and companies, and feoffees or trustees for charitable and other public purposes, enfranchising as last mentioned, and his or their lessee or lessees, or any cestuique trust of such lessee or lessees, touching or concerning any such enfranchisement, and to order and direct a recompense to be reserved out of the purchase money to such lessee or lessees, and such person or persons, if any, as shall or may be interested or entitled as cestuique trusts or otherwise under such lessee or lessees, for any loss or injury that may occur to him, her, or them by any such enfranchisement as aforesaid.

Where the reversion of lands holden under any corporation, &c. by lease or copy of court roll, &c. shall be purchased by the persons beneficially entitled to the profits, who shall be bound to renew at their own charge, the interests under the lease as well as the reversion shall, under the directions of the said commissioners, be made chargeable with the money advanced and the interest, but if not so bound, the reversion only shall be chargeable, unless the persons advancing the money shall be desirous of the subsisting lease being also made chargeable.

“LXXXV. And be it further enacted, that where the reversion of any manors, messuages, lands, tenements, or other hereditaments holden under any body politic or corporate, or company, or any feoffees or trustees for charitable or other public purposes by virtue of any lease for one or more life or lives, or for years absolute or determinable on the dropping of one or more life or lives, or by copy of court roll or customary tenure for life or lives, shall be purchased under the powers of this act, by or with the proper monies of the person or persons for the time being beneficially entitled to the rents and profits thereof, and where such lease or leases shall be subject to any will or settlement, so that such person or persons shall not, at the time of purchasing the said reversion thereof, be entitled to the absolute interest under such lease or leases, and such person or persons shall be bound by any covenant, engagement, or condition, to renew the lease at the accustomed periods, with his, her, or their own monies, or with or out of the rents and profits of the estate, then and in every such case the immediate estates and interests under such subsisting lease or leases, as well as the reversion expectant thereon, shall, under the direction of the said last-mentioned commissioners, be charged with and made subject to the repayment of the principal money advanced for the purchase of such reversion, with lawful interest, to or for the benefit of the person or persons advancing the same, his, her, or their executors, administrators, or assigns; but if the person or persons so for the time being beneficially entitled to the rents and profits of the estates comprised in such subsisting lease or leases as aforesaid shall not be liable to any covenant, engagement, or condition to renew the lease at the accustomed periods with his or her own monies, or with or out of the rents and profits of the estate, then and in such case the reversion only expectant on the subsisting lease or leases shall, under such direction as aforesaid, be charged and made subject, for the benefit of such person or persons, with the payment of the principal money advanced for the purchase thereof, together with lawful interest, to accumulate from the time of such purchase till the expiration of the subsisting lease, after deducting out of such interest the annual rent (if any) which shall be payable during the lease, and which shall have been purchased with the reversion, unless the person or persons advancing such money shall be desirous that the same, together with the interest, may be made a charge on the subsisting lease or leases, in which case the immediate estates and interests under the same, as well as the reversion expectant thereon, shall be charged and made subject to the payment of such principal money and interest, in like manner as if such person or persons had been bound to renew the lease, and, subject to such charges so to be made respectively as aforesaid, the fee simple of such manors, messuages, lands, tenements, or

Where the immediate estates under any such lease shall be

other hereditaments shall be settled, under the like direction, for the benefit of the person or persons so purchasing the same, and of such other persons as would have been entitled under such will or settlement to the benefit of any renewed lease or leases for the time being, and so as to be enjoyed by them for such respective estates and interests as, considering the alteration of the tenure, shall appear to the said commissioners most correspondent with the intention of such will or settlement; provided always, that where the immediate estates or interests under any such lease or leases shall be charged with and made subject to the payment of the principal money advanced for the purchase of the reversion, the persons successively entitled to the rents and profits of the manors, messuages, lands, tenements, and hereditaments comprised in the subsisting lease or leases respectively, shall be made chargeable with the interest accruing during his or her estate therein, and that no greater arrear than for one year shall be recoverable against any person who shall become entitled in remainder for interest accrued during the estate or term of any person or persons entitled to any preceding estate or interest in the premises; provided also, that it shall be lawful for the said commissioners to direct an application to be made to the court of Chancery, in a summary way, for obtaining direction as to the mode of settling any such reversion, or the equity of redemption thereof, where the case shall appear to them to be attended with difficulty.

“LXXXVI. And be it further enacted, that it shall be lawful for any bodies politic or corporate, or companies, or feoffees or trustees for charitable or other public purposes, by and under the direction and authority of the said last-mentioned commissioners, to contract and agree with their respective lessees and tenants holding under any demise, by copy of court roll or otherwise, who shall under the powers contained in the said recited acts or any of them, or of this act, have redeemed the land tax charged on the manors or other hereditaments comprised in such demises respectively, for an assignment to such bodies politic or corporate, or companies, or feoffees or trustees for charitable or other public purposes, of the land tax which shall have been so redeemed by their respective lessees or tenants; and for the purpose of completing the purchase of such assignment it shall be lawful to carry into execution all and every or any of the powers which under and by virtue of this act are or shall be vested in them for raising money by sale of any manors or other hereditaments for the purpose of redeeming any land tax in the first instance; provided always, that if any monies shall be then remaining in the Bank of England, or any stock shall be then invested in the names of the commissioners for the reduction of the national debt, which shall have arisen from any sale or sales before made by any such body politic or corporate, or company, or feoffees or trustees for charitable or other public purposes, contracting for the purchase of such assignment, and which shall not have been applied to the redemption of any land tax, it shall be lawful for the said commissioners, under the great seal, or any two or more of them, to order and direct that the consideration agreed to be paid or transferred for such purchase shall be paid or transferred out of such monies or stock respectively, and the governor and company of the Bank of England, and such commissioners for the reduction of the national debt respectively, are hereby authorized and required, upon a certificate of such order, signed by any two or more of the said commissioners, under the great seal, to pay or transfer to the person or persons assigning such land tax the money or stock specified in such certificate, and the receipt or receipts of such person or persons shall be a sufficient discharge for such money or stock.

“LXXXVII. And be it further enacted, that where any manors, messuages, lands, tenements, or hereditaments belonging to any bodies politic or corporate, or companies, or feoffees or trustees for charitable or other public purposes, shall be sold to raise money for the redemption of land tax, and it shall afterwards appear that the money arising from such sale or sales shall not be sufficient to redeem the whole of the land tax charged on the manors, messuages, lands, tenements, or hereditaments belonging to such bodies politic or corporate, or companies, or feoffees or trustees for charitable or other public purposes, and such bodies politic or cor-

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charged with the payment of the money advanced for the reversion, the persons entitled to the rents shall be chargeable with the interest, but not for more than one year prior to their becoming so entitled. The commissioners may direct an application to the Chancery in cases of difficulty.

Corporations, &c. by authority of the said commissioners, may contract with their lessees, &c. who have redeemed their land tax, for an assignment thereof, and may sell lands to raise money for that purpose, and if any money shall be in the bank, or any stock invested in the names of the commissioners for the reduction of the national debt arisen from sales made by such corporations, &c. which shall not have been applied for redemption of land tax, it may be applied for purchase of such assignment.

Where the money arising from sale of lands belonging to any corporations, &c. shall be insufficient to redeem the whole of

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the land tax,
the bank may
receive money
to make up the
deficiency.

Land tax re-
deemed by
bishops, &c.
shall be con-
sidered as an
additional
yearly rent on
the present
and future
demises.

porate, or companies, or feoffees or trustees for charitable or other public purposes, shall be willing and desirous to pay into the bank such further sum or sums as may be necessary to make up the whole of the money requisite to redeem such land tax, then it shall be lawful for the cashier or cashiers of the Bank of England, and they are hereby required, to give a receipt or receipts for all such sum or sums as may be offered to be paid to them to make up such deficiencies, and to apply such monies for the purpose of completing such redemption.

“LXXXVIII. And be it further enacted, that where the land tax charged on any manors, messuages, lands, tenements, or hereditaments belonging to any bishop or other ecclesiastical corporation shall have been or shall be redeemed by such bishop or ecclesiastical corporation with any monies which shall have been or shall be raised for that purpose by virtue of any of the powers or provisions of the said recited acts or of this act, such land tax shall be considered as yearly rent payable to such bishop or other ecclesiastical corporation, his and their successors, over and above the reserved rent, (if any,) during the demise existing at the time of such sale, and shall be recovered and paid as such, and the land tax so redeemed shall, in all future demises of such manors, messuages, lands, tenements, or hereditaments, be added to the ancient and accustomed yearly rent reserved or made payable during the terms granted by such demises, and shall be reserved and made payable as such accustomed yearly rent during the terms to be granted as aforesaid, and shall be recovered and recoverable as such accustomed rent by the like remedies as such bishops or other ecclesiastical corporations may use for the recovery of the ancient and accustomed rent reserved upon such demises, and where such manors, messuages, lands, tenements, or hereditaments shall be demised to any under-lessee who shall be bound by any covenant or agreement to pay the land tax charged thereon, then and in such case the amount of such land tax shall be considered as rent reserved or made payable on such last-mentioned demise, and the same powers shall be had, used, or enjoyed for the recovery thereof as for the recovery of such rent when in arrear.”

STAT. 43 GEO.
3, CAP. IX.

CCCXX. STAT. 43 GEORGII 3, CAP. IX. A.D. 1803.

“An Act for rebuilding the Tower of the Parish Church of Saint Peter, in the Borough and Liberty of Saint Alban, in the County of Hertford, together with the Chancel thereof; and for more effectually repairing the said Parish Church.”

STAT. 43 GEO.
3, c. 10.

CCCXXI. STAT. 43 GEORGII 3, c. 10(1). A.D. 1802.

“An Act to amend so much of an Act made in the forty-second year of the Reign of His present Majesty, intituled, An Act for amending the Laws relating to the Militia in England, and for augmenting the Militia, as relates to the Exemption of Licensed Teachers of any separate Congregation from serving in the Militia.”

42 Geo. 3,
c. 90, recited.
No teacher of
any separate
congregation
licensed twelve
months pre-
vious to the
yearly meeting
appointed by
recited act,
shall be liable
to serve, or to
provide a sub-
stitute to serve
in the militia.

“Whereas an act passed in the forty-second year of the reign of his present majesty, intituled, ‘An Act for amending the Laws relating to the Militia in England, and for augmenting the Militia;’ and whereas doubts have arisen as to the exemption under the said act of licensed teachers of separate congregations from serving in the militia; and whereas it is expedient that such doubts should be removed: be it therefore enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that no licensed teacher of any separate congregation, who shall have been licensed twelve months at the least previous to the yearly general meeting appointed by the said recited act to be held in October, shall be liable to serve personally, or provide a substitute to serve in the said militia; anything in the said act contained to the contrary notwithstanding.”

CCCXXII. STAT. 43 GEORGII 3, CAP. XX. A.D. 1803.

STAT. 43 GEO.
3, CAP. XX.

"An Act to provide a new Burial Ground, and erect a Chapel thereon, for the Parish of Saint Giles-in-the-Fields, in the County of Middlesex."

CCCXXIII. STAT. 43 GEORGII 3, c. 30(1). A.D. 1803.

STAT. 43 GEO.
3, c. 30.

"An Act to entitle Roman Catholics taking and subscribing the Declaration and Oath contained in the Act of the thirty first year of the Reign of His present Majesty, intituled, An Act to relieve, upon conditions and under restrictions, the Persons therein described, from certain Penalties and Disabilities to which Papists, or Persons professing the Popish Religion, are by Law subject, to the Benefits given by an Act of the eighteenth year of the Reign of His present Majesty, intituled, An Act for relieving His Majesty's Subjects professing the Popish Religion from certain Penalties and Disabilities imposed on them by an Act made in the eleventh and twelfth years of the Reign of King William the Third, intituled, An Act for the further preventing the Growth of Popery."

CCCXXIV. STAT. 43 GEORGII 3, c. 34(2). A.D. 1803.

STAT. 43 GEO.
3, c. 34.

"An Act to continue, until the eighth day of July, One thousand eight hundred and three, an Act made in the forty-second year of the Reign of His present Majesty, intituled, An Act to continue, until the eighth day of April, One thousand eight hundred and three, an Act passed in the last Session of Parliament for staying Proceedings in Actions under the Statute of King Henry the Eighth, for abridging Spiritual Persons from having Pluralities of Livings, and of taking of Firms; and also to stay Proceedings in Actions, under the Act of the thirteenth year of Queen Elizabeth, touching Leases of Benefices, and other Ecclesiastical Livings with Cure."

CCCXXV. STAT. 43 GEORGII 3, c. 84(3). A.D. 1803.

STAT. 43 GEO.
3, c. 84.

"An Act to amend the Laws relating to Spiritual Persons holding of Farms; and for enforcing the Residence(4) of Spiritual Persons on their Benefices(5) in England."

CCCXXVI. STAT. 43 GEORGII 3, CAP. XCI. A.D. 1803.

STAT. 43 GEO.
3, CAP. XCI.

"An Act to establish a Chapel of Ease at Brighthelmston, in the County of Sussex."

CCCXXVII. STAT. 43 GEORGII 3, c. 106(6). [IRELAND.] A.D. 1803.

STAT. 43 GEO.
3, c. 106. [IR.]

"An Act to enable the Commissioners of First-fruits in Ireland to lend certain Sums of Money, (Interest free,) to Incumbents of Benefices there, for the purpose of enabling them to erect or purchase Glebe Houses and Offices convenient for their Residence; and to purchase Glebe Lands fit and convenient for the Erection of such Houses and Offices; and to make Provision for the Repayment of all Loans so to be made by the said Commissioners."

(1) *Vide* Stat. 10 Geo. 4, c. 7. Stat. 2 & 3 Gul. 4, c. 115.

(2) Expired.

(3) Amended by Stat. 43 Geo. 3, c. 109, and Stat. 54 Geo. 3, c. 175; repealed, and other provisions made, by Stat. 57 Geo. 3, c. 99, which was repealed by Stat. 1 & 2 Vict. c. 106. *Vide* Stat. 13 Eliz. c. 20, ante 432.

(4) *Residence*:—In *Hardy v. Cathcart* (Clerk), (5 Taunt. 2,) it was held that Stat. 43 Geo. 3, c. 84, s. 12, required a prebendary to reside on his prebend, although the statutes of his cathedral did not require it:

and that in an action for a continued non-residence, it was necessary to prove the non-residence to have commenced on the precise day, and continued to the precise day, which was alleged in the declaration, and that it was not necessary to aver the non-residence to have been in any one year.

(5) *Benefices*:—A prebend was a benefice within this statute. *Cathcart* (Clerk) v. *Hardy* (in error), 2 M. & S. 534.

(6) Repealed, and other provisions made, by Stat. 3 & 4 Gul. 4, c. 37. Stat. 4 & 5 Gul. 4, c. 90. Stat. 6 & 7 Gul. 4, c. 99.

STAT. 43 GEO.
3, c. 107.

CCCCXXVIII. STAT. 43 GEORGII 3, c. 107(1). A.D. 1803.

"An Act for effectuating certain parts of an Act passed in the second and third years of the Reign of Her late Majesty Queen Anne, intituled, An Act for the making more effectual Her Majesty's gracious Intentions for the Augmentation of the Maintenance of the Poor Clergy, by enabling Her Majesty to grant, in perpetuity, the Revenues of the First-fruits and Tenths, and also for enabling any other Person to make Grants, for the same Purpose, so far as the same relate to Deeds and Wills made for granting and bequeathing Lands, Tenements, and Hereditaments, Goods, and Chattels, to the Governors of the Bounty of Queen Anne, for the Purposes in the said Act mentioned, and for enlarging the Powers of the said Governors."

2 & 3 Ann.
c. 11, reciting
that persons
were empower-
ed to grant
estates, &c. in
their own right
to the govern-
ors of the
bounty of
Queen Anne,
towards the
augmentation
of the mainte-
nance of the
clergy.

"Whereas by an act made in the second and third years of the reign of her late majesty Queen Anne, intituled, 'An Act for the making more effectual her Majesty's gracious Intentions for the Augmentation of the Maintenance of the poor Clergy, by enabling her Majesty to grant, in Perpetuity, the Revenues of the First-fruits and Tenths; and also for enabling any other Persons to make Grants for the same Purpose;' after reciting, amongst other things, that for the encouragement of such well-disposed persons as should, by her majesty's royal example, be moved to contribute to so pious and charitable a purpose, and that such their charity might be rightly applied, it was, amongst other things, enacted, that all and every person and persons having in his or their own right any estate or interest, in possession, reversion, or contingency, of or in any lands, tenements, or hereditaments, or any property of or in any goods or chattels, should have full power, licence, and authority, at his, her, and their will and pleasure, by deed enrolled in such manner and within such time as is directed by the statute made in the twenty-seventh year of the reign of King Henry the Eighth, for enrolment of bargains and sales, or by his, her, or their last will or testament in writing, duly executed according to law, to give and grant to and vest in the corporation thereby authorized, and since erected under the name of The Governors of the Bounty of Queen Anne, and their successors, all such his, her, or their estate, interest, or property in such lands, tenements, and hereditaments, goods, and chattels, or any part or parts thereof, for and towards the augmentation of the maintenance of such ministers officiating in such church or chapel where the liturgy and rites of the said church were or should be so used or observed, as in the same act were mentioned, and having no settled competent provision belonging to the same, and to be for that purpose applied according to the will of the said benefactor, in and by such deed enrolled, or by such will or testament executed as aforesaid expressed, and in default of such direction, limitation, or appointment, in such manner as by her majesty's letters patent should be directed or appointed as aforesaid, and such corporation and their successors, should have full capacity and ability to purchase, receive, take, hold, and enjoy for the purposes aforesaid, from such persons as should be so charitably disposed to give the same, any manors, lands, tenements, goods, or chattels, without any licence or writ of *ad quod damnum*, the statute of mortmain or any other statute or law to the contrary notwithstanding: and it was by the same act provided, that that act, or anything therein contained, shall not extend to enable any person or persons being within age, or of non-sane memory, or women covert without their husbands, to make any such gift, grant, or alienation, anything in that act contained to the contrary in anywise notwithstanding: and whereas the beneficial effect and operation of the said act have been considerably obstructed and retarded by an act, passed in the ninth year of the reign of his late majesty King George the Second, intituled, 'An Act to restrain the Disposition of Lands, whereby the same become unalienable:' for remedy thereof be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that so much of the said act of her late

9 Geo. 2, c. 36.

So much of the
recited act of
2 & 3 Ann.
shall remain in
force, notwith-
standing⁹ Geo.
2, c. 36.

(1) *Vide* Stat. 45 Geo. 3, c. 84. Stat. 7 Stat. 3 & 4 Vict. c. 20. Stat. 3 & 4 Vict. Geo. 4, c. 66. Stat. 2 & 3 Vict. c. 49. c. 60.

majesty Queen Anne, as is herein recited, shall be and remain in full force and effect, the said act of his late majesty King George the Second, or any other act or law to the contrary notwithstanding. STAT. 43 GEO. 3, c. 107.

"II. And whereas by an act passed in the first year of the reign of his late majesty King George the First, intituled, 'An Act for making more effectual her late Majesty's gracious Intentions for augmenting the Maintenance of the poor Clergy,' it was amongst other things enacted, that it should be lawful, with the concurrence of the said governors of the bounty of Queen Anne, and the incumbent, patron, and ordinary of any augmented living or cure, to exchange all or any part of the estate settled for the augmentation thereof, for any other estate in lands or tithes of equal or greater value, to be conveyed to the same uses; be it also enacted, that the said power shall be, and the same is hereby extended to all the messuages, buildings, and lands belonging to every such augmented living or cure. 1 Geo. 1, c. 10. Power of exchanging lands, &c. thereby granted, extended to every augmented living.

"III. And be it further enacted, that where a living shall have been or shall be augmented by the said governors, either by way of lot or benefaction, and there is no parsonage house suitable for the residence of the minister, it shall and may be lawful for the said governors, and they are hereby empowered, from time to time, in order to promote the residence of the clergy on their benefices, to apply and dispose of the money appropriated for such augmentation, and remaining in their hands, or any part thereof, in such manner as they shall deem most advisable, in or towards the building, rebuilding, or purchasing a house, and other proper erections within the parish, convenient and suitable for the residence of the minister thereof, which house shall for ever thereafter be deemed the parsonage house appertaining to such living, to all intents and purposes whatsoever; anything in any act or acts, or the rules of the said governors, contained to the contrary notwithstanding. Where there is no suitable parsonage house, the governors may provide one.

CCCXXIX. STAT. 43 GEORGII 3, c. 108 (1). A.D. 1803.

STAT. 43 GEO. 3, c. 108.

"An Act to promote the building, repairing, or otherwise providing of Churches and Chapels, and of Houses for the Residence of Ministers, and the providing of Churchyards and Glebes."

"Whereas a sufficient number of churches and chapels for the celebration of divine service, according to the rites and ceremonies of the united church of England and Ireland, and of mansion houses with competent glebes for the residence of ministers officiating in such churches and chapels, is necessary towards the promotion of religion and morality: and whereas the same are either wholly wanting or materially deficient in many parts of England and Ireland: and whereas many well disposed persons would be desirous of contributing towards the supply of such defects, if they were enabled so to do in the manner herein after directed; may it therefore please your majesty, that it may be enacted; and be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that all and every person and persons having in his or their own right any estate or interest in possession, reversion, or contingency, of or in any lands or tenements, or of any property of or in any goods or chattels, shall have full power, licence, and authority, at his and their will and pleasure, by deed enrolled in such manner, and within such time, as is directed in England by the statute made in the twenty-seventh year of the reign of King Henry the Eighth, and in Ireland by the statute made in the tenth year of the reign of King Charles the First, for enrolment of bargains and sales, or by his, her, or their last will or testament in writing duly executed according to law, such deed, or such will or testament, being duly executed three calendar months at least before the death of such grantor or testator, including the days of the execution and death, to give and grant (2) to and vest in any person or persons, or body

Persons by deed or will may give lands not exceeding five acres, or goods and chattels not exceeding 500*l.* for the purposes of this act.

(1) Amended by Stat. 51 Geo. 3, c. 115. *ler*, (3 Y. & C. 677,) *anté* 798.

(2) *To give and grant*: Vide *Dixon v. But-*

STAT. 43 GEO.
3, c. 108.

politic or corporate, and their heirs and successors respectively, all such his, her, or their estate, interest, or property in such lands or tenements, not exceeding five acres, or goods and chattels, or any part or parts thereof, not exceeding in value five hundred pounds, for or towards the erecting, rebuilding, repairing, purchasing, or providing any church or chapel where the liturgy and rites of the said united church are or shall be used or observed, or any mansion house for the residence of any minister of the said united church officiating, or to officiate in any such church or chapel (1), or of any out-buildings, offices, church-yard, or glebe (2), for the same respectively, and to be for those purposes applied, according to the will of the said benefactor in and by such deed enrolled, or by such will or testament executed

(1) *Chapel*:—Of chapels subject to a mother church, some are merely chapels of ease, others chapels of ease and parochial. Such distinction appears from Lyndwood's definition of a parochial chapel (De Cel. Miss. c. Effrœn. v. *Capel*): "Ubi, scilicet, parochianis deservitur de ecclesiasticis sacramentis et sacramentalibus, sic quod non teneantur accedere ad ecclesiam majorem pro divinis audiendis, vel recipiendis sacramentis, et habent ad hoc sacerdotem specialiter limitatum." Kenn. Par. Ant. 590.

A chapel merely of ease, is that, which was not allowed a font, at its institution, and which is used only for the ease of the parishioners in prayers and preaching, (sacraments and burials being received and performed at the mother church,) and commonly, where the curate is removable at the pleasure of the parochial minister: "Quando prælatus superioris ecclesiæ est curatus utriusque, exercet tamen ibi curam per vicarium non perpetuum, sed temporalem, ac removitivum ad libitum;" (De Cens. c. Quamvis Lex, v. *Una Eccl.*;) though, in this case, as observed by Lyndwood, (De Clan. Desp. c. ult. v. *Ab. ant.*) there may be (in other respects) the rights of a parochial chapel by custom: "Si autem in tali capellâ non sit institutus proprius curatus perpetuus, sed remotivus ad libitum prælatus majoris ecclesiæ; potest nihilominus, in casu, talis capella habere jura parochialia, videlicet, ex consuetudine præscriptâ." But where a chapel is instituted, though with parochial rights, there is usually (if not always) a reservation, of repairing to the mother church, on a certain day or days, in order to preserve the subordination. Kenn. Par. Ant. 595.

Instances are to be found of licences granted, (Staff. 25 (a); Court. 123 (b); 5 Fox, Wint. 151.) and orders issued, (2 E. dynd. Wint. 30 (b); Langh. 54 (b).) to administer sacraments in a chapel; and so, for oratories, (Cranm. 15 (a), 16 (b).) but both these are rare. Gibson's Codex, 209.

It seems, from the tenor of the following writ, that the distinction of free chapels is grounded on the freedom or exemption from all ordinary jurisdiction:

"Rex, Abbati sancti Jacobi Northampton, salutem. Cum ecclesia sanctæ Cædde de Salop. per progenitores nostros quondam reges Angliæ fundata, et variis libertatibus et privilegiis communita, capella libera dictorum progenitorum nostrorum à primæva sua fundatione continuè fuerit, et sic nostra sit in presenti, nobisque et ministris nostris solis et in solidum omni jure subjecta, et ab

omni provisione de decanatu, canonicislibus, et præbendis, ac officiis quibuscunque dictæ capellæ, auctoritate sedis apostolicæ seu quavis alia concedenda vel facienda, exempta penitus et immunis; quibus quidem privilegiis et libertatibus, exemptione et immunitate dicti progenitores nostri et nos, ac etiam dicta capella nostra liberè, pacificè, et quietè absque interruptione qualibet, prout de jure coronæ ad nos pertinere dignoscitur, usi sumus hactenus et gavis; ac jam intellexerimus quòd vos privilegiorum, libertatum, exemptionum, et immunitatum prædictarum considerationem non habentes, sub colore quorundam mandatorum seu commissionum vobis in hac parte factorum, processum et executiones facere nitimini, in derogationem privilegiorum, libertatum, exemptionis et immunitatis prædictorum; quæ si fierent, in nostri et juris coronæ nostræ præjudicium ac exhæredationis nostræ periculum cederent manifestum: nos conservationi jurium nostrorum volentes prospicere ut debemus, vobis prohibemus ne quicquam in præmissis quod in nostri vel dictæ capellæ nostræ præjudicium, seu jurium nostrorum, cedere valeat quovismodo, attentetis indebitè seu per alios attentari faciatis. Et si quæ per vos in hac parte perperam attentata fuerint, ea sine dilatione revocari faciatis." Reg. 40 (b).

(2) *Glebe*:—Every church, of common right, is entitled to house and glebe; and are both comprehended under the name of manse. The rule of the canon law is, "Sancitum est, ut unicuique ecclesiæ unus mansus integer, absque ullo servitio, tribuatur;" (Extra. l. 3, t. 39, c. 1.) which is repeated in the canons of Egbert, (Can. 25.) and the assigning of these was of such absolute necessity, that without them no church could be regularly consecrated; which is the foundation of Lyndwood's definition, (Lyndw. de Eccl. Ædif. c. Licet. v. *Gleba*), "Gleba, id est, terra in quâ consistit dos ecclesiæ, et talis dos debet esse libera à quocunque servitio seculari." And it was likewise stated by Hobart, in the case of *Mabie*, "If I let my rectory, excepting my glebe, the exception is void, for no rectory may be without glebe." Winch (Sir H.), 23.

The foregoing decree of the canon law, adds: "Et presbyteri in eis constituti, non de decimis, neque de oblationibus fidelium, non de domibus, neque de areis, vel de hortis juxta ecclesiam positos, neque de prædicto manso aliquod servitium faciant præter ecclesiasticum. Et si aliquid amplius habuerint, inde senioribus debitum servitium impendant." Extra. l. 3 t. 39, c. 1. Gibson's Codex, 661.

as aforesaid expressed, the consent and approbation of the ordinary being first obtained, and in default of such direction, limitation, or appointment, in such manner as shall be directed and appointed by the patron and ordinary, with the consent and approbation of the parson, vicar, or other incumbent; and such person and persons, bodies politic and corporate, and their heirs and successors respectively, shall have full capacity and ability to purchase, receive, take, hold, and enjoy, for the purposes aforesaid, as well from such persons as shall be so charitably disposed to give the same, as from all other persons as shall be willing to sell or aliene to such person or persons, bodies politic or corporate, any lands or tenements, goods or chattels, without any licence or writ of *ad quod damnum*, the statute of mortmain, or any other statute or law to the contrary notwithstanding: provided always, that this act or any thing therein contained, shall not extend to enable any person or persons being within age, or of non-sane memory, nor women covert without their husbands, to make any such gift, grant, or alienation; any thing in this act contained to the contrary in anywise notwithstanding.

“II. Provided also, and it is hereby further enacted, that no more than one such gift or devise shall be made by any one person, and that if any such gift or devise as aforesaid shall happen to exceed five acres in lands or tenements, or the value of five hundred pounds in goods and chattels, every such gift or devise shall be good and valid to the extent aforesaid; and it shall be lawful for the lord chancellor for the time being, on petition, to make order for reducing every such gift or devise to and within the said limits, and for allotting such specific five acres, and if occasion should require, such specific goods and chattels as in his judgment shall be most convenient, and to make such further order touching the premises as to him shall appear just and reasonable.

“III. Provided also, that no glebe containing upwards of fifty acres, shall be augmented with more than one acre under or by virtue of this act, but that the excess, if any given or devised for the purpose of such augmentation, shall be reduced in manner aforesaid, by the said lord chancellor, and such order thereupon shall be by him made as herein before is directed in the case of an excess beyond five acres.

“IV. And whereas it often happens that small plots of land held in mortmain lie convenient to be annexed to some such church or chapel, or house of residence as aforesaid, or to some churchyard, or curtilage thereto belonging, or convenient to be employed as the site of some such church or chapel, or house to be hereafter erected, and for the necessary and commodious use and enjoyment thereof, and that they might be so employed to the advantage of the public, and without detriment to the proprietors thereof, if they were enabled to give and grant the same for the purposes aforesaid; be it therefore further enacted, that it shall be lawful for every body politic or corporate, sole or aggregate, by deed enrolled as aforesaid, with or without confirmation, as the law may require, to give and grant, either by way of exchange or benefaction, any such small plot of land not exceeding one acre, to any person or persons, body politic or corporate, his and their heirs and successors respectively, to be held, used, and applied for the purposes aforesaid; and such last-mentioned person and persons, bodies politic and corporate, and their heirs and successors respectively, shall have full capacity and ability, with consent of the incumbent, patron, and ordinary, to take, hold, and enjoy such small plot of land for the purposes aforesaid, without any licence or writ of *ad quod damnum*, the statute of mortmain, or any other act or law to the contrary notwithstanding.

“V. Provided also, and it is hereby further enacted and declared, that in every parochial church or chapel hereafter to be erected, ample provision shall be made for the decent and suitable accommodation of all persons, of what rank or degree soever, who may be entitled to resort to the same, and whose circumstances may render them unable to pay for such accommodations.

“VI. Provided also, that nothing in this act contained shall be construed to take away or abridge any right of giving or devising which already exists in any person whatsoever.”

STAT. 43 GEO.
3, c. 108.

But such powers not to extend to persons within age, insane, or females covert.

Only one such gift shall be made by one person, and where it exceeds five acres or 500*l.* the chancellor may reduce it.

No glebe upwards of fifty acres shall be augmented with more than one acre.

Plots of land not exceeding one acre held in mortmain, lying convenient to be annexed to some church, &c. may be granted either by exchange or benefaction for that purpose.

Accommodation to be provided for persons resorting to church, &c.

Rights of giving or devising not affected.

STAT. 43 GEO.
3, c. 109.

CCCXXX. STAT. 43 GEORGII 3, c. 109 (1). A.D. 1803.

"An Act to rectify a mistake in an Act made in this present Session of Parliament, intituled, An Act to amend the Laws relating to Spiritual Persons holding of Farms; and for enforcing the Residence of Spiritual Persons on their Benefices in England; and to remove a Doubt respecting the title of the Statute of the twenty-first year of King Henry the Eighth, therein mentioned."

STAT. 43 GEO.
3, CAP. CXVII

CCCXXXI. STAT. 43 GEORGII 3, CAP. CXVII. A.D. 1803.

"An Act for erecting a new Church, to be called Christ Church, in the Town of Birmingham, in the County of Warwick; and for providing a Maintenance and Residence for the Minister or Perpetual Curate thereof."

STAT. 43 GEO.
3, CAP. CXLIII.

CCCXXXII. STAT. 43 GEORGII 3, CAP. CXLIII. A.D. 1803.

"An Act for altering and enlarging some of the Provisions of an Act passed in the thirty-sixth year of His present Majesty's Reign, intituled, An Act for amending an Act passed in the thirtieth year of the Reign of His present Majesty, intituled, An Act for taking down the Church and Tower belonging to the Parish of Saint John at Hackney, in the County of Middlesex; and for building another Church and Tower for the use of the said Parish; and for making an additional Cemetery or Churchyard; and for raising a further Sum of Money for completing the said Church and other Works."

STAT. 43 GEO.
3, c. 158. [Ir.]

CCCXXXIII. STAT. 43 GEORGII 3, c. 158 (2). [IRELAND.] A.D. 1803.

"An Act for granting to His Majesty the Sum of Fifty Thousand Pounds for building Glebe Houses in Ireland."

[The lord lieutenant may order 50,000*l.*, Irish currency, to be issued out of the consolidated fund of Ireland to the commissioners of first-fruits, to be advanced on loan to incumbents, in the manner prescribed by Stat. 43 Geo. 3, c. 106. Securities for repayment of the money shall be taken as the treasury, with the approbation of the lord lieutenant, shall direct.]

STAT. 44 GEO.
3, c. 2.

CCCXXXIV. STAT. 44 GEORGII 3, c. 2 (3). A.D. 1803.

"An Act for granting to His Majesty the Sum of Eight Thousand Pounds for the present Relief of certain Curates in England."

STAT. 44 GEO.
3, CAP. XII.

CCCXXXV. STAT. 44 GEORGII 3, CAP. XII. A.D. 1804.

"An Act for effectuating an Exchange of certain parts of the Glebe Land belonging to the Rectory of Bradsted, in the County of Kent, for certain Lands the Property of the Right Honourable Frederick Campbell, commonly called Lord Frederick Campbell, within the Parish of Bradsted aforesaid."

STAT. 44 GEO.
3, c. 43.

CCCXXXVI. STAT. 44 GEORGII 3, c. 43. A.D. 1804.

"An Act to enforce the due Observance of the Canons and Rubrics respecting the Ages of Persons to be admitted into the sacred Orders of Deacon and Priest."

"Whereas by the canons of the churches heretofore of England and Ireland, now the united church of England and Ireland, it is ordained, ordered and directed, that no bishop shall admit any person into the sacred order of a deacon who is not twenty-three years old, nor to be a priest except he be twenty-four years complete; and whereas by the prefaces to the forms of ordination of priests and deacons, established and used by authority of several acts of the parliaments of England and Ireland respectively, it is directed that none shall be admitted deacon

(1) Repealed by Stat. 57 Geo. 3, c. 99,
and Stat. 1 & 2 Vict. c. 106.

(2) Amended by Stat. 47 Geo. 3, Sess. 2,
c. 23.

(3) Expired.

except he be twenty-three years of age, unless he have a faculty, and that every man which is to be admitted a priest shall be full twenty-four years old; and whereas, in that part of the united kingdom called Ireland, the aforesaid rule respecting the ages of persons desiring to be admitted into holy orders has been sometimes disregarded and rendered of no effect, to the great scandal and detriment of the church, and to the prejudice of religion: for the better prevention whereof for the future, and also in order that one certain and undoubted rule and course of practice may hereafter prevail and be observed in this respect in England and Ireland, be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that, from and after the passing of this act, no person shall be admitted a deacon before he shall have attained the age of three and twenty years complete, and that no person shall be admitted a priest before he shall have attained the age of four and twenty years complete: and in case any person shall, from and after the passing of this act, be admitted a deacon before he shall have attained the age of three and twenty years complete, or be admitted a priest before he shall have attained the age of four and twenty years complete, that then and in every such case the admission of every such person as deacon or priest respectively, shall be merely void in law as if such admission had not been made, and the person so admitted shall be wholly incapable of having, holding, or enjoying, or being admitted to any parsonage, vicarage, benefice, or other ecclesiastical promotion or dignity whatsoever, in virtue of such his admission as deacon or priest respectively, or of any qualification derived or supposed to be derived therefrom: provided always, that no title to confer or present by lapse shall accrue by any avoidance or deprivation, *ipso facto*, by virtue of this statute, but after six months' notice of such avoidance or deprivation given by the ordinary to the patron.

STAT. 44 GEO.
3, c. 43.

Deacons not to be admitted before twenty-three, nor priests before twenty-four.

"II. And be it further enacted, that nothing herein contained shall extend, or be construed to extend, to take away any right of granting faculties heretofore lawfully exercised, and which now be lawfully exercised by the Archbishop of Canterbury or the Archbishop of Armagh."

Not to affect the right of granting faculties.

CCCXXXVII. STAT. 44 GEORGH 3, c. 63. [IRELAND.] A.D. 1804.

STAT. 44 GEO.
3, c. 63. [Ir.]

"*An Act for vesting a capital Messuage, with the Appurtenances, situate in Kevin Street, in the City of Dublin, called the Palace of the Archbishop of Dublin, at Saint Sepulchre's, in His Majesty, his Heirs, and Successors, and for applying the Purchase Money, together with another Sum therein mentioned, in manner and for the Purposes therein mentioned.*"

CCCXXXVIII. STAT. 44 GEORGH 3, CAP. LXIII. A.D. 1804.

STAT. 44 GEO.
3, CAP. LXIII.

"*An Act for altering and amending an Act of Parliament passed in the thirty-fifth year of the Reign of His present Majesty, intituled, An Act for enabling the Lord Bishop of London to grant a Lease, with powers of renewal, of Lands in the Parish of Paddington, in the County of Middlesex, for the purpose of Building upon; and for granting further Powers, the better to carry into execution the Purposes of the said Act.*"

CCCXXXIX. STAT. 44 GEORGH 3, c. 77 (1). A.D. 1804.

STAT. 44 GEO.
3, c. 77.

"*An Act to render valid certain Marriages solemnized in certain Churches and public Chapels in which Banns had not usually been published before, or at the time of passing an Act, made in the twenty-sixth year of the Reign of His late Majesty King George the Second, intituled, An Act for the better preventing of Clandestine Marriages.*"

"Whereas since the making of an act passed in the twenty-sixth year of the reign of his late majesty King George the Second, intituled, 'An Act for the

26 Geo. 2, c. 33.

STAT. 44 GEO. 3, c. 77. better preventing of clandestine Marriages;’ and also of an act passed in the twenty-first year of the reign of his present majesty, intituled, ‘An Act to render valid

21 Geo. 3, c. 53. certain Marriages solemnized in certain Churches and public Chapels in which Banns had not usually been published before or at the Time of passing an Act, made in the twenty-sixth year of King George the Second, intituled, “An Act for the better preventing of clandestine Marriages,”” divers churches and chapels have been erected and built within that part of Great Britain called England, Wales, and town of Berwick-upon-Tweed, which have been duly consecrated, and divers marriages have been solemnized therein since the passing of the said last-mentioned act; but, by reason that in such churches and chapels banns of matrimony had not usually been published before or at the time of passing the said first-mentioned act, such marriages have been or may be deemed to be void: may it therefore please your majesty that it may be enacted, and be it enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that all marriages already solemnized, or to be solemnized before the twenty-fifth day of March, one thousand eight hundred and five, in any church or public chapel in that part of Great Britain called England, Wales, and the town of Berwick-upon-Tweed, erected since the making of the said act of the twenty-sixth year of the reign of his late majesty King George the Second, and consecrated, shall be as good and valid in law as if such marriages had been solemnized in parish churches, or public chapels having chapelries annexed, and wherein banns had usually been published before or at the time of passing the said last-mentioned act.

Rendering valid marriages solemnized in chapels before March 25, 1805.

Indemnifying ministers who have solemnized such marriages.

“II. And be it further enacted by the authority aforesaid, that all parsons, vicars, ministers, and curates, who, before the said twenty-fifth day of March, one thousand eight hundred and five, shall have solemnized any of the marriages which are hereby enacted to be valid in law, shall be and they are hereby indemnified against the penalties inflicted by the said act of the twenty-sixth year of the reign of his said late majesty King George the Second, upon persons who shall solemnize marriages in any other place than a church or public chapel in which banns had been usually published before or at the time of passing the said last-mentioned act.

Registers of such marriages to be received as evidence.

“III. And be it further enacted by the authority aforesaid, that the registers of marriages solemnized or to be solemnized in the said churches or chapels, which are hereby enacted to be valid in law, or copies thereof, shall be received in all courts of law and equity as evidence of such marriages, in the same manner as the registers of such marriages solemnized in parish churches or public chapels in which banns were usually published before or at the time of passing the said act of the twenty-sixth year of the reign of his said late majesty King George the Second, or copies thereof, are received in evidence: provided nevertheless, that in all such courts the same objections shall be available to the receiving such registers or copies in evidence, as would have been available to the receiving the same as evidence, if such registers or copies had related to marriages mentioned in such last-mentioned parish churches or public chapels as aforesaid.

Registers of marriages solemnized in chapels, to be removed to the parish churches adjoining.

“IV. And be it further enacted by the authority aforesaid, that the registers of all marriages solemnized in any public chapels, which are hereby enacted to be valid in law, shall, within fourteen days next after the said twenty-fifth day of March, one thousand eight hundred and five, be removed to the parish church of the parish in which such chapel shall be situated, and in case such chapel shall be situated in an extra-parochial place, then to the parish church next adjoining to such extra-parochial place, to be kept with the marriage registers of such parish, and in like manner as parish registers are directed to be kept by the said act of the twenty-sixth year of the reign of his said late majesty King George the Second.”

STAT. 44 GEO. 3, CAP. LXXXVIII.

CCCXL. STAT. 44 GEORGII 3, CAP. LXXXVIII. A.D. 1804.

“An Act for enabling the officiating Minister for the time being of the Chapel of Voylas, in the County of Denbigh, to publish Banns and solemnize Marriages in the said Chapel.”

CCCXLI. STAT. 44 GEORGII 3, CAP. LXXXIX. A.D. 1804.

STAT. 44 GEO.
3, CAP.
LXXXIX.*"An Act for the Relief of Certain Incumbents of Livings in the City of London."*

CCCXLII. STAT. 44 GEORGII 3, C. 98 (1). A.D. 1804.

STAT. 44 GEO.
3, C. 98.*"An Act to repeal the several Duties under the Commissioners for managing the Duties upon Stamped Vellum, Parchment, and Paper, in Great Britain, and to grant new and additional Duties in lieu thereof."*

CCCXLIII. STAT. 45 GEORGII 3, C. 28. A.D. 1805.

STAT. 45 GEO.
3, C. 28.*"An Act for granting to His Majesty additional Stamp Duties (2) in Great Britain on certain Legacies."*

CCCXLIV. STAT. 45 GEORGII 3, CAP. XLV. A.D. 1805.

STAT. 45 GEO.
3, CAP. XLV.*"An Act for establishing a new Church or Chapel at Blaenavon, in the Parish of Lanover, in the County of Monmouth."*

CCCXLV. STAT. 45 GEORGII 3, C. 77. A.D. 1805.

STAT. 45 GEO.
3, C. 77.*"An Act to amend and render more effectual an Act passed in the forty-second year of His present Majesty's Reign, for consolidating the Provisions of the several Acts passed for the Redemption and Sale of the Land Tax into one Act."*

"Whereas an act passed in the forty-second year of his present majesty's reign, intituled, 'An Act for consolidating the Provisions of the several Acts passed for the Redemption and Sale of the Land Tax into one Act; and for making further Provisions for the Redemption and Sale thereof; and for removing Doubts respecting the Right of Persons claiming to vote at Elections for Knights of the Shire, and other Members, to serve in Parliament, in respect of Messuages, Lands, or Tenements, the Land Tax upon which shall have been redeemed or purchased;' and whereas it is expedient that the said act should be amended and rendered more effectual in some respects, be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that where the land tax charged upon the glebe lands, tithes, or other profits, of any living, shall have been, or shall be redeemed or purchased by the patron or patrons, or any former incumbent thereof, or by any other person or persons, it shall be lawful for the incumbent for the time being of such living, to treat and agree for the purchase of an assignment of such land tax for the benefit of such living, and for the purpose of raising money to purchase such assignment from such patron or patrons, or former incumbent, or other person or persons, his, her, or their heirs, executors, administrators, or assigns, to carry into execution all and every, or any of the powers which by the said recited act are given in order to raise money by sale, mortgage, or grant, for the redemption of land tax, in such and the same manner, and under and subject to such and the same rules, restrictions, and regulations, in all respects, as such incumbent for the time being might have carried into execution the same powers for the purpose of redeeming such land tax, in the first instance, and the land tax so assigned shall forthwith become merged and extinguished for the benefit of such living: provided always, that the monies to arise from any such sale, mortgage, or grant, shall not be paid into the bank of England, or to any receiver-general or collector, but the same, or so much thereof as shall be requisite, shall, under the order of any two of the commissioners appointed, or to be appointed, for the purposes of the said recited act, under the great seal, be paid to the person or persons assigning such land tax, whose

42 Geo. 3,
c. 116.Incumbent for
the time being
may purchase
the land tax
redeemed for
the benefit of
such living.Application of
money arising
by such sale.

(1) Repealed by Stat. 55 Geo. 3, c. 185. (2) Duties:—Repealed by Stat. 55 Geo. 3, c. 184.

STAT. 45 GEO. 3, c. 77. receipt or receipts, in pursuance of such order, shall effectually discharge the respective purchasers or mortgagees; and the remainder of such monies, in case any such shall be, after payment of the costs and expenses which shall have been incurred on account of such sale, mortgage, or grant, and assignment, and have been allowed by the said commissioners, shall, in pursuance of the like order, be paid into the bank of England, or to the receiver-general or collector, as the case may require, and be applied in like manner as in the said recited act is directed in the case of monies arising from sales, mortgages, or grants, made for the purpose of purchasing assignments of land tax, under the said act: provided also, that no such assignment of land tax, or any such deed of sale, mortgage, or grant, in pursuance of this act, shall be liable to any stamp duty whatever."

Assignments not liable to stamp duty.

STAT. 45 GEO. 3, c. 84.

CCCXLVI. STAT. 45 GEORGHII 3, c. 84 (1). A.D. 1805.

"An Act for making more effectual the gracious Intentions of Her late Majesty Queen Anne, for the Augmentation of the Maintenance of the Poor Clergy, so far as relates to the Returns of Certificates into the Exchequer and Gifts of Personal Property."

1 Geo. 1, c. 10.

"Whereas by an act passed in the first year of the reign of his late majesty King George the First, intituled, 'An Act for making more effectual her late Majesty's gracious Intentions for augmenting the Maintenance of the Poor Clergy,' the respective bishops of every diocese were empowered from time to time, as they should see occasion, and as might best serve the purposes of the said bounty to the poor clergy, to inform themselves by such means as in the said act are mentioned, of the clear improved yearly value of every benefice with cure of souls, living, and curacy, and of the true and clear improved yearly value of the maintenance of every parson, vicar, curate, and minister officiating in any such churches or chapels as are therein mentioned, and how such yearly values arose, with the other circumstances thereof, and the same to certify to the said governors, for their better information in the premises; in which said act is contained a proviso, that where by certificates returned into her said majesty's court of Exchequer at Westminster,

5 Ann. c. 24.

pursuant to an act made in the fifth year of her reign, intituled, 'An Act for discharging small Livings from their First-fruits and Tenths, and all Arrears thereof;' and one other act made in the sixth year of her reign, intituled, 'An Act to enlarge the Time for returning the Certificates of all Ecclesiastical Livings not exceeding the yearly Value of Fifty Pounds, and for other Purposes,' or either of them, or made good by the said recited act of the first year of King George the First, the yearly value of any livings not exceeding the clear yearly value of fifty pounds, were particularly and duly expressed and specified, such certificates should ascertain the yearly values of such livings, in order to their being augmented by the said governors, and no new or different valuation thereof should be returned to the said governors by virtue of the said recited act; and whereas since the time that such certificates were returned into the Exchequer, in pursuance of the said acts of the fifth and sixth of her said late majesty Queen Anne, many livings in such certificates mentioned, and thereby returned as not exceeding the clear yearly value of fifty pounds, for the purpose of being discharged from first-fruits and tenths, are by subsequent improvement of their glebes and tithes, and by inclosures and other means, become of much greater value: and in order that the bounty of her said late majesty may be applied as was originally intended, for the augmentation of small livings, in places where the same are not already sufficiently provided for, and that her majesty's gracious intentions for the relief of the poor clergy may be more speedily and effectually carried into execution, it is become expedient that the governors of the said bounty should be empowered to receive new valuations of such livings as were so returned into the Exchequer: may it therefore please your majesty that it may be enacted; and be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal,

6 Ann. c. 27.

and commons, in this present parliament assembled, and by the authority of the same, that the respective bishops of every diocese, and the guardians of spiritualities *sede vacante*, shall be and are hereby empowered from time to time as they shall see occasion, and as may best serve the purposes of the said bounty to the poor clergy, by such ways and means as in the said act of the first year of his majesty King George the First, are mentioned in that behalf, to inform themselves of the clear improved yearly value of such benefices with cure of souls, livings, and curacies as were returned into the Exchequer in pursuance of the said acts of the fifth and sixth years of the reign of her said late majesty Queen Anne, within their several dioceses, or within any peculiars or places of exempt jurisdiction within the bounds and limits of their respective dioceses, or adjoining or contiguous thereto, although the same be exempt from the jurisdiction of any bishop in other cases, and how such yearly values arise, with the other circumstances thereof; and the same or such of them, whereof they shall have fully informed themselves, from time to time with all convenient speed to certify to the said governors of the bounty of Queen Anne, for the augmentation of the maintenance of the poor clergy, for their better information in the premises; and the said governors are hereby authorized and empowered, with respect to the augmentation of such livings, so formerly certified into the Exchequer as aforesaid, to act upon and be guided by such new certificates of the value and other circumstances thereof, made in pursuance of this act, as fully and effectually to all intents and purposes as they are in and by the said first herein before mentioned and in part recited act, enabled to do with regard to such livings as were not so certified into the Exchequer, and as if the restraint of the said proviso therein had not been made, the same proviso or any thing in the said recited act to the contrary thereof in anywise notwithstanding.

“II. Provided always, and be it enacted, that such certificates as were returned into the Exchequer for the purpose of ascertaining what livings were to be discharged from first-fruits and tenths, shall not, so far as the same relate to the first-fruits and tenths, be affected or altered in any manner whatsoever by any thing in this act contained.

“III. And in order to facilitate the intentions of all such persons as may be disposed to contribute to the augmentation of such livings and curacies as are within the meaning of the laws now in force, respecting the said bounty; be it further enacted, that it shall be lawful for any person or persons having in his, her, or their own right, any money, goods, chattels, or other personal effects, at his, her, or their will and pleasure, to give or grant to, or vest in the said governors of the bounty of Queen Anne and their successors, to be by them disposed of according to law, all or any part of such money, goods, chattels, or other personal effects, without any deed or deeds, either enrolled or not enrolled, in like manner as he, she, or they could or might have done, either by deed or deeds enrolled or otherwise, before the passing of this act, any statute or law to the contrary in anywise notwithstanding.

“IV. Provided nevertheless, that nothing herein contained shall in any manner alter or affect the law now in force respecting the gift or conveyance of any lands, tenements, or hereditaments, by any deed or deeds, or the disposition thereof, or of any goods, chattels, or other personal property, by will or testament.”

STAT. 45 GEO. 3, c. 84.

Bishops and guardians to inquire into value of benefices returned into the Exchequer, and certify the same to the governors of Queen Anne's bounty, who shall be empowered to act upon such new certificate as they are now enabled to do with respect to livings not returned into the Exchequer.

Not to affect livings with respect to their discharge from first-fruits and tenths.

For facilitating the intentions of persons disposed to contribute towards augmentation of livings.

Not to affect the laws respecting the gift or conveyance of lands, &c.

CCCXLVII. STAT. 45 GEORGII 3, CAP. LXXXVI. A.D. 1805.

“An Act for enabling the Dean and Chapter of Canterbury to grant a Building Lease of certain Lands in the County of Surrey, for the term of Ninety-nine years, to William Clutton and Robert Boxall, pursuant to an Agreement entered into for that Purpose.”

STAT. 45 GEO. 3, CAP. LXXXVI.

CCCXLVIII. STAT. 45 GEORGII 3, CAP. C. A.D. 1805.

“An Act for rebuilding the Parish Church of All Saints, in the Town of Lewes, in the County of Sussex, and for repairing the Tower thereof.”

STAT. 45 GEO. 3, CAP. C.

STAT. 45 GEO.
3, c. 101.

CCCXLIX. STAT. 45 GEORGII 3, c. 101 (1). A.D. 1805.

"An Act to repeal so much of an Act passed in the ninth year of the Reign of His late Majesty King George the Second, intituled, An Act to restrain the Disposition of Lands whereby the same become unalienable, as restrains Colleges within the two Universities of Oxford and Cambridge from purchasing or holding Advowsons, except as therein is provided."

9 Geo. 2, c. 36.

"Whereas it is amongst other things provided by an act, passed in the ninth year of the reign of his late majesty King George the Second, intituled, 'An Act to restrain the Disposition of Lands, whereby the same become unalienable,' that no college or house of learning in either of the two universities within that part of the united kingdom called England, which doth or shall hold or enjoy so many advowsons of ecclesiastical benefices as are or shall be equal in number to one moiety of the fellows, or persons usually styled or reputed as fellows, or where there are or shall be no fellows, or persons usually styled or reputed as fellows, to one moiety of the students upon the foundation whereof any such college or house of learning doth or may by the present constitution of such college or house of learning consist, shall, from and after the twenty-fourth day of June, one thousand seven hundred and thirty-six, be capable of purchasing, acquiring, receiving, taking, holding, or enjoying, any other advowsons of ecclesiastical benefices by any means whatever, the advowsons of such ecclesiastical benefices as are annexed to or given for the benefit or better support of the headships of any of the said colleges or houses of learning, not being computed in the number of advowsons hereby limited: and whereas the above restriction has been found by experience to operate to the prejudice of such colleges or houses of learning, by rendering the succession too slow; and whereas the removal of such restriction will be for the benefit of such colleges or houses of learning, and of the said universities, and will tend to the promotion of learning, and to the providing a better supply of fit and competent parochial ministers; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that so much of the said statute as is herein before recited shall be and the same is hereby repealed."

So much of
recited act as
restrains col-
leges from
purchasing or
holding advow-
sons, repealed.

STAT. 45 GEO.
3, CAP. CXI.

CCCL. STAT. 45 GEORGII 3, CAP. CXI. A.D. 1805.

"An Act to establish and confirm an Exchange made by and between the Rector of the Parish Church of Wimborne Saint Giles and Allhallows, in the County of Dorset, and the Right Honourable Anthony Ashley, Earl of Shaftesbury, of part of his Glebe Lands, and other Lands held and enjoyed with the said Rectory, for other Lands there, the Property of the said Earl, which are more conveniently situated for the said Rector and his Successors."

STAT. 45 GEO.
3, CAP. CXIII.

CCCLI. STAT. 45 GEORGII 3, CAP. CXIII. A.D. 1805.

"An Act for enlarging the Powers of an Act passed in the thirty-fifth year of the Reign of His present Majesty, intituled, An Act for enabling the Lord Bishop of London to grant a Lease, with Powers of Renewal, of Lands in the Parish of Paddington, in the County of Middlesex, for the Purpose of building upon."

(1) Vide Stat. 9 Geo. 2, c. 36, *antè* 795.

CCCLII. STAT. 45 GEORGII 3, CAP. CXV. A.D. 1805.

STAT. 45 GEO.
3, CAP. CXV.

"An Act for confirming certain building Leases of Lands in Walworth, in the Parish of Saint Mary, Newington, in the County of Surrey, granted by the Dean and Chapter of Canterbury jointly with their Lessees, Henry Penton, Esq., and Samuel Brandon, and Thomas Brandon, Esquires, contrary to the Provisions of an Act made in the fourteenth year of the Reign of His present Majesty, and for establishing Exchanges of three small Pieces of Freehold and Leasehold Lands between the said Dean and Chapter and the said Samuel Brandon, and the Trustees under the Will of the said Thomas Brandon, deceased; and for empowering the said Dean and Chapter, and their Lessees for the time being of their Estates in Walworth, to grant building Leases of Parts of the said Premises, and for other the Purposes therein mentioned."

CCCLIII. STAT. 46 GEORGII 3, CAP. IV. A.D. 1806.

STAT. 46 GEO.
3, CAP. IV.

"An Act for taking down and rebuilding the Body of the Parish Church of Chertsey, in the County of Surrey, and for repairing the Tower thereof, and building a Vestry-room near or adjoining to the said Church."

CCCLIV. STAT. 46 GEORGII 3, C. 60(1). [IRELAND.] A.D. 1806.

STAT. 46 GEO.
3, C. 60. [IR.]

"An Act for amending an Act passed in Ireland, in the twenty-ninth year of King George the Second, intituled, An Act for amending and making more effectual the several Laws relating to the First-fruits payable out of Ecclesiastical Benefices in this Kingdom, and for the better Regulation and Management of the charitable Bequest of Dr. Hugh Boulter, late Lord Archbishop of Armagh, for augmenting the Maintenance of poor Clergy in this Kingdom, so far only as relates to the said charitable Bequest."

CCCLV. STAT. 46 GEORGII 3, CAP. LXI. A.D. 1806.

STAT. 46 GEO.
3, CAP. LXI.

"An Act for repairing the Parish Church of Great Yarmouth, in the County of Norfolk, and rebuilding the Tower thereof."

CCCLVI. STAT. 46 GEORGII 3, C. 122(2). [IRELAND.] A.D. 1806.

STAT. 46 GEO.
3, C. 122. [IR.]

"An Act to revive and amend an Act, made in the Parliament of Ireland, for enabling the Lord Lieutenant to appoint Commissioners for inquiring into the several Funds and Revenues granted for the Purposes of Education, and into the State and Condition of all Schools in Ireland."

CCCLVII. STAT. 46 GEORGII 3, CAP. CXXIII. [IRELAND.] A.D. 1806.

STAT. 46 GEO.
3, CAP. CXXIII
[IR.]

"An Act for altering and enlarging the Provisions of an Act, passed in the Parliament of Ireland, in the thirty-third year of His present Majesty, for making and constituting a new Parish, by the Name of the Parish of Saint George, on the Ground adjoining the City of Dublin therein described, and for erecting and building a Parish Church therein."

CCCLVIII. STAT. 46 GEORGII 3, CAP. CXXIV. A.D. 1806.

STAT. 46 GEO.
3, CAP. CXXIV.

"An Act to enable the Vestrymen of the Parish of Saint Mary-le-bone, in the County of Middlesex, to provide an additional Cemetery or Burial Ground for the said Parish, and to erect a Chapel therein, and also other Buildings and Conveniences for the Residence of a Clergyman, Clerk, and Sexton, and for other Purposes relating thereto."

STAT. 46 GEO.
3, c. 133.

CCCLIX. STAT. 46 GEORGII 3, c. 133(1). A.D. 1806.

"An Act to amend an Act passed in the forty-second year of His present Majesty, for consolidating the several Acts passed for the Redemption and Sale of the Land Tax, and to make further Provision for exonerating small Livings and Charitable Institutions from the Land Tax."

Incumbents to transmit statements of the income of their livings, and certificates of the amount of land tax.

"III. And be it further enacted, that any incumbent of any such living, or other ecclesiastical benefice, and all feoffees or trustees of any such charitable institution, who shall be desirous that the messuages, lands, tenements, or other hereditaments, belonging to such living, or ecclesiastical benefice, or charitable institution, should be exonerated from land tax under the provisions of this act, shall, within six calendar months after the passing of this act, transmit a memorial to the said commissioners, verified in such manner as they shall require and direct, stating the nature and description of the property, or other funds or sources from whence the income of such living, or ecclesiastical benefice, or charitable institution is derived, and the amount of income derived from each respectively; and shall also at the same time transmit to the said commissioners a certificate or certificates, signed by two or more of the commissioners of land tax or supply, acting for the hundred, ward, lathe, wapentake, rape, or other division of the county, riding, city, borough, cinque-port, town, or place, within which the messuages, lands, tenements, or hereditaments, belonging to such living, or other ecclesiastical benefice, or charitable institution, shall be situate; which certificate or certificates such last-mentioned commissioners are hereby authorized and required to grant, containing a description in writing of the messuages, lands, tenements, or hereditaments, belonging to such living, or other ecclesiastical benefice, or charitable institution, and the name of the parish or place, or parishes or places, within which the same shall be situate, and the amount or amounts of land tax charged thereon; provided always, that it shall be lawful for the said commissioners, appointed by letters patent under the great seal, if they shall deem it expedient, to enlarge the time by this act limited for the transmission of memorials and certificates as aforesaid, for any further period not exceeding six months from the expiration of the period by this act limited as aforesaid; and all memorials and certificates which shall be transmitted to the said commissioners within such extended period, shall be as valid and effectual to enable the exoneration of land tax, under the provisions of this act, as if the same had been transmitted within the period herein prescribed."

STAT. 46 GEO.
3, CAP. CXLIII.

CCCLX. STAT. 46 GEORGII 3, CAP. CXLIII. A.D. 1806.

"An Act for enabling the Trustees of certain Charity Lands at Deptford, in the County of Kent, to grant building Leases thereof."

STAT. 46 GEO.
3, CAP. CXLIV.

CCCLXI. STAT. 46 GEORGII 3, CAP. CXLIV. A.D. 1806.

"An Act for establishing and well governing the Charitable Institution, commonly called The Philanthropic Society, formed for the Protection of poor Children, the Offspring of convicted Felons; and for the Reformation of Children who have themselves been engaged in criminal Practices, and for incorporating the Subscribers thereto, and for the better empowering and enabling them to carry on their charitable and useful Designs."

(1) Amended by Stat. 49 Geo. 3, c. 67; Stat. 50 Geo. 3, c. 58; Stat. 53 Geo. 3, c. 123; Stat. 54 Geo. 3, c. 173. Powers re-
newed for exonerating charitable institutions from the land tax by Stat. 57 Geo. 3, c. 100, and Stat. 1 & 2 Vict. c. 58.

CCCLXII. STAT. 46 GEORGII 3, c. 151 (1). A.D. 1806

STAT. 46 GEO.
3, c. 151.

"An Act to enable His Majesty to grant new Leases on former Rents for the Benefit of Charitable Institutions, or Augmentation of Ecclesiastical Corporations."

CCCLXIII. STAT. 47 GEORGII 3, SESS. 1, CAP. X. A.D. 1807.

STAT. 47 GEO.
3, SESS. 1,
CAP. X.

"An Act for enabling the Trustees for executing an Act, passed in the forty-sixth year of His present Majesty, intituled, An Act for taking down and rebuilding the Body of the Parish Church of Chertsey, in the County of Surrey, and for repairing the Tower thereof, and building a Vestry-room near or adjoining to the said Church, to raise a further Sum of Money for completing the Purposes of the said Act."

CCCLXIV. STAT. 47 GEORGII 3, SESS. 1, CAP. XV. A.D. 1807.

STAT. 47 GEO.
3, SESS. 1,
CAP. XV.

"An Act for enlarging the Churchyard belonging to the Parish of Saint Martin, in the Town of Birmingham, in the County of Warwick, and for providing an additional Cemetery or Burial Ground for the Use of the said Parish."

CCCLXV. STAT. 47 GEORGII 3, SESS. 1, CAP. XXVIII. A.D. 1807.

STAT. 47 GEO.
3, SESS. 1,
CAP. XXVIII.

"An Act for granting to the Chapel lately rebuilt in the Royal Hospital of Bridewell, all the Rights and Privileges belonging to the former Chapel of the said Hospital, lately taken down."

CCCLXVI. STAT. 47 GEORGII 3, SESS. 2, c. 23 (2). [IRELAND.] A.D. 1807.

STAT. 47 GEO.
3, SESS. 2, c.
23. [Ir.]

"An Act to amend an Act passed in the forty-third year of His present Majesty, for granting to His Majesty the Sum of Fifty thousand Pounds for building Glebe Houses in Ireland."

CCCLXVII. STAT. 47 GEORGII 3, SESS. 2, CAP. LXI. A.D. 1807.

STAT. 47 GEO.
3, SESS. 2,
CAP. LXI.

"An Act for settling the Right of Patronage or Presentation of or to a Chapel, to be called Shireoaks Chapel, in the Parish of Worksop, in the County of Nottingham."

CCCLXVIII. STAT. 47 GEORGII 3, SESS. 2, c. 75 (3). A.D. 1807.

STAT. 47 GEO.
3, SESS. 2, c.
75.

"An Act for suspending the Operation of an Act of the thirty-sixth year of His present Majesty, for the further Support and Maintenance of Curates within the Church of England, and for other Purposes in the said Act mentioned, so far as relates to the Avoidance of Benefices by the Incumbents thereof having accepted augmented Curacies."

CCCLXIX. STAT. 47 GEORGII 3, SESS. 2, CAP. LXXVI. A.D. 1807.

STAT. 47 GEO.
3, SESS. 2,
CAP. LXXVI.

"An Act for taking down the present Church, and providing a new Church and Churchyard, in the Parish of Wallsend, in the County of Northumberland, and for rendering valid certain Marriages solemnized in the said Parish while the present Church has been in a state of Decay."

CCCLXX. STAT. 47 GEORGII 3, SESS. 2, CAP. LXXVII. A.D. 1807.

STAT. 47 GEO.
3, SESS. 2,
CAP. LXXVII.

"An Act for erecting a Chapel on certain extra-parochial Land called Standard Hill, near the Town of Nottingham."

(1) Repealed, and other provisions made, 4 & 5 Gul. 4, c. 90. Stat. 6 & 7 Gul. 4, c. by Stat. 10 Geo. 4, c. 50. Stat. 5 & 6 Gul. 99.

4, c. 58.

(3) Repealed by Stat. 48 Geo. 3, c. 5.

(2) Vide Stat 3 & 4 Gul. 4, c. 37. Stat.

STAT. 47 GEO.
3, SESS. 2,
CAP. CXIV.

CCCLXXI. STAT. 47 GEORGII 3, SESS. 2, CAP. CXIV. A.D. 1807.

"An Act for separating the Chapelries and Chapels of Newcastle-under-Lyme, Burslem, Whitmore, Bucknall, and Bagnall, and Norton in the Moors, from the Rectory and Parish Church of Stoke-upon-Trent, in the County of Stafford, and for making them five distinct Rectories and Parish Churches; and for enabling the Rector of the said Parish Church of Stoke-upon-Trent for the time being to grant building Leases of certain Glebe Lands belonging to the said Rectory."

STAT. 47 GEO.
3, SESS. 2,
CAP. CXXVII.

CCCLXXII. STAT. 47 GEORGII 3, SESS. 2, CAP. CXXVII. A.D. 1807.

"An Act for vesting several Fee-farm Rents and annual Sums settled by Edward Colston, deceased, on the Master, Wardens, and Commonalty of Merchant Venturers of the City of Bristol, for the Maintenance of an Hospital and Almshouse in the said City, in Trustees to be sold, and for applying the Money to arise by such Sale in the Purchase of Lands and Hereditaments to be settled upon the Trusts on which such Fee-farm Rents and annual Sums are respectively held."

STAT. 47 GEO.
3, SESS. 2,
CAP. CXXXII.

CCCLXXIII. STAT. 47 GEORGII 3, SESS. 2, CAP. CXXXII. A.D. 1807.

"An Act for making better Provision for the Support and Maintenance of the Rector for the time being of the Parish of Saint George the Martyr, Southwark, in the County of Surrey."

STAT. 48 GEO.
3, c. 5.

CCCLXXIV. STAT. 48 GEORGII 3, c. 5. A.D. 1808.

"An Act for repealing an Act made in the forty-seventh year of His present Majesty, intituled, An Act for suspending the Operation of an Act of the thirty-sixth year of His present Majesty, for the further Support and Maintenance of Curates within the Church of England, and for other Purposes in the said Act mentioned, so far as relates to the Avoidance of Benefices by the Incumbents thereof having accepted augmented Curacies."

47 Geo. 3,
c. 75.

"Whereas by an act passed in the forty-seventh year of the reign of his present majesty, intituled, 'An Act for suspending the Operation of an Act of the thirty-sixth year of His present Majesty, for the further Support and Maintenance of Curates within the Church of England, and for other Purposes in the said Act mentioned, so far as relates to the Avoidance of Benefices by the Incumbents thereof having accepted augmented Curacies;' it was enacted that all persons who upon or at any time after the first day of the then present session of parliament, were or had been the lawful incumbents of any benefices, should, notwithstanding they had accepted such augmented cures, but without prejudice to the avoidance or right of presentation arisen from any other cause, remain and be the incumbents of such benefices until the fortieth day of the then next session of parliament, or until the death or cession of such incumbent respectively, or other lawful cause of avoidance of such benefices respectively, other than the acceptance of such augmented cures respectively: and whereas it is expedient that the said act should be repealed; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that the said act, made in the forty-seventh year of his present majesty, shall be and the same is hereby wholly repealed; and that all presentations, institutions, and inductions to benefices that were made or had taken place at any time during the last session of parliament, under the said act of the thirty-sixth of his present majesty, shall be good and effectual in law to all intents and purposes, in the same manner as if the said act of the forty-seventh of his present majesty had never been passed, any thing therein contained to the contrary notwithstanding; provided always, that the time during which any suspension shall by virtue of the said last-mentioned act have taken place of any presentation or institution, or of the effect of any presentation or institution, shall not be reckoned as part of the time during which there hath been a vacancy in any question of lapse."

Recited act
repealed.

CCCLXXV. STAT. 48 GEORGHII 3, CAP. XXII. A.D. 1808.

STAT. 48 GEO.
3, CAP. XXII.

"An Act to amend and enlarge the Powers of an Act of King William the Third, for erecting Hospitals and Workhouses, in the Borough of King's Lynn, in the County of Norfolk, and for the better employing and maintaining the Poor there."

CCCLXXVI. STAT. 48 GEORGHII 3, C. 47. [IRELAND.] A.D. 1808.

STAT. 48 GEO.
3, C. 47. [IR.]

"An Act for quieting Possessions, and confirming defective Titles in Ireland, and limiting the Right of the Crown to sue in manner therein mentioned; and for the Relief of Incumbents in respect of Arrears due to the Crown, during the Incumbency of their Predecessors."

[Crown rents, incumbents relieved in respect of arrears during the incumbency of their predecessors.]

CCCLXXVII. STAT. 48 GEORGHII 3, C. 55. A.D. 1808.

STAT. 48 GEO.
3, C. 55.

"An Act for repealing the Duties of Assessed Taxes, and granting new Duties in lieu thereof. . . ."

[Exemptions, Schedule A. Any hospital, charity school, or house provided for the reception and relief of poor persons, except such apartments therein as are or may be occupied by the officers or servants thereof, which shall severally be assessed, and be subject to the said duties as entire dwelling houses. The windows in any room of a dwelling house, licensed according to law as a chapel for the purposes of divine worship, and used for no other purpose whatsoever. Provided that every such hospital, charity school, house for the reception and relief of poor persons, or room licensed as a chapel as aforesaid, shall be brought into charge by the assessor or assessors, or in their default, by the surveyor or inspector, and shall be stated on the certificate of assessments as such; and on due proof of the fact before the commissioners by the assessors, it shall be lawful for the commissioners for executing the said act to discharge such hospital, charity school, house for the reception and relief of poor persons, and room licensed as a chapel, from the said duties, or such part thereof as is hereby intended to be exempted, in like manner as they are authorized to discharge the assessment on poor persons by this act, but not otherwise. Any hospital, charity school, or house provided for the reception or relief of poor persons.]

CCCLXXVIII. STAT. 48 GEORGHII 3, C. 65 (1). [IRELAND.] A.D. 1808.

STAT. 48 GEO.
3, C. 65. [IR.]

"An Act to make more effectual Provision for the building and rebuilding of Churches, Chapels, and Glebe Houses, and for the Purchase of Glebe Lands, Glebe Houses, and Improvements, in Ireland."

CCCLXXIX. STAT. 48 GEORGHII 3, C. 66 (2). [IRELAND.] A.D. 1808.

STAT. 48 GEO.
3, C. 66. [IR.]

"An Act for enforcing the Residence of Spiritual Persons on their Benefices in Ireland."

CCCLXXX. STAT. 48 GEORGHII 3, C. 75. A.D. 1808.

STAT. 48 GEO.
3, C. 75.

"An Act for providing suitable Interment in Churchyards or parochial Burying Grounds in England, for such dead human Bodies as may be cast on Shore from the Sea, in cases of Wreck or otherwise."

"Whereas no provision hath yet been made by the laws now in force for providing suitable interment in churchyards or parochial burying grounds, for such dead human bodies as may be cast on shore from the sea by wreck or otherwise, in that part of the United Kingdom called England: and whereas it is

(1) Repealed, and other provisions made, Gul. 4, c. 90; Stat. 6 & 7 Gul. 4, c. 99.
by Stat. 3 & 4 Gul. 4, c. 37; Stat. 4 & 5

(2) Repealed by Stat. 5 Geo. 4, c. 91.

STAT. 48 GEO.
3, c. 75.

In cases where dead human bodies shall be cast on shore, churchwardens, &c. of the parish where the body shall be found to cause the same to be removed and interred in a decent manner in the churchyard of such parish.

Minister of the parish to perform the funeral service, &c.

Rewarding persons finding dead human bodies, and giving notice thereof to parish officers.

Persons finding dead human bodies cast on shore, and not giving notice, subject to a penalty.

Expenses to be paid by churchwardens, &c.

expedient that provision should be made for the decent interment of such bodies; may it therefore please your majesty, that it may be enacted; and be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the passing of this act, the churchwarden and churchwardens, overseer and overseers of the poor for the time being of the respective parishes throughout England, in which any dead human body or dead human bodies shall be found thrown in or cast on shore from the sea by wreck or otherwise, shall, and he and they is and are hereby required, upon notice to him or them given that any such body or bodies are thrown in or cast on shore by the sea, and is or are lying within the bounds of the parish for which he or they shall be churchwarden or churchwardens, overseer or overseers of the poor, to cause the same to be forthwith removed to some convenient place, and with all convenient speed to cause such body or bodies to be decently interred in the churchyard or burial ground of such parish, so that the expenses attending on such burial do not exceed the sum which at that time is allowed in such parish for the burial of any person or persons buried at the expense of such parish: provided always, that in case any such body or bodies shall be thrown in or cast on shore from the sea in any extra-parochial place where there is no churchwarden or churchwardens, overseer or overseers of the poor, then and in every such case the constable or headborough of such place shall, on notice being given to him that such body or bodies is or are lying in such extra-parochial place, forthwith cause such body or bodies to be removed to some convenient place, and with all convenient speed cause the same to be buried in such and the like manner as the churchwardens and overseers within England are hereby required to bury such body or bodies.

“II. And be it further enacted, that every minister, parish clerk, and sexton of such respective parishes shall perform their several and respective duties in such and the like manner as is customary in other funerals, and shall admit of such body or bodies being interred in such churchyards or burial grounds without any improper loss of time, receiving for the same, by way of compensation, such and the like sums as in cases of burials made at the expense of such parishes.

“III. And be it further enacted, that in case any person or persons shall find any such body or bodies cast on shore from the sea by wreck or otherwise, and shall within six hours thereafter give notice thereof to some one of the churchwardens or overseers of the poor of the parish for the time being in which such body or bodies shall be found, or to the constable or headborough for the time being, in case such body or bodies shall be found in any extra-parochial place, or cause such notice to be left at his or their last or usual place or places of abode, then and in every such case such person or persons shall receive the sum of five shillings for his, her, or their trouble, such sum to be forthwith paid to the person or persons first giving such notice only; but nevertheless, that no greater sum than five shillings shall be paid for any one notice, although there may be a greater number of such bodies than one.

“IV. Provided always, and be it further enacted, that in case any person or persons shall find any such body or bodies cast on shore from the sea by wreck or otherwise, and shall not within six hours thereafter give notice to some one of the churchwardens or overseers of the poor of the parish for the time being in which such body or bodies shall be found, or to the constable or headborough for the time being, in case such body or bodies shall be found in any extra-parochial place, or cause such notice to be left at his or their last or usual place or places of abode, then and in every case such person or persons shall for every such offence forfeit and pay the sum of five pounds.

“V. And be it further enacted, that all necessary and proper payments, costs, charges, and expenses which shall be made or incurred in or about the execution of this act, shall be made and paid by the churchwarden or churchwardens, overseer or overseers, constable or headborough for the time being of such respective parishes and places as aforesaid.

“VI. And, for the purpose of reimbursing him or them all such payments, costs, charges, and expenses, be it further enacted, that it shall and may be lawful to and for any one justice of the peace for the county or place within that part of the United Kingdom called England, in which any such body or bodies shall have been so removed and buried as aforesaid, by any writing under his hand, to order and direct the treasurer for such county to pay such sum or sums of money to such churchwarden and churchwardens, overseer and overseers, constable or headborough, for his or their costs and expenses in or about the execution of this act (after the same shall have been duly verified on oath) as to the said justice shall seem reasonable and necessary ; and such treasurer shall and he is hereby authorized and required forthwith to pay the sum or sums of money so ordered and directed to be paid to the person or persons empowered to receive the same ; and such treasurer shall be allowed the same in his accounts.

STAT. 48 GEO.
3, c. 75.

Who are to be reimbursed by the treasurer of the county.

“VII. Provided always, and be it enacted, that in case any such churchwarden or churchwardens, overseer or overseers, constable or headborough, shall refuse or neglect to remove or cause to be removed such body or bodies from the sea shore to some convenient place prior to the interment thereof, for the space of twelve hours after such notice given to him or them, or left in writing at his or their last or usual place or places of abode by any person or persons whomsoever, or shall neglect or refuse to perform the several other duties required of him and them by this act, then and in every such case every such churchwarden or overseer, constable or headborough, shall for every such offence forfeit and pay the sum of five pounds.

Penalty on
parish officers
neglecting to
remove and
inter dead
human bodies
so found or
cast on shore.

“VIII. And be it further enacted, that all penalties and forfeitures which shall be incurred under this act, if not paid on conviction, shall be levied and recovered by distress and sale of the goods and chattels of the offender or offenders, by warrant under the hand and seal of any justice of the peace for the county or place where the offence shall happen, (which warrant such justice is hereby empowered to grant on the confession of the party, or upon the evidence of any credible witness upon oath,) and the surplus of the money arising by such distress and sale shall be returned on demand to the owner of such goods and chattels, after deducting the costs and charges of making, keeping, and selling the distress; and such penalties and forfeitures, when recovered, shall be paid to the informer or informers; and in case sufficient distress shall not be found, or such penalties and forfeitures shall not be paid forthwith, it shall and may be lawful to and for such justice, and he is hereby authorized and required, by warrant under his hand and seal, to cause the offender or offenders to be committed to the common gaol or house of correction of such county or place, there to remain without bail or main-prize, for any time not exceeding two calendar months, nor less than fourteen days, unless such penalties and forfeitures, and all reasonable charges attending the recovery thereof, shall be sooner fully paid and satisfied.

Recovery of penalties under this act.

“IX. And be it further enacted, that in all cases where any conviction shall be had for any offence or offences committed against this act, or against any order of sessions, or any matter in pursuance of this act, the form of conviction shall be in the words or to the effect following ; (that is to say,)

“Be it remembered, that on this _____ day of _____ in the
year of the reign of _____ A. B. is convicted before
one of his majesty's justices of the peace for the _____ of having [as the
offence shall be] and I the said _____ do adjudge him [or them] to forfeit
and pay for the same the sum of _____ . Given under my hand and
seal the day and year aforesaid.’

Form of conviction.

“X. Provided always, and be it enacted, that if any person or persons shall think himself, herself, or themselves aggrieved by any judgment or determination, or by any matter or thing done in pursuance of this act, such person or persons may appeal to the justices of the peace at the first general or quarter sessions of the peace to be holden for the county or place (within which the matter of appeal shall arise) next after the expiration of one calendar month from the time such matter of appeal shall have arisen, the person or persons appealing having first

Appeal to the
quarter ses-
sions.

STAT. 48 GEO.
3, c. 75.

given ten days' notice at least of his or their intention to bring such appeal, and of the matter thereof, to the person or persons so appealed against, and forthwith after such notice entering into a recognizance before some justice of the peace for such county or place, with sufficient sureties conditioned to try such appeal and abide the order and award of the said court thereon; and the said justices at such sessions, upon due proof of such notice and recognizance having been given and entered into, are hereby authorized and required to hear and determine the matter of such appeal in a summary way, and to make such determination therein, and to award such costs to either of the parties, or otherwise, as they shall judge proper; and the said justices may, if they see cause, mitigate any fine, penalty, or forfeiture, and may also order such further satisfaction to be made to the party injured as they shall judge reasonable; and all such determinations of the said justices shall be final, binding, and conclusive upon all parties, to all intents and purposes whatsoever.

Proceedings
not to be
quashed for
want of form.

"XI. And be it further enacted, that where any distress shall be made for any sum of money to be levied by virtue of this act, the distress itself shall not be deemed unlawful, nor the party or parties making the same be deemed a trespasser or trespassers on account of any defect or want of form in the information, summons, conviction, warrant of distress, or other proceedings relating thereto; nor shall the party or parties distrained be deemed a trespasser or trespassers *ab initio*, on account of any irregularity that shall be afterwards done by the party or parties so distraining, but the person or persons aggrieved by such irregularity, shall and may recover full satisfaction for the special damage in an action upon the case.

Penalties to be
paid by persons
incurring the
same, and not
by the parish.

"XII. Provided always, and be it further enacted, that all penalties and expenses attendant thereon, which shall be incurred under the provisions of this act, shall be paid and borne by the person or persons incurring the same, and that the parish or place wherein such person or persons ought to have acted in the duties prescribed by this act shall be wholly exempted therefrom.

Lords of manors,
&c. to pay the same
fee as heretofore
on interring dead
human bodies,
&c.

"XIII. Whereas in cases of dead wrecks, wherein no living person is found, or owner known, the lords of manors on which any such dead body or dead bodies may be washed in, and who are entitled to wreck there, have usually paid a small fee for the placing such body or bodies in the ground in the state in which the same have been found, and such payments have been adduced and admitted as proof on trials at common law of the right of such lords of manors to wrecks in such manors; be it therefore enacted, that in all and every such cases it shall and may be lawful to and for all and every lord or lords of any manor or manors throughout England to pay or cause to be paid to the churchwarden or churchwardens, overseer or overseers, constable or headborough of such respective parishes and places as aforesaid, such and the like sums as he or they was or were heretofore accustomed to pay for the placing any such body or bodies into the ground as aforesaid; such sums to go in part payment and discharge of the costs and expenses to be incurred in or about the execution of this act, and credit to be given for the same by such overseers, churchwardens, constable or headborough, in their accounts with the county to which such accounts shall be submitted; anything in this act to the contrary thereof in anywise notwithstanding.

How expenses
of interment
shall be defrayed.

"XIV. And, for defraying the expenses of the removal and burial of such body or bodies as aforesaid, and all other expenses necessary for the execution of this act, be it further enacted, that the justices of the peace at the general or quarter sessions may cause such sums of money as shall be necessary for all or any of the purposes aforesaid, to be raised in the same manner as rates are directed to be raised by an act made in the twelfth year of the reign of his late majesty King George the Second, intituled, 'An Act for the more easy assessing, collecting, and levying of County Rates.'"

STAT. 48 GEO.
3, c. 77. [IR.]

CCCLXXXI. STAT. 48 GEORGII 3, c. 77. [IRELAND.] A.D. 1808.

"*An Act to enable His Majesty to vest the Right of Appointment of Master of the Free School of Londonderry, in the City and County of Londonderry, in the Bishop of Derry, for the time being.*"

CCCLXXXII. STAT. 48 GEORGII 3, CAP. LXXVII. A.D. 1808.

STAT. 48 GEO.
3, CAP. LXXVII.

“An Act for enabling the Governor and Directors of the Hospital for poor French Protestants and their Descendants residing in Great Britain, to grant such part of the Site of the Buildings and the Lands belonging to the said Hospital, or such part thereof as they shall think proper, upon Building Leases.”

CCCLXXXIII. STAT. 48 GEORGII 3, CAP. CXXV. A.D. 1808.

STAT. 48 GEO.
3, CAP. CXXV.

“An Act for confirming and rendering valid and effectual an Exchange made in the year One thousand seven hundred and sixty-two, between William Mellish, Esquire, deceased, and Charles Mellish, Esquire, his eldest Son, also deceased, and the Vicar of Blyth, in the County of Nottingham, of Lands and Hereditaments, of the said William Mellish and Charles Mellish, in the Parish of Blyth, for a small part of the Glebe belonging to the said Vicarage.”

CCCLXXXIV. STAT. 48 GEORGII 3, c. 127. A.D. 1808.

STAT. 48 GEO.
3, c. 127.

“An Act to render valid certain Marriages solemnized in certain Churches and public Chapels, in which Banns had not usually been published before, or at the time of passing an Act made in the twenty-sixth year of the Reign of His late Majesty King George the Second, intituled, An Act for the better preventing of Clandestine Marriages.”

“Whereas since the making of an act passed in the twenty-sixth year of the reign of his late majesty King George the Second, intituled, ‘An Act for the better preventing of Clandestine Marriages;’ and of two acts, one passed in the twenty-first year of the reign of his present majesty, intituled, ‘An Act to render valid certain Marriages solemnized in certain Churches and public Chapels in which Banns had not usually been published before or at the time of passing an Act made in the twenty-sixth year of King George the Second, intituled, “An Act for the better preventing of Clandestine Marriages;”’ and the other, passed in the forty-fourth year of the reign of his present majesty, intituled, ‘An Act to render valid certain Marriages solemnized in certain Churches and public Chapels in which Banns had not usually been published before or at the time of passing an Act made in the twenty-sixth year of the Reign of His late Majesty King George the Second, intituled, “An Act for the better preventing of Clandestine Marriages:”’ and whereas divers marriages have been solemnized since the passing of the said last-mentioned act within that part of Great Britain called England, Wales, and town of Berwick-upon-Tweed, in divers churches and chapels duly consecrated, but by reason that in such churches and chapels banns of matrimony had not usually been published before or at the time of passing the said first-mentioned act, such marriages have been or may be deemed to be void: may it therefore please your majesty that it may be enacted, and be it enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that all marriages already solemnized or to be solemnized before the twenty-third day of August, one thousand eight hundred and eight, in any church or public chapel in that part of Great Britain called England, Wales, and the town of Berwick-upon-Tweed, duly consecrated, shall be as good and valid in law as if such marriages had been solemnized in parish churches or public chapels having chapelries annexed, and wherein banns had usually been published before or at the time of passing the said last-mentioned act.

26 Geo. 2,
c. 33.21 Geo. 3,
c. 53.44 Geo. 3,
c. 77.

Marriages solemnized before August 23, 1808, in any church or chapel duly consecrated, shall be as valid as if done in parish churches.

“II. And be it further enacted by the authority aforesaid, that all parsons, vicars, ministers, and curates, who, before the said twenty-third day of August, one thousand eight hundred and eight, shall have solemnized any of the marriages which are hereby enacted to be valid in law, shall be and they are hereby indemnified against the penalties inflicted by the said recited act, made in the twenty-sixth year of the reign of his said late majesty King George the Second, upon persons who shall solemnize marriages in any other place than a church or public

Ministers who shall have solemnized such marriages indemnified.

STAT. 48 GEO.
3, c. 127.

Registers of
such marriages
to be received
in evidence.

chapel in which banns had been usually published before or at the time of passing the said last-mentioned act.

“III. And be it further enacted by the authority aforesaid, that the registers of marriages solemnized, or to be solemnized, in the said churches or chapels, which are hereby enacted to be valid in law, or copies thereof, shall be received in all courts of law and equity in evidence, in the same manner as the registers of such marriages solemnized in parish churches or public chapels in which banns were usually published before or at the time of passing the said recited act of the twenty-sixth year of the reign of his said late majesty King George the Second, or copies thereof, are received in evidence: provided nevertheless, that in all such courts the same objections shall be available to the receiving such registers or copies in evidence, as would have been available to the receiving the same in evidence, if such registers or copies had related to marriages mentioned in such last-mentioned parish churches or public chapels as aforesaid.

Registers of
marriages
solemnized in
public chapels
shall be re-
moved to
the parish
churches, &c.

“IV. And be it further enacted by the authority aforesaid, that the registers of all marriages solemnized in any public chapels which are hereby enacted to be valid in law, shall, within thirty days next after the said twenty-third day of August, one thousand eight hundred and eight, be removed to the parish church of the parish in which such chapel shall be situated; and in case such chapel shall be situated in an extra-parochial place, then to the parish church next adjoining to such extra-parochial place, to be kept with the marriage registers of such parish, and in like manner as parish registers are directed to be kept by the said recited act, made in the twenty-sixth year of the reign of his said late majesty King George the Second; and within twelve months after the removal of such registers to such parish churches respectively, two copies thereof respectively shall be transmitted by the respective churchwardens of such parishes to the bishop of the diocese, or his chancellor, subscribed by the hands of the minister and churchwardens of such parishes respectively, to the end that the same may be faithfully preserved in the registry of the said bishop.”

STAT. 48 GEO.
3, c. 138.
[SCOT.]

CCCLXXXV. STAT. 48 GEORGII 3, c. 138. [SCOTLAND.] A.D. 1808.

“An Act for defining and regulating the Powers of the Commissioners of Teinds, in augmenting and modifying the Stipends of the Clergy of Scotland.”

STAT. 48 GEO.
3, CAP. CXLV.
[IR.]

CLXXXVI. STAT. 48 GEORGII 3, CAP. CXLV. [IRELAND.] A.D. 1808.

“An Act to amend two Acts, passed in Ireland, for the better Education of Persons professing the Roman Catholic Religion, and for the better Government of the Seminary established at Maynooth for the Education of such Persons, so far as relates to the Purchase of Lands, and compounding Suits.”

[Trustees of the college empowered to compromise suits. Trustees also empowered to purchase lands, not exceeding 1000*l.* per annum, exclusive of premises held under lease for the Duke of Leinster, and the buildings thereon.]

STAT. 48 GEO.
3, c. 149.

CCCLXXXVII. STAT. 48 GEORGII 3, c. 149. A.D. 1808.

“An Act for repealing . . . the Duties on Legacies and Successions to Personal Estate upon Intestacies, now payable in Great Britain, and for granting new Duties (1) in lieu thereof.”

Probates of
wills and letters
of administra-
tion valid as to
trust property,
though the
value thereof
be not covered
by the stamp
duty.

“XXXV. And be it further enacted, that from and after the passing of this act the probate of the will of any person deceased, or the letters of administration of the effects of any person deceased, heretofore granted or to be hereafter granted, either before or upon or after the tenth day of October, one thousand eight hundred and eight, shall be deemed and taken to be valid and available by the executors or administrators of the deceased, for recovering, transferring, or assigning any debt or debts, or other personal estate or effects, whereof or whereto the deceased was possessed or entitled, either wholly or partially, as a trustee, notwithstanding the

amount or value of such debt or debts, or other personal estate or effects, or the amount or value of so much thereof, or such interest therein, as was trust property in the deceased, (as the case may be,) shall not be included in the amount or value of the estate in respect of which the stamp duty was paid on such probate or letters of administration.

“XXXVI. And be it further enacted, that where the executors or administrators of any person deceased shall be desirous of transferring or of receiving the dividends of any share standing in the name of the deceased, of and in any of the government or parliamentary stocks or funds transferable at the Bank of England, or of and in the stock and funds of the governor and company of the Bank of England, or of and in the stock and funds of any other company, corporation, or society whatsoever, passing by transfer in the books of such company, corporation, or society, under and by virtue of any such probate or letters of administration as aforesaid, and shall allege that the deceased was possessed thereof or entitled thereto, either wholly or partially, as a trustee, it shall be lawful for the said governor and company of the Bank of England, and for any such other company, corporation, or society as aforesaid, or their respective officers, for their indemnity and protection, to require such affidavit or affirmation of the fact as hereinafter is mentioned, if the fact shall not otherwise satisfactorily appear, and thereupon to permit such executors or administrators to transfer the stock or fund in question, or receive the dividends thereof, without regard to the amount of the stamp duty on the probate of the will of the deceased, or the letters of administration of his or her effects; and where the executors or administrators of any person deceased shall have occasion to recover any debt or debts, or other personal effects, due or apparently belonging to the deceased, and shall allege that the deceased was possessed thereof or entitled thereto, either wholly or partially, as a trustee, it shall be lawful for the person or persons liable to pay or deliver such debt or debts or other effects to require such affidavit or affirmation of the fact as hereinafter is mentioned, if the fact shall not otherwise satisfactorily appear, and thereupon to pay, deliver, or make over the debt or debts or other effects in question to such executors or administrators, or as they shall direct, without regard to the amount of the stamp duty on the probate of the will of the deceased, or the letters of administration of his or her effects; and where the executors or administrators of any person deceased shall have occasion to assign or transfer any debt or debts due to the deceased, or any chattels real or other personal effects whereof or whereof the deceased was possessed or entitled, and shall allege that the same respectively was or were due to or vested in the deceased, either wholly or partially, as a trustee, it shall be lawful for the person or persons to whom or for whose use such debt or debts, chattels real, or other personal effects, shall be proposed to be assigned or transferred, to require such affidavit or affirmation of the fact as hereinafter is mentioned, if the fact shall not otherwise satisfactorily appear, and thereupon to accept the proposed assignment or transfer, without regard to the amount of the stamp duty on the probate of the will of the deceased, or the letters of administration of his or her effects.

“XXXVII. And be it further enacted, that upon any such requisition as aforesaid the executor or executors, administrator or administrators, of the deceased, or some other person or persons to whom the facts shall be known, shall make a special affidavit or affirmation of the facts and circumstances of the case, stating the property in question, and that the deceased had not any beneficial interest whatever in the same, or no other beneficial interest therein than shall be particularly mentioned and set forth, (as the case may be,) but was possessed thereof or entitled thereto, either wholly or in part, (as the case may be,) in trust for some other person or persons, whose name or names, or other sufficient description, shall be specified in such affidavit or affirmation, or for such purposes as shall be specified therein, and that the beneficial interest of the deceased, if any, in the property in question doth not exceed a certain value, to be therein also specified, according to the best estimate that can be made thereof, if reversionary or contingent, and that the amount or value of the estate for which the stamp duty was paid on the pro-

STAT. 48 GEO.
3, c. 149.

Where executors, &c. allege that any property was vested in the deceased as a trustee, a special affidavit may be required of the facts.

Particulars to be stated in the affidavit

STAT. 48 GEO.
3, c. 149.

Penalty for
false oath.

Executors and
others intro-
mitting with
the effects in
Scotland of
any person
dying after the
10th October,
1808, to exhibit
an inventory
thereof in the
commissary
court there,
duly stamped;

and an addi-
tional inven-
tory on dis-
covering other
effects.

Penalty for
neglect.

bate of the will of the deceased, or on the letters of administration of his or her effects, is sufficient to include and cover such beneficial interest of the deceased, as well as the rest of the personal estate whereof or whereto the deceased was beneficially possessed or entitled, and for which such probate or letters of administration shall have been granted, as far as the same have come to the knowledge of such executor or executors, administrator or administrators; and where the affidavit or affirmation of the facts and circumstances of the trusts shall be made by any other person than the executor or executors, administrator or administrators of the deceased, such executor or executors, administrator or administrators, shall make affidavit or affirmation that the same are true, to the best of his, her, or their knowledge, and that the property in question is intended to be applied and disposed of accordingly, which affidavits or affirmations shall be sworn or made before a master in chancery, ordinary or extraordinary, (who is hereby authorized to take the same, and administer the proper oath or affirmation for that purpose,) and shall be delivered to the party or parties requiring the same, and shall be sufficient to indemnify and protect the party or parties acting upon the faith thereof; and if any person or persons making any such affidavit or affirmation as aforesaid shall knowingly and wilfully make a false oath or affirmation of or concerning any of the matters to be therein specified and set forth, every person so offending, and being thereof lawfully convicted, shall be subject and liable to such pains and penalties as by any law now in force persons convicted of wilful and corrupt perjury are subject and liable to.

“XXXVIII. And be it further enacted, that all and every person or persons who, as executor or executors, nearest in kin, creditor or creditors, or otherwise, shall intromit with or enter upon the possession or management of any personal or moveable estate or effects in Scotland, of any person dying after the tenth day of October, one thousand eight hundred and eight, shall, on or before disposing of or distributing any part of such estate or effects, or uplifting any debt due to the deceased, and at all events within six calendar months next after having assumed such possession or management, in whole or in part, and before any such person or persons shall be confirmed executor or executors, testamentary or dative, exhibit upon oath or solemn affirmation, in the proper commissary court in Scotland, (which oath or affirmation any judge of or commissioner appointed by such court is hereby authorized to administer, and which oath or affirmation shall not be chargeable with any stamp duty,) a full and true inventory, duly stamped as required by this act, of all the personal or moveable estate and effects of the deceased, already recovered or known to be existing, distinguishing what shall be situated in Scotland, and what elsewhere, together with any testament or other writing relating to the disposal of such estate and effects, or any part thereof, which the person or persons exhibiting such inventory shall have in his, her, or their custody or power; which said inventory, together with such testament or other writing, (if any such there be,) shall be recorded in the books of the said court, without any other expense to the party than the ordinary fees of registration; and if at any subsequent period a discovery shall be made of any other effects belonging to the deceased, an additional inventory or additional inventories of the same shall, within two calendar months after the discovery thereof, be in like manner exhibited upon oath or solemn affirmation, by any person or persons intromitting with or assuming the management of such effects, which additional inventory or inventories shall also be recorded in the manner aforesaid; and in case any person or persons hereby required to exhibit any such inventory or inventories as aforesaid shall refuse or neglect so to do within the time prescribed for that purpose, or shall knowingly omit any part of the estate or effects of the deceased therein, he, she, or they shall for every such offence forfeit the sum of twenty pounds, to be recovered by ordinary action or summary complaint, in the sheriff, steward, or borough court, or before any justice of the peace of the shire, stewartry, or borough, where the person or persons sued or complained of shall reside; which court of justice shall have power, if there shall appear cause, to mitigate such penalty, so that the same be not reduced below one moiety thereof, besides costs of suit; and the person or

persons so offending shall also be charged and chargeable with and be holden liable to the payment of double the amount of the stamp duty which would have been payable upon such inventory or inventories so neglected to be exhibited, according to the amount or value of the estate and effects which ought to have been specified therein, or double the amount of the further or increased stamp duty which would have been payable upon any such inventory or inventories exhibited in respect of the estate or effects so omitted therein as aforesaid, as the case may require; which double duty shall be deemed and taken to be a debt to his majesty, his heirs and successors, of the person or persons liable to pay the same, and shall and may be sued for and recovered accordingly.

STAT. 48 GEO.
3, c. 149.

“XXXIX. And be it further enacted, that all and every the inventory and inventories so to be exhibited and recorded as aforesaid shall be retained by the clerk of the commissary court wherein the same shall be exhibited, and shall be transmitted by him from time to time as often as required, together with the said oath or affirmation relating thereto, to the solicitor of stamp duties at Edinburgh, who shall file and preserve the same in the stamp office there; and if the clerk of any such court shall fail to record, retain, or transmit any such inventory which shall be exhibited there to be recorded as aforesaid, or shall receive or record any such inventory which shall not be duly stamped as the law requires, he shall, for every such offence, forfeit the sum of fifty pounds.

Such inventories being recorded, to be transmitted to the solicitor of stamps at Edinburgh.

“XL. And be it further enacted, that where any such additional inventory shall be exhibited to be recorded as aforesaid, the same shall also specify the amount or value of the estate and effects of the same person comprised in any former inventory or inventories; and the stamp duty to be charged on such additional inventory shall be the *ad valorem* duty payable in respect of the total amount or value of the estate and effects specified therein, and in any such former inventory or inventories; and upon any such additional inventory, duly stamped, being recorded and transmitted as aforesaid, the solicitor of stamp duties shall, upon the application of the party who shall have exhibited the same, deliver out to such party the former inventory, with a certificate thereon signed by him, bearing that an additional inventory of the effects of the deceased, duly stamped, had been transmitted to him and filed as aforesaid; and such certificate shall entitle the party exhibiting the additional inventory to demand and receive the amount of the stamp duty on such former inventory from the head distributor of stamps at Edinburgh, who shall pay the same out of any monies in his hands arising from the duties hereby charged on such inventories as aforesaid, on a proper receipt being given for the same, and upon the former inventory and certificate being delivered to him, to be produced with the receipt as a voucher for such payment.

Additional inventories to specify the amount of the effects in former inventories, and the stamp duty to be according to the total of both; and the duty on the former to be repaid.

“XLI. Provided always, and be it further enacted, that the duty charged in the schedule hereunto annexed upon any such inventory to be exhibited as aforesaid shall be deemed and taken to be charged and payable only in respect of the amount or value of such parts of the estate and effects therein mentioned as shall be situated in Scotland.

The duty on any inventory to be charged only in respect of effects in Scotland.

“XLII. And be it further enacted, that it shall not be lawful for any commissary court in Scotland to grant confirmation of any testament, testamentary or dative, or eik thereto, of or for any estate or effects whatever, of any person dying after the tenth day of October, one thousand eight hundred and eight, unless the same shall be mentioned and included in some such inventory exhibited and recorded as aforesaid; and it shall not be competent to any executor or executors, or other person or persons, to recover any debt or other effects in Scotland of or belonging to any person dying after the said tenth day of October, unless the same shall have been previously included in some such inventory exhibited and recorded as aforesaid; except the same respectively were vested in the deceased as a trustee for any other person or persons, and not beneficially; but these provisions are not, in other respects, to prejudice the law of Scotland, regarding total or partial confirmations or the rules of succession there established.

Confirmations of testaments not to be granted for effects not included in such inventory. Executors not to recover effects unless so included.

“XLIII. And whereas many persons may, through ignorance or inadvertence, or from accidental or unavoidable causes, have neglected to pay the duties hereto-

The commissioners autho-

STAT. 48 GEO.
3, c. 149.

riized to remit
the penalties
incurred by
nonpayment
of the duty on
legacies, if the
duty in arrear
shall be paid
on or before
31st January,
1809;

fore payable in respect of legacies, and of residues of personal estate given by wills or other testamentary instruments, or which have devolved to any person or persons upon intestacies, within the time prescribed by law for that purpose, and may have incurred heavy penalties by reason of such neglect; be it further enacted, that if any person or persons who shall have incurred any penalty before the passing of this act, by reason of the nonpayment of any such duty as aforesaid, shall offer to pay the same to the commissioners of stamps, at their head office in England or Scotland, as the case may require, on or before the thirty-first day of January, one thousand eight hundred and nine, and shall make it appear, to the satisfaction of the said commissioners, that such duty was not paid within the time prescribed by law, through ignorance or inadvertence, or from any accidental or unavoidable cause, it shall be lawful for the said commissioners to remit the penalty, and to receive the duty which shall be due and payable by law, according to the circumstances of the case, and to cause a proper receipt to be given for such duty, and also to cause the receipt or discharge, if any, which shall have been given for the legacy or residue, or share of residue, of any personal estate, in respect of which such duty shall be paid, to be duly stamped as the law requires for making the same available; and thereupon such receipt or discharge shall be as valid and available as if the same had been stamped, and the duty paid, within the time originally prescribed for that purpose; anything contained in any former act or acts to the contrary notwithstanding.

And in other
cases, the com-
missioners
authorized to
stamp receipts
for legacies
brought after
three months
from the date,
on payment of
duty and
penalty, and to
remit penalty if
signed out of
Great Britain.

“XLIV. And be it further enacted, that in all cases not provided for by the preceding clause, where any receipt or discharge given for any legacy, or for the residue, or any share of the residue, of any personal estate, which shall have been given by will or other testamentary instrument, or have devolved to any person or persons upon intestacy, shall be brought to the head office, to be stamped after the expiration of three calendar months from the date thereof, it shall be lawful for the said commissioners to cause the same to be duly stamped, for making the same available, on payment of the duty which shall be payable in respect thereof, together with the penalty incurred in consequence of the same not having been brought to be stamped before the expiration of such three calendar months; and where any such receipt or discharge shall have been signed out of Great Britain, if the same shall be brought to be stamped within twenty-one days after its being received in Great Britain, it shall be lawful for the said commissioners to remit any penalty that may have been incurred thereon, and to cause the same to be duly stamped, on payment of the duty payable in respect thereof; anything contained in any former act or acts to the contrary notwithstanding.”

STAT. 48 GEO.
3, CAP. CLVII.

CCCLXXXVIII. STAT. 48 GEORGII 3, CAP. CLVII. A.D. 1808.

“An Act to prevent the Right of Presentation to the Rectory and Parish Church of Simonburn, in the County of Northumberland, from lapsing for a limited Time.”

STAT. 49 GEO.
3, CAP. XVIII.

CCCLXXXIX. STAT. 49 GEORGII 3, CAP. XVIII. A.D. 1809.

“An Act for establishing and well-governing the Charitable Institution, called, The Society of Stewards and Subscribers for maintaining and educating poor Orphans of Clergyman, until of age to be put Apprentice; and for incorporating such Society: and for more effectually enabling them to carry on their charitable and useful Designs.”

STAT. 49 GEO.
3, CAP. XXI
[SCOT.]

CCCXC. STAT. 49 GEORGII 3, CAP. XXI. [SCOTLAND.] A.D. 1809.

“An Act for extending the Royalty of the City of Edinburgh; for disannexing part of the Parish of Saint Cuthbert's, in the said Parish, and uniting it to the Parish of Saint Andrew; for further regulating the Assessment for the Poor in the said Parishes; for erecting two new Churches; for discontinuing certain Churches, and annexing the Parishes thereof to other Parishes; for further regulating the Revenues of the said City applicable to the payment of Ministers' Stipends; and for draining the Meadow on the south side of the said City.”

CCCXCI. STAT. 49 GEORGII 3, c. 27. A.D. 1809.

STAT. 49 GEO.
3, c. 27.

"An Act for establishing Courts of Judicature in the Island of Newfoundland, and the Islands adjacent; and for re-annexing Part of the Coast of Labrador, and the Islands lying on the said Coast, to the Government of Newfoundland."

[Chief justice may grant probates and administrations.]

CCCXCII. STAT. 49 GEORGII 3, c. 67. A.D. 1809.

STAT. 49 GEO.
3, c. 67.

"An Act to amend an Act passed in the forty-sixth year of His present Majesty, for the Redemption and Sale of the Land Tax, and to make further provision for exonerating small Livings and Charitable Institutions from the Land Tax."

"Whereas by an act passed in the forty-sixth year of the reign of his present majesty, intituled, 'An Act to amend an Act passed in the forty-second year of His present Majesty, for consolidating the several Acts passed for the Redemption and Sale of the Land Tax, and to make further provision for exonerating small Livings and Charitable Institutions from the Land Tax,' after reciting that the profits arising to the public from the redemption of land tax by bodies politic and corporate, and companies and feoffees and trustees for charitable and other public purposes, by sales under the authority of the commissioners appointed by letters patent under the great seal of Great Britain, for the purpose of regulating, directing, approving, and confirming, such sales, amounted to a very large sum, and was likely to be considerably increased by further sales and contracts for sale for the redemption of land tax under the authority of the said commissioners, and that it might be expedient to augment the income of small livings or other ecclesiastical benefices, and of charitable institutions, by exonerating the same from the land tax charged on the messuages, lands, tenements, or other hereditaments belonging to such livings or other ecclesiastical benefices or charitable institutions, in the manner therein mentioned, it was enacted, that it should and might be lawful for the commissioners appointed or to be appointed by letters patent under the great seal of Great Britain for the purposes aforesaid, at any time within the space of two years after the passing of the said Act, to direct the exoneration and discharge of the land tax charged upon the messuages, lands, tenements, and other hereditaments belonging to any livings or other ecclesiastical benefices or charitable institutions in cases where the clear annual income of such livings or other ecclesiastical benefices or charitable institutions should not exceed the sum of one hundred and fifty pounds, without the transfer or payment of any consideration for the same, in the manner and under the directions and restrictions in the said act mentioned, provided that the annual amount of land tax to be exonerated by virtue of the said act, under the direction of the said commissioners without the transfer or payment of any consideration, should not exceed the sum of six thousand pounds: and whereas it appears from the proceedings of the said commissioners in the execution of the powers and authorities vested in them by the said act, of which proceedings a statement has been laid before parliament, pursuant to the provisions for that purpose in the said act contained, that they have directed the exoneration and discharge of the land tax charged upon messuages, lands, tenements, and other hereditaments belonging to one thousand two hundred and sixty-three livings or other ecclesiastical benefices, and to two hundred and eight charitable institutions in cases where the clear annual amount of such livings or other ecclesiastical benefices and charitable institutions do not exceed the sum of one hundred and fifty pounds without the transfer or payment of any consideration in the manner, and under the directions and restrictions in the said act mentioned, and that the annual amount of land tax which has been so exonerated is only five thousand six hundred and seventy pounds, six shillings, and three pence three farthings: and whereas the time limited by the said act, for transmitting to the said commissioners the memorials which were required by the said act, in order to entitle the parties claiming such exoneration to the benefit thereof, is expired: and whereas the profits arising to the public from the redemption of land tax by bodies politic and corporate and companies and feoffees and trustees for charitable and other public purposes,

46 Geo. 3,
c. 133.

STAT. 49 GEO.
3, c. 67.

The commis-
sioners ap-
pointed under
the great seal
within eighteen
months may
direct the
exoneration of
the land tax
charged on
messuages
belonging to
small livings
and charitable
institutions,
on certain
conditions.

have been considerably increased by further sales and contracts for sale for the redemption of land tax under the authority of the said commissioners since the time of passing the said recited act, and much benefit to the public may be expected if such redemption of land tax by bodies politic and corporate, and companies and feoffees, and trustees for charitable and other public purposes, shall continue to be made under the provisions and authorities to that effect, in the said act of the forty-second year of his present majesty's reign contained: and whereas it is expedient further to extend the benefits of the said recited act of the forty-sixth year of his present majesty's reign to such other livings or other ecclesiastical benefices or charitable institutions in cases where the whole clear annual income thereof does not exceed the sum of one hundred and fifty pounds as have not yet had the benefit of the said recited act; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that it shall and may be lawful for the said commissioners at any time within the space of eighteen calendar months after the passing of this act to direct the exoneration and discharge of the land tax charged upon such messuages, lands, tenements, or other hereditaments, in the manner and under the directions and restrictions, as in the said recited act of the forty-sixth year of his present majesty are mentioned, provided that the annual amount of land tax to be exonerated by virtue of this act, shall not, together with the before mentioned annual sum of five thousand six hundred and seventy pounds six shillings and three-pence three farthings, exceed the total yearly sum of eight thousand pounds: provided also, that memorials, such as were directed by the said act of the forty-sixth year of his present majesty to be transmitted to the said commissioners, and which must be verified in such manner as they shall require and direct, and also the certificates directed thereby to be transmitted to the said commissioners, signed by two or more commissioners of land tax, which certificates such said last-mentioned commissioners were by the said act and are hereby authorized and required to grant, and shall be so transmitted to the said commissioners appointed under the great seal of Great Britain, within twelve months after the passing of this act."

[Commissioners may by endorsement on the certificate of land tax, declare the lands exonerated therefrom. s. 3. Such certificates of exoneration shall be registered gratis. s. 4. Proceedings of commissioners shall be laid before parliament before close of the session, 1811. s. 5. Deeds enrolled or registered at any time before the passing of this act, or within twelve months after, declared valid: s. 6. Powers of recited acts extended to this act. s. 7.]

STAT. 49 GEO.
3, CAP.
LXXXVIII.

CCCXCIII. STAT. 49 GEORGII 3, CAP. LXXXVIII. A.D. 1809.

"An Act to enable the Rector of the Parish and Parish Church of Saint Mary, Woolwich, in the County of Kent, for the time being, to grant Building Leases of of the Glebe Lands belonging to the said Rectory, and to sell the present Rectory House and Garden, and to build a new Rectory House."

STAT. 49 GEO.
3, c. 103. [IR.]

CCCXCIV. STAT. 49 GEORGII 3, c. 103(1). [IRELAND.] A.D. 1809.

"An Act to amend an Act made in the last Session of Parliament, for making provision for the building and rebuilding of Churches, Chapels, and Glebe Houses in Ireland."

STAT. 49 GEO.
3, CAP. CIX.

CCCXCV. STAT. 49 GEORGII 3, CAP. CIX. A.D. 1809.

"An Act for uniting the Rectory and Parish Church of Stanmer, in the County of Sussex, with the adjoining Vicarage and Parish Church of Falmer; and also for exchanging the Parsonage House and Glebe Land of Stanmer, and the Vicarage House of Falmer, for a Piece of Land at Falmer, part of the settled Estates of the Right Honourable Thomas, Earl of Chichester, and for a new Parsonage House to be built thereon at the Expense of the said Earl."

CCCXCVI. STAT. 49 GEORGH 3, CAP. CXIV. A.D. 1809.

STAT. 49 GEO.
3, CAP. CXIV.*"An Act for building a Chapel of Ease in the Town of Worthing, in the County of Sussex."*

CCCXCVII. STAT. 49 GEORGH 3, CAP. CXVI. A.D. 1809.

STAT. 49 GEO.
3, CAP. CXVI.*"An Act for building a Church on Gateshead Fell, in the Parish of Gateshead."*

CCCXCVIII. STAT. 49 GEORGH 3, CAP. CLXXXIV. A.D. 1809.

STAT. 49 GEO.
3, CAP.
CLXXXIV.*"An Act for rendering more effectual two Acts passed for the better regulating the Poor in the Parish of Saint Mary Magdalen, Bermondsey, in the County of Surrey; for inclosing the Churchyard thereof; and for other Purposes therein mentioned relating thereto."*

CCCXCIX. STAT. 50 GEORGH 3, c. 33 (1). [IRELAND.] A.D. 1810.

STAT. 50 GEO.
3, c. 33. [Ir.]*"An Act for enabling Tenants in Tail and for Life, and also Ecclesiastical Persons, to grant Land for the purpose of endowing Schools in Ireland."*

"Whereas by an act of parliament passed in Ireland in the fifth year of the reign of his late majesty King George the Second, intituled, 'An Act for the further explaining and amending the several Laws for preventing Frauds committed by Tenants, and for the more easy Renewal of Leases, and for the further Amendment of the Law in certain Cases therein mentioned,' it is, amongst other things, enacted, that it shall and may be lawful for all persons whatsoever seised in fee-simple, fee-tail, or for life, in possession in any lands, with immediate remainder to his, her, or their own issue, by his, her, or their deeds respectively, to grant any part of such lands not exceeding one acre, plantation measure, of the yearly value of thirty shillings, and being no part of the demesne lands usually occupied with or reputed as demesne to the mansion or chief dwelling-house belonging to such tenant in fee-simple, fee-tail, or for life, for the use of a resident protestant schoolmaster to teach the English tongue, and that the minister and churchwardens, and their successors for ever of each respective parish where such acre of land is or shall be so granted or set apart, shall be empowered and made capable of receiving such grant or grants of land, not exceeding one acre, plantation measure, for the use of such English resident protestant schoolmaster to teach the English tongue, and to no other intent or use whatever: and whereas the provisions of the said act in that respect have been found insufficient; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the passing of this act, it shall and may be lawful to and for all persons whatsoever seised of any lands in fee-simple, fee-tail, or for life in possession, with immediate remainder to his, her, or their issue of any interest in lands, by his or their deeds respectively, to grant any part of such lands not exceeding half an acre, Irish plantation measure, within the liberties of any city or corporate town in Ireland, nor two acres, Irish plantation measure, in any other part of Ireland, of whatever yearly value the same may be, and being no part of the demesne lands usually occupied with or reputed as demesne, to the mansion or chief dwelling-house belonging to such tenant in fee-tail, or for life, to any person or persons, body or bodies corporate, whether aggregate or sole, who shall be approved of for that purpose by the bishop of the diocese in which such lands lie, and to his and their heirs or successors in fee-simple, or for any lesser interest, such approbation to be expressed by such bishop being a party to and signing and sealing such deed, in trust and for the use of a resident schoolmaster, and subject to such conditions respecting the mode of appointing such schoolmaster and his successors, and the plan of education and regulation of such school and its concerns as shall be specified in such deed, or as shall after-

Irish act,
5 Geo. 2.Landowners
may grant
land not
exceeding half
an acre within
a corporate
town, or two
acres else-
where, for the
endowment of
schools, &c.

STAT. 50 GEO. 3, c. 33. [1R.] wards be agreed on by and between the person or persons so making such grant of land, or his or their heirs, on the one part, and all and every or any person or persons, body or bodies politic or corporate, their heirs or successors, on the other part, who shall advance or shall have advanced any of his or their money, or any part of the funds intrusted to their management, to the amount of not less than one hundred pounds sterling, either for the building of a school-house on the lands so granted, or for the endowment of the schoolmaster.

Ecclesiastical persons may, with consent of diocesan, grant an acre of land for the same purpose.

“II. And be it further enacted, that it shall and may be lawful in like manner for every archbishop and bishop, and dean or dean and chapter, archdeacon, or other ecclesiastical dignitary, prebendary, rector, vicar, and all other ecclesiastical persons, with the consent of the archbishop or bishop of their respective dioceses, to make an absolute grant by deed or deeds under their respective hands and seals, of any quantity of land to any of them respectively belonging, in right of their respective archbishoprics, bishoprics, and other ecclesiastical dignities, or as glebe or otherwise, not exceeding one acre, to any person or persons, body or bodies politic or corporate, who shall be approved of by such archbishop or bishop, the consent and approbation of such archbishop or bishop to be expressed by his being a party to and signing and sealing such deed, in trust for the use of a resident schoolmaster, and subject to such conditions respecting the mode of appointing such schoolmaster, and the plan of education and regulation of such school, as is hereinbefore mentioned and expressed with respect to such grant by other persons hereinbefore mentioned.

Grantee not entitled to vote at an election.

“III. Provided always, and be it enacted, that no grantees or lessees, or his or their heir or heirs, successor or successors, shall be qualified to vote at the election of any member to serve in parliament, as a freeholder, by virtue of any grant or lease made by virtue of this present act.”

STAT. 50 GEO. 3, CAP. XLIII.

CCCC. STAT. 50 GEORGII 3, CAP. XLIII. A.D. 1810.

“An Act for providing an additional Burial Ground for the Parish of Saint Luke, Chelsea, in the County of Middlesex.”

STAT. 50 GEO. 3, CAP. XLIV.

CCCCI. STAT. 50 GEORGII 3, CAP. XLIV. A.D. 1810.

“An Act for further enlarging the Churchyard of the Parish of Paddington, in the County of Middlesex.”

STAT. 50 GEO. 3, c. 58.

CCCCII. STAT. 50 GEORGII 3, c. 58 (1). A.D. 1810.

“An Act to amend several Acts for the Redemption and Sale of the Land Tax.”

42 Geo. 3, c. 116, s. 78.

“II. And whereas by an act passed in the forty-second year of the reign of his present majesty, intituled, ‘An Act for consolidating the Provisions of the several Acts passed for the Redemption and Sale of the Land Tax into one Act, and for making further Provisions for the Redemption and Sale thereof; and for removing Doubts respecting the Right of Persons claiming to vote at Elections for Knights of the Shire and other Members to serve in Parliament in respect of Messuages, Lands, or Tenements, the Land Tax upon which shall have been redeemed or purchased,’ all corporations aggregate are enabled by the sale of lands, or by the grant of rent charges, to provide for the redemption of the land tax charged on the glebe lands, tithes, and other profits of any living or livings in the patronage of such corporations aggregate respectively, in cases where such land tax shall have been or shall be redeemed by or on behalf of such corporations aggregate; and it is expedient that similar powers should be given to corporations sole and to companies; be it therefore further enacted, that where the land tax charged upon the glebe lands, tithes, or other profits of any living or livings in the patronage of any archbishop, bishop, or other corporation sole, or any company or companies, shall have been or shall be redeemed by or on the behalf of any such bodies politic or corporate, or companies, by virtue of any of the provisions of the

Provision for redemption by sale of part of such lands, &c.

said recited acts, or of this act, it shall be lawful for any such archbishop, bishop, or bodies politic or corporate, whether sole or aggregate, or companies, to provide for such redemption by sale of any lands, tenements, or hereditaments, belonging to such archbishop, bishop, or bodies politic or corporate, whether sole or aggregate, or companies, respectively, or by the grant of any rent-charge which they could or might respectively lawfully make for the redemption of any land tax charged on the lands belonging to such archbishop, bishop, or bodies politic or corporate, whether sole or aggregate, or companies, and the land tax so redeemed shall be forthwith extinguished; but every such archbishop, bishop, or body politic or corporate, whether sole or aggregate, or company, shall nevertheless be entitled to an annual rent-charge, issuing out of such living, equivalent to the amount of the land tax redeemed, unless it shall be declared in writing under the seal or common seal of the archbishop, bishop, body or bodies politic or corporate, whether sole or aggregate, or companies, having such right of patronage or nomination at the time of presenting or nominating any clerk or clerks to such living or livings, that such rent-charge shall be suspended during his or their incumbency or respective incumbencies, which declaration the archbishop, bishop, body or bodies politic or corporate, whether sole or aggregate, or companies, entitled to nominate to such living or livings, shall from time to time be competent to make: provided always, that such suspension shall be without prejudice to the right of the said archbishop, bishop, body or bodies politic or corporate, or companies, respectively, to recover such rent-charge after the next or any future avoidance: provided also, that any declaration made by any such archbishop, bishop, bodies politic or corporate, whether sole or aggregate, or companies, at the time of redeeming the said land tax, shall be as available during the incumbency of the then rector, vicar, or curate, as if it had been made at the time of his being preferred to such living."

STAT. 50 GEO.
3, c. 58.

Rent charge
paid equivalent
to land tax
redeemed, if
not declared to
be suspended
during incum-
bency.

CCCCIII. STAT. 50 GEORGII 3, c. 73 (1). A.D. 1810.

"An Act to alter, explain, and amend the Laws now in force respecting the Trade of Bakers residing out of the City of London, or the Liberties thereof, or beyond ten miles of the Royal Exchange."

[Sect. 3 prohibits baking on a Sunday.]

STAT. 50 GEO.
3, c. 73.

CCCCIV. STAT. 50 GEORGII 3, c. 84. [SCOTLAND.] A.D. 1810.

"An Act for augmenting Parochial Stipends, in certain cases, in Scotland."

STAT. 50 GEO.
3, c. 84.
[SCOT.]

CCCCV. STAT. 50 GEORGII 3, CAP. CVIII. [IRELAND.] A.D. 1810.

"An Act for incorporating the Archbishop of Cashel, the Bishop of Leighlin and Ferns, the Bishop of Ossory, and the Dean of Ossory, and their respective Successors for the time being, into a Corporation, to be called by the name of 'The Trustees of the Asylum in the City of Kilkenny,' founded by James Switsir, Esquire, and for enabling them to carry on that charitable and useful Institution, according to the provisions of a certain Trust Deed executed by the said James Switsir."

STAT. 50 GEO.
3, CAP. CVIII.
[IR.]

CCCCVI. STAT. 50 GEORGII 3, CAP. CXXX. A.D. 1810.

"An Act to amend and render more effectual an Act of His present Majesty, for erecting a new Church, to be called Christ Church, in the Town of Birmingham, in the County of Warwick; and for providing a Maintenance and Residence for the Minister or Perpetual Curate thereof."

STAT. 50 GEO.
3, CAP. CXXX.

CCCCVII. STAT. 50 GEORGII 3, CAP. CXLV. A.D. 1810.

"An Act for repairing or rebuilding the Parish Church of Stockport, in the County Palatine of Chester, and for rebuilding the Tower thereof, and for making a Cemetery or Churchyard for the use of the said Parish."

STAT. 50 GEO.
3, CAP. CXLV.

STAT. 50 GEO.
3, CAP.
CLXXVI.

CCCCVIII. STAT. 50 GEORGII 3, CAP. CLXXVI. A.D. 1810.

"An Act for empowering the Dean and Chapter of Canterbury, and their Lessees, Edmund White, John White, and William Parker Terry, to grant building and repairing Leases of Lands and Buildings at South Lambeth, in the County of Surrey, pursuant to an Agreement entered into for those purposes."

STAT. 50 GEO.
3, CAP.
CLXXXVIII.

CCCCIX. STAT. 50 GEORGII 3, CAP. CLXXXVIII. A.D. 1810.

"An Act to continue for Two Years an Act passed in the forty-eighth year of His present Majesty, for preventing the Right of Presentation to the Rectory and Parish of Simonburn, in the County of Northumberland, from lapsing, for a limited Time."

STAT. 50 GEO.
3, CAP. CCXVI.
[WALES.]

CCCCX. STAT. 50 GEORGII 3, CAP. CCXVI. [WALES.] A.D. 1810.

"An Act for establishing a Chapel of Ease at Tremadoc, in the Chapelry of Ynysynhaiarn, in the County of Carnarvon."

STAT. 51 GEO.
3, CAP. I.

CCCCXI. STAT. 51 GEORGII 3, CAP. I. A.D. 1811.

"An Act for enlarging the Powers of an Act of His present Majesty, for rebuilding the Parish Church of East Grinstead, in the County of Sussex."

STAT. 51 GEO.
3, CAP. XXIV.

CCCCXII. STAT. 51 GEORGII 3, CAP. XXIV. A.D. 1811.

"An Act for inclosing and exonerating from Tithes, Lands in the Townships of Lune, Holwick, and Romaldkirk, in the North Riding of the County of York."

STAT. 51 GEO.
3, c. 37.

CCCCXIII. STAT. 51 GEORGII 3, c. 37. A.D. 1811.

"An Act further to prevent the Marriage of Lunatics."

Persons found
lunatic mar-
rying before
declared sane,
marriage to be
void.

"Whereas an act was made in the parliament of Great Britain, in the fifteenth year of the reign of his late majesty King George the Second, to prevent the marriage of lunatics: and whereas it is expedient that the provisions of the said act should be extended to Ireland; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that, from and after the expiration of ten days after the passing of this act, in case any person who has been, or at any time hereafter shall be found a lunatic by any inquisition taken or to be taken by virtue of a commission under the great seal of Great Britain, or the great seal of Ireland respectively, or any lunatic or person under a frenzy, whose person and estate by virtue of any act of parliament now or hereafter shall be committed to the care and custody of particular trustees, shall marry before he or she shall be declared of sane mind by the lord high chancellor of Great Britain or Ireland, or the lord keeper or lords commissioners of the great seal of Great Britain or Ireland for the time being, or such trustees as aforesaid, or the major part of them respectively, as the nature of the case shall require, every such marriage shall be and is hereby declared to be null and void to all intents and purposes whatsoever."

STAT. 51 GEO.
3, CAP. LI.

CCCCXIV. STAT. 51 GEORGII 3, CAP. LI. A.D. 1811.

"An Act for effectually separating the several Churches or Chapelries of Nailsea and Bourton, otherwise Flax Bourton, otherwise Boreton, in the County of Somerset, from the Rectory and Parish Church of Wraexhall, in the said County, and for uniting the several Churches or Chapelries of Nailsea and Bourton, otherwise Flax Bourton, otherwise Boreton aforesaid, into and making the same one distinct and separate Rectory."

CCCCXV. STAT. 51 GEORGII 3, CAP. LXVIII. A.D. 1811.

STAT. 51 GEO.
3, CAP. LXVIII.

"An Act to repeal certain parts of an Act of His present Majesty, for building two Chapels, and providing Burial Grounds thereto, in the Town of Birmingham, in the County of Warwick, and for amending the said Act."

CCCCXVI. STAT. 51 GEORGII 3, CAP. LXIX. A.D. 1811.

STAT. 51 GEO.
3, CAP. LXIX.

"An Act for building and establishing a Church or Chapel of Ease at Buxton, in the County of Derby."

CCCCXVII. STAT. 51 GEORGII 3, C. 105. A.D. 1811.

STAT. 51 GEO.
3, c. 105.

"An Act to enable Persons to bequeath Lands and Tenements to the Commissioners for the Government of the Royal Naval Asylum, and to authorize the said Commissioners to hold the same for the Benefit of the said Asylum; and for amending an Act made in the forty-seventh year of His present Majesty relating to the said Asylum."

CCCCXVIII. STAT. 51 GEORGII 3, CAP. CVII. A.D. 1811.

STAT. 51 GEO.
3, CAP. CVII.

"An Act for better assessing and collecting the Poor and other Parochial Rates of the Parish of Clapham, in the County of Surrey; and to alter, enlarge, rebuild, or repair the present Workhouse, and to regulate the Poor thereof, and for other purposes relating thereto; and to amend so much of an Act of the fourteenth year of His present Majesty, for rebuilding a Parish Church, as relates to the assessing the Church Rates by the Land Tax."

CCCCXIX. STAT. 51 GEORGII 3, CAP. CXIV. A.D. 1811.

STAT. 51 GEO.
3, CAP. CXIV.

"An Act for effectuating an Agreement between the Reverend Anthony Hamilton, Doctor of Divinity, Rector of the Rectory and Parish Church of Great Hadham, in the County of Hertford, and James Gordon, Esquire; and for accelerating the Sale to the said James Gordon of certain Lands heretofore enjoyed, as Parcel of the said Rectory, for the purpose of redeeming the Land Tax of such Rectory."

CCCCXX. STAT. 51 GEORGII 3, C. 115 (1). [ENG. & IR.] A.D. 1811.

STAT. 51 GEO.
3, c. 115.
[ENG. & IR.]

"An Act for amending the Act forty-third George Third, to promote the building, repairing, or otherwise providing the Churches and Chapels, and of Houses for the Residence of Ministers, and the providing of Churchyards and Glebes."

"Whereas by an act passed in the forty-third year of his present majesty's reign, intituled, 'An Act to promote the building, repairing, or otherwise providing of Churches and Chapels, and of Houses for the Residence of Ministers, and the providing of Churchyards and Glebes;' it was enacted, that every person and persons having in his or their own right any estate or interest in possession, reversion, or contingency of or in any lands or tenements, or of any property of or in any goods or chattels, should have full power, licence, and authority, by deed enrolled, in such manner, and within such time as is directed in England by the statute made in the twenty-seventh year of the reign of King Henry the Eighth, and in Ireland by the statute made in the tenth year of the reign of King Charles the First, for enrolment of bargains and sales; or by his, her, or their last will or testament in writing, duly executed according to law, such deed or such will or testament being duly executed three calendar months at least before the death of such grantor or testator, including the days of the execution and death, to give and grant to and vest in any person or persons, or body politic or corporate, and their heirs and successors respectively, all such his, her, or their estate, interest, or property in such lands or tenements not exceeding five acres, or goods and chattels, or any part or parts thereof, not exceeding in value five hundred pounds, for or towards the erecting, rebuilding, repairing, purchasing, or providing any church or

43 Geo. 3,
c. 108.

STAT. 51 GEO.
3, c. 115.
[ENG. & IR.]

chapel where the liturgy and rites of the said united church are or shall be used or observed, or any mansion house for the residence of any minister of the said united church, officiating or to officiate in any such church or chapel, or of any outbuildings, offices, churchyard, or glebe for the same respectively, and to be for those purposes applied according to the will of the said benefactor in and by such deeds enrolled, or by such will or testament executed as aforesaid expressed, (the consent and approbation of the ordinary being first obtained,) and in default of such direction, limitation, or appointment, in such manner as shall be directed and appointed by the patron and ordinary, with the consent and approbation of the parson, vicar, or other incumbent; and such person and persons, bodies politic and corporate, and their heirs and successors respectively, should have full capacity and ability to purchase, receive, take, hold, and enjoy for the purposes aforesaid, as well from such persons as shall be so charitably disposed to give the same, as from all other persons as shall be willing to sell or alien to such person or persons, bodies politic or corporate, any lands or tenements, goods or chattels, without any licence or writ of *ad quod damnum*: and whereas doubts have arisen whether the powers and provisions of the said act will enable his majesty to make any such grant for the purposes before mentioned: and whereas it is expedient that the powers of the said act should be extended for that purpose; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that the king's most excellent majesty, his heirs and successors, shall have full power, licence, and authority, by deed or writing under the great seal, or under the seal of his duchy and county palatine of Lancaster, to give and grant and vest in any person or persons, bodies politic or corporate, and their heirs and successors respectively, all such his, her, or their estate, interest, or property in any lands or tenements within the survey of the court of Exchequer, or of the duchy of Lancaster, for or towards the erecting, rebuilding, repairing, purchasing, or providing any church or chapel where the liturgy and rites of the said united church are or shall be used or observed, or any mansion house for the residence of any minister of the said united church officiating or to officiate in any such church or chapel, or of any outbuildings, offices, churchyard, or glebe for the same respectively, and to be for those purposes applied in and by such deed as aforesaid expressed, the consent and approbation of the ordinary being first obtained, and such person and persons, bodies politic and corporate, and their heirs and successors respectively, shall have full capacity and ability to receive, take, hold, and enjoy for the purposes aforesaid, any lands or tenements, notwithstanding the statute of mortmain, or the act of the first year of her late majesty Queen Anne, intituled, 'An Act for the better Support of her Majesty's Household, and the Honour and Dignity of the Crown,' or any other act or acts, or other impediment or disability whatsoever: provided always, that nothing in this act contained shall extend or be construed to extend to enable his majesty, his heirs and successors, to grant more than five acres in any one grant for any of the purposes aforesaid, or to alter or amend any of the provisions of the said act of the forty-third year of his present majesty, which are not hereinbefore specially named and mentioned.

His majesty
may vest lands
in any person
for building or
repairing any
church or
chapel, or any
house for the
residence of a
minister.

1 Ann. c. 7.

No grant to
exceed five
acres

Any person
having the fee
simple of any
manor may
grant five acres
of the waste for
ecclesiastical
purposes.

"II. And be it further enacted, by the authority aforesaid, that it shall be lawful for any person or persons, bodies politic or corporate, seised of or entitled to the entire and absolute fee-simple of any manor, by deed under the hand and seal or hands and seals of any such person or persons, and under the seal or seals of any such body or bodies politic or corporate, and enrolled in the court of Chancery, to grant to the rector, vicar, or other minister of any parish church and his successors, or to the curate or minister of any chapel and his successors, any parcel or parcels of land not exceeding in the whole the quantity of five statute acres, parcel of the waste of such manor, and lying within the parish where such church or chapel shall be or shall be intended to be directed, or within any extra-parochial district wherein any such chapel shall be or shall be intended to be erected, for the purpose of erecting thereon or enlarging any such church or chapel, or for a

churchyard or burying-ground, or enlarging a churchyard or burying-ground for such parish or extra-parochial place, or for a glebe for the rector, vicar, curate, or other minister of any such church or chapel, to erect a mansion house or other buildings thereon, or make other conveniences for the residence of such rector, vicar, curate, or other minister, freed and absolutely discharged of and from all rights of common thereon, and any statute prohibiting any alienation in mortmain, or other statute, law, or custom to the contrary notwithstanding: provided always, that no grant whatsoever shall be made of any land whatsoever, for any of the purposes authorized by this act, unless the church or chapel for the benefit whereof or of the minister whereof such grant shall be made, shall be a parochial church or chapel for the service of the united church of England and Ireland, duly authorized by law, or a church or chapel duly consecrated for the service of such church, or erected or to be erected for such purpose by and with the licence and consent of the ordinary of the diocese wherein the same shall be."

STAT. 51 GEO.
3, c. 115.
[ENG. & IR.]

Grants re-
stricted to
parochial
churches or
chapels.

CCCCXXI. STAT. 51 GEORGHII 3, c. 116. A.D. 1811.

"An Act to enable His Majesty to grant a piece of Ground, within the Tower of London, to be used as an additional Burial Ground for Persons dying within the said Tower."

STAT. 51 GEO.
3, c. 116.

CCCCXXII. STAT. 51 GEORGHII 3, CAP. CXVI. A.D. 1811.

"An Act to enable the Master and Brethren of the Hospital of King James, in Gateshead, in the County of Durham, to grant Leases of Lands thereto belonging, and to enable the Lord Bishop of Durham to make Statutes and Ordinances for the Government of the said Hospital."

STAT. 51 GEO.
3, CAP. CXVI.

CCCCXXIII. STAT. 51 GEORGHII 3, CAP. CXXVI. A.D. 1811.

"An Act for repairing, enlarging, and improving the Parish Church of Hungerford, in the Counties of Berks and Wilts."

STAT. 51 GEO.
3, CAP. CXXVI.

CCCCXXIV. STAT. 51 GEORGHII 3, CAP. CXXXIV. A.D. 1811.

"An Act for providing a Chapel of Ease, and an additional Burial Ground, for the Parish of Saint Mary, Islington, in the County of Middlesex."

STAT. 51 GEO.
3, CAP.
CXXXIV.

CCCCXXV. STAT. 51 GEORGHII 3, CAP. CXXXVI. A.D. 1811.

"An Act for enabling the Archbishop of Canterbury to grant building and repairing Leases of Estates at Deal and Cliffe, in the County of Kent, belonging to the See of Canterbury; and for other Purposes."

STAT. 51 GEO.
3, CAP.
CXXXVI.

CCCCXXVI. STAT. 51 GEORGHII 3, CAP. CLI. A.D. 1811.

"An Act for amending an Act of King Charles the Second, for making the Precinct of Covent Garden parochial; and for increasing the Stipends of the Rector, Curate, Clerk, and Sextons of the said Parish."

STAT. 51 GEO.
3, CAP. CLI.

CCCCXXVII. STAT. 51 GEORGHII 3, CAP. CLII. A.D. 1811.

"An Act to enable the Vestrymen of the Parish of Saint Mary-le-Bone, in the County of Middlesex, to build a new Parish Church, and two or more Chapels; and for other Purposes relating thereto."

STAT. 51 GEO.
3, CAP. CLII.

CCCCXXVIII. STAT. 51 GEORGHII 3, CAP. CLIII. A.D. 1811.

"An Act for repairing the Parish Church of Sevenoaks, in the County of Kent."

STAT. 51 GEO.
3, CAP. CLIII.

STAT. 51 GEO.
3, CAP.
CLXXXI.

CCCCXXIX. STAT. 51 GEORGII 3, CAP. CLXXXI. A.D. 1811.

"An Act to enable the Dean of the Cathedral Church of the Holy and Undivided Trinity, Dublin, to accept Surrenders and grant Leases of certain Lands, called the Dean's Grange, in the County of Dublin, and to remove Doubts respecting the Validity of Leases heretofore made thereof."

STAT. 51 GEO.
3, CAP.
CLXXXII.

CCCCXXX. STAT. 51 GEORGII 3, CAP. CLXXXII. A.D. 1811.

"An Act for enabling the Dean of Windsor and Wolverhampton, and his Successors, to grant Leases and Licenses for opening and working Mines within the Lands belonging to the Manor of Wolverhampton; and for augmenting the Income of the Sacrist of the Collegiate Church, or Royal Free Chapel, of Wolverhampton."

STAT. 51 GEO.
3, CAP. CXIV.

CCCCXXXI. STAT. 51 GEORGII 3, CAP. CXIV. A.D. 1811.

"An Act for erecting Five distinct Rectories and Parishes within the Rectory and Parish of Simonburn, in the County of Northumberland; and for separating the same from the Rectory and Parish Church of Simonburn; and for providing Parish Churches, Churchyards, and Parsonage Houses for the same; and for restraining the Commissioners and Governors of the Royal Hospital for Seamen at Greenwich, in the County of Kent, from presenting to the Rectory of Simonburn, or the said new Rectories, any other Persons than Chaplains in the Royal Navy."

STAT. 51 GEO.
3, CAP. CC.
[IR.]

CCCCXXXII. STAT. 51 GEORGII 3, CAP. CC. [IRELAND.] A.D. 1811.

"An Act for building a Church in and for the Parish of Newry, in the Counties of Down and Armagh."

STAT. 51 GEO.
3, CAP. CCVIII.

CCCCXXXIII. STAT. 51 GEORGII 3, CAP. CCVIII. A.D. 1811.

"An Act for extinguishing all Rights of Common, and other Rights, in respect of the Glebe Land belonging to the Church of Harthill, in the County of Chester, in, upon, or under the uninclosed Waste Lands in the Township of Harthill, in the same County, and such other Lands in the same Township as have been heretofore inclosed and taken from the Waste Lands in the same Township; and for vesting a piece or parcel of Land, called Hook Loont, situate in the same Township, (subject as therein mentioned,) in the very Reverend Hugh Cholmondeley and his Successors, perpetual Curates of Harthill aforesaid, in lieu and satisfaction of such Rights."

STAT. 51 GEO.
3, CAP. CCIX.

CCCCXXXIV. STAT. 51 GEORGII 3, CAP. CCIX. A.D. 1811.

"An Act for confirming certain Building Leases of Lands in Newington, in the County of Surrey, granted by the Dean and Chapter of Canterbury, jointly with their Lessee, Thomas Brandon, Esquire, not warranted by the Provisions of an Act made in the fourteenth year of the Reign of His present Majesty; and for empowering the said Dean and Chapter, and their Lessees for the time being of their Estates in Newington, to grant Building Leases of parts of the said Premises; and for other the Purposes therein mentioned."

STAT. 51 GEO.
3, CAP. CCX.

CCCCXXXV. STAT. 51 GEORGII 3, CAP. CCX. A.D. 1811.

"An Act for vesting in the Trustees of the Charity Schools of the Parish of Saint Mary Matfelon, otherwise Whitechapel, in the County of Middlesex, the legal Estate of two undivided third parts, belonging to the said Charity Schools, in a Farm and Lands at Sandon and Much Baddow, in the County of Essex; and to enable the said Trustees to perfect a Partition of the said Farm and Lands; and for other Purposes."

STAT. 52 GEO.
3, CAP. XI.

CCCCXXXVI. STAT. 52 GEORGII 3, CAP. XI. A.D. 1812.

"An Act for building a Church or Chapel of Ease in Liversedge, in the Parish of Birstall, in the West Riding of the County of York."

CCCCXXXVII. STAT. 52 GEORGHII 3, c. 62. [IRELAND.] A.D. 1812.

STAT. 52 GEO.
3, c. 62. [IR.]

"An Act to enable Coadjutors (1) to Archbishops and Bishops in Ireland to execute the Powers of Archbishops and Bishops respectively."

"Whereas in cases of the illness or other disability of archbishops and bishops in Ireland, it has been and may be necessary that coadjutors to such archbishops or bishops respectively should be appointed: and whereas several authorities, jurisdictions, and powers, are by several acts of parliament in force in Ireland, and otherwise vested, settled, and placed in the several archbishops and bishops of Ireland respectively for the time being, and by the charter of the college of the Holy and Undivided Trinity of Queen Elizabeth, near Dublin, the archbishop of Dublin for the time being is appointed one of the visitors of the said college: now, for the preventing of all doubts and questions that may arise whether all or any of those authorities, jurisdictions, and powers may be executed by such coadjutors; be it enacted and declared, and it is hereby enacted and declared by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that every person appointed or who shall or may be appointed coadjutor for the time being, to any archbishop or bishop in Ireland, may use and exercise at all times according to the commission of such coadjutor as of right belonging to the bishop or archbishop for the time being to whom he shall be coadjutor, all and every the same and like office, authority, jurisdiction, and execution of laws and statutes, and all other customs and privileges, and shall and may do and perform all such matters and things whatsoever, which the archbishop or bishop for the time being to whom he shall be coadjutor of right might have, use, or execute, do, or perform, as belonging to his office or dignity, or is empowered or required to do or perform by virtue of any act or acts of parliament in force in Ireland, or by the said charter and the statutes of the said college or otherwise howsoever, to all intents and purposes, as if such coadjutor for the time being were archbishop or bishop; and all office, authority, and jurisdiction, exercised by such coadjutor, and all matters and things done and performed by such coadjutor in the exercise thereof, shall be as good, valid, and effectual, to all intents and purposes whatsoever, as if the same had been exercised, done, or performed, by the archbishop or bishop for the time being to whom he shall so be coadjutor as aforesaid.

Coadjutors may execute the powers of archbishops and bishops for whom they are appointed.

"II. Provided always, and be it enacted, that nothing in this act contained shall extend or be construed to extend to entitle, authorize, or empower, any such coadjutor to collate or present to any benefice or ecclesiastical preferment or promotion, in right of the archbishop or bishop to whom he shall be such coadjutor; and that nothing in this act contained shall extend nor be construed to extend to affect any rights, authorities, privileges, or powers, which by law devolve to or become vested in his majesty, his heirs, or successors, or in any other person or persons in case of the illness or other disability of any archbishop or bishop respectively, anything herein contained to the contrary notwithstanding."

But not to present to benefices.

CCCCXXXVIII. STAT. 52 GEORGHII 3, CAP. LXXI. A.D. 1812.

STAT. 52 GEO.
3, CAP. LXXI.

"An Act for building a Chapel in the City of Chichester, in the County of Sussex."

CCCCXXXIX. STAT. 52 GEORGHII 3, CAP. XCVII. A.D. 1812.

STAT. 52 GEO.
3, CAP. XCVII.

"An Act to enlarge the Powers of an Act passed in the forty-ninth year of the Reign of His present Majesty, intituled, An Act to enable the Rector of the Parish and Parish Church of Saint Mary, Woolwich, in the County of Kent, for the time being, to grant Building Leases of the Glebe Lands belonging to the said Rectory, and to sell the present Rectory House and Garden, and to build a new Rectory House."

(1) *Coadjutors*.—Respecting the appointment of coadjutors, *vide* *antè* 354.

STAT. 52 GEO.
3, c. 101.

CCCCXL. STAT. 52 GEORGII 3, c. 101 (1). A.D. 1812.

"An Act to provide a Summary Remedy(2) in Cases of Abuses of Trusts created for Charitable Purposes(3)."

"Whereas it is expedient to provide a more summary remedy in cases of breaches of trusts created for charitable purposes, as well as for the just and

(1) <i>Vide</i> Stat. 59 Geo. 3, c. 81. Stat. 2 & 3 Gul. 4, c. 57. Stat. 5 & 6 Gul. 4, c. 71. Stat. 3 & 4 Vict. c. 77, s. 21.	The following table of the principal statutes relating to charities subsequent to A.D. 1800, may perhaps be of practical utility:	
Charitable donations, for registering and securing	52 Geo. 3, c. 102.	E.
..... and bequests of Roman Catholics, for better securing	2 & 3 Gul. 4, c. 115.	G. B.
Charitable institutions, making further provision for exonerating from the land tax	46 Geo. 3, c. 133.	G. B.
<i>Amended by</i>	49 Geo. 3, c. 67. 50 Geo. 3, c. 58. 53 Geo. 3, c. 123. 54 Geo. 3, c. 173.	G. B.
..... renewing the powers for exonerating from the land tax	57 Geo. 3, c. 100. 1 & 2 Vict. c. 58.	G. B.
..... enabling his majesty to grant new leases on former rents for the benefit of	46 Geo. 3, c. 151.	E.
<i>Repealed</i> and other provisions made by	10 Geo. 4, c. 50. 5 & 6 Gul. 4, c. 58.	U. K. S.
..... in Ireland maintained wholly or partly by grand-jury presentments, making better provision for the superintendence of	2 & 3 Gul. 4, c. 85.	I.
Charitable loan societies in Ireland, amending the laws respecting	4 Geo. 4, c. 32.	I.
<i>Amended by</i>	10 Geo. 4, c. 42.	
Both acts <i>repealed</i> , and other provisions made by	1 & 2 Vict. c. 78.	
Charitable purposes, providing a summary remedy in cases of abuses of trusts created for	52 Geo. 3, c. 101.	U. K.
..... authorizing exchange of lands, &c. subject to trusts for charitable purposes	1 & 2 Geo. 4, c. 92.	E.
..... remedying a defect in the titles of lands purchased for charitable purposes	9 Geo. 4, c. 85.	E.
Charities in England for the education of the poor, appointing commissioners to inquire concerning	58 Geo. 3, c. 91.	E.
<i>Amended by</i>	59 Geo. 3, c. 81.	
..... continuing, until 1823, the powers of the commissioners, and extending them to other charities in England and Wales	59 Geo. 3, c. 81.	E.
<i>Continued</i> by 5 Geo. 4, c. 58, and 10 Geo. 4, c. 57, expired.		
..... appointing, for two years, commissioners to continue inquiries concerning	1 & 2 Gul. 4, c. 34.	E.
<i>Amended by</i>	2 & 3 Gul. 4, c. 57.	
..... appointing, until March, 1837, commissioners to continue inquiries concerning	5 & 6 Gul. 4, c. 71.	E.
<i>Continued</i> until July, 1837, by	7 Gul. 4 & 1 Vict. c. 4.	
..... facilitating applications to courts of equity regarding the management of estates or funds belonging to	59 Geo. 3, c. 91.	E.
<i>Continued and extended by</i>	2 & 3 Gul. 4, c. 57.	
Charity societies, extending provisions of 36 Geo. 3, c. 90, and 52 Geo. 3, c. 158, to	57 Geo. 3, c. 39.	E.
<i>Repealed</i> , and other provisions made by	6 Geo. 4, c. 74, which has been <i>repealed</i> by the following acts.	
Provisions now in force	10 Geo. 4, c. 56. 11 Geo. 4 & 1 Gul. 4, c. 60.	E.

(2) *Summary Remedy*.—Stat. 52 Geo. 3, c. 101, was intended to give a more easy and less expensive mode of bringing before the court a clear abuse of a charity, but it does not extend to questions respecting persons interested in the trust, or what is in the nature of a trust, or in what manner the breach of trust is to be acted upon; in fact, the statute only applies to that class of cases, where nothing is to be the subject of in-

quiry, but whether A. B. and C. made parties to a petition, have been guilty of a breach of trust, and to order that to be done in consequence, which seems requisite. Where, therefore, a petition was filed against a corporation who had improperly become trustees for pulling down a chapel and almshouses, and it did not appear, whether the chapel was private or parochial, and the heir of the founder was not a party,

upright administration of the same; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that from and after the passing of this act, in every case of a *breach of any trust or supposed breach of any trust created for charitable purposes* (4), or whenever the direction or order of a court of equity shall be deemed necessary for the administration of any trust for charitable purposes, it shall be

STAT. 52 GEO.
3, c. 101.

In cases of
breach of trust
petition to be
presented to
the lord chan-

but who was the surviving trustee, nor could the court see in what manner the charity was to be carried into effect, and the petitions had lain by for forty years; the House of Lords reversed the judgment below upon a petition under Stat. 52 Geo. 3, c. 101. *Ludlow (Corporation of) v. Greenhouse*, 1 Bligh N. S. 17.

The jurisdiction of the court is discretionary under Stat. 52 Geo. 3, c. 101, and Stat. 40 Geo. 3, c. 56, as to money entailed. *Exp. Rees*, 3 V. & B. 11.

The intention of the legislature in framing Stat. 52 Geo. 3, c. 101, being to guard charitable trusts from abuse, and, for that purpose, to prevent proceedings from being instituted for the mere purpose of costs, which are payable out of the funds of the charity; the signature of the attorney-general, or, in case of there being none, of the solicitor-general, is required to every petition; but the official signature is not granted as a matter of course, for the same deliberation is exercised, as if the case were presented in the shape of an information. *Exp. Skinner in re Lawford Charity*, 2 Meriv. 453. *Ludlow (Corporation of) v. Greenhouse*, 1 Bligh N. S. 65.

If an information and a petition be pending at the same time, the court, in order to save the costs, will refer the proceedings to the attorney-general to certify which shall be prosecuted. *Attorney-General v. Green*, 1 J. & W. 303.

Where a petition is presented for carrying a charity into execution, and for calling for the rents and profits of the charity estate, all who were concerned in the trust, must be before the court, which will not entertain charges against one of several trustees, or his representatives, on the ground of his being the acting trustee, nor compel his representatives to account for his proportion, where the other trustees, or their representatives, are not before the court. *In re Chertsey Market*, 6 Price, 278.

Persons presenting a petition under an act, empowering "any person or persons whomsoever" to petition against the trustees of a charity, must be interested in the fund. *In re Bedford Charity*, 2 Swanst. 525. *Sed vide Attorney-General v. Vivian*, 1 Russ. 226.

In a charity petition, to which the trustees of a charity were respondents, and had been ordered to pay the costs of the petition, it was held, upon an application relative to the service of the order, that the trustees, being respondents, were parties to the petition, and therefore the case was not within the forty-fourth of the new orders of 1828.

A petition for the regulation of abuses in a charity, if preferred by one person only, or presented to the lord chancellor, as repre-

senting the king, cannot be sustained under Stat. 52 Geo. 3, c. 101, although certified by the attorney-general or solicitor-general. *In re Garstang Church Town School*, 7 Law Journ. 169.

The attorney-general is not precluded by having signed the petition from interfering to prevent injustice to any party, and he may therefore be heard for the respondents. *Ludlow (Corporation of) v. Greenhouse*, 1 Bligh N. S. 44.

(3) *Charitable Purposes*:—*Vide* Stat. 43 Eliz. c. 4, *antè* 481; Stat. 9 Geo. 2, c. 36, *antè* 795.

(4) *Breach of any trust or supposed breach of any trust created for charitable purposes*:—In all cases of proceedings by the attorney-general, under Stat. 59 Geo. 3, c. 91, or under Stat. 2 Gul. 4, c. 57, the certificate of the attorney-general will be evidence of particulars of cases having been duly certified by the commissioners.

Under Stat. 2 Gul. 4, c. 57, the court of Chancery or Exchequer can direct conveyances of estates, and empower resident ministers and churchwardens to receive rent charges belonging to charities, where there are no existing trustees.

If a charitable object fail, the crown has a right to enter upon, and signify to what charitable purpose the fund shall be applied.

Petitions have been presented to the court by the attorney-general, for the appointment of trustees; vesting estates in trustees; and schemes for the regulation of charities. *In re Bampffield Charity*, Nov. 5, 1825; Jan. 22, 1827. The court will also interfere for an account of the rents and profits, and for the removal of trustees. *In re Bateman's Charity*, Nov. 5, 1823.

Although the internal management of a charity may be the exclusive subject of visitatorial jurisdiction; yet if a trust be created as to the revenue, any abuse by misapplication will be controlled by the court under Stat. 52 Geo. 3, c. 101. *Exp. Berkhamstead Free School*, 2 V. & B. 139. *In re Tadcaster School & Hospital*, Jan. 21, 1826. *Attorney-General v. Dixie*, 13 Ves. 519.

If an annuity be given to a charitable institution for ever, upon a condition, and be once accepted and acted upon, it cannot afterwards be renounced at pleasure: although the gift be coupled with a direction, that upon the neglect or refusal of the institution at any time to act upon the condition, the annuity shall be applied in another manner. *Attorney-General v. Christ's Hospital*, 1 Russ. & M. 626.

The court will control the application of a gift to trustees, when it is discretionary for them to found a grammar-school, or a school for teaching other branches of learning. *Attorney-General v. Hartley*, 2 J. & W. 370.

STAT. 52 GEO. 3, c. 101. lawful for any two or more persons to present a petition to the lord chancellor, lord keeper, or lords commissioners for the custody of the great seal, or master

If, in the case of a free grammar-school, all the proceedings have been regularly taken under Stat. 52 Geo. 3, c. 101, and an order made by the vice-chancellor, absolutely confirming the master's report, approving of a scheme for the future conduct of the school, the court, nevertheless, will not be thereby precluded from opening the scheme: and if the attorney-general have not been present at the previous proceedings in the master's office, the court will afford him an opportunity of making suggestions relative to the scheme, and will send it back to the master for that purpose. Thus, in *The Attorney-General v. Stamford (Earl of)*, (4 Jurist, 1105,) Lord Cottenham observed, "I consider this case as one of the very highest importance; as much from its peculiar circumstances, as from its connexion with the education of the children of the inhabitants of the populous and important town of Manchester. An act was passed during the last session of parliament to extend the powers of the court of Chancery with respect to grammar schools, from which act I find the school of Manchester was specially excepted; but there are fortunately some circumstances and peculiarities in the case of this school, which relieve the court from any difficulty that might otherwise be experienced in dealing with it. There is sufficient in this case to relieve it from the operation of those cases in which the court has, I think, unnecessarily restricted the meaning of the term *grammar school*. There is no doubt, that the school was by the statutes intended to be strictly a grammar-school, but later cases have departed from the strictness of the doctrine of *cyprès*, and relieved the court from considering the matter within those narrow limits which that circumstance would seem to require. Indeed, without that, Stat. 16 Hen. 8 points out the course to be adopted with respect to this school. By that statute it is provided, that the school should be founded 'for the teaching of all infants and others that shall come to the school, their A B C, primer, and sorts, until they be in grammar.' The statute goes on most wisely to provide in these terms: 'Because, in time to come things may and shall survive and grow by sundry occasions and causes, which, at the making of the acts and ordinances, it may not be possible to come to mind, the feoffees are therefore authorized, from time to time, when need shall require, to call in to their aid counsel learned in the law, and men of good repute, to have full power and authority to augment, increase, expend, and perform all such acts and ordinances, articles, compositions, and agreements, concerning the schoolmaster, ushers, and scholars, for their and every of their offices in connexion with the free school.' The power given by this statute to the court, it will exercise for the benefit of the testator's property. The bill of the relators asks for an account, the removal of the trustees, and a new scheme for the administration of the

charity. Now, I am clearly of opinion, that the relators have not made out any case for an account. The statute prescribes the mode in which the receiver is to keep his accounts; and no errors have been proved in the accounts of the person intrusted with the management of the revenues of the charity; and in the absence of all such proof, to decree an account would be an unnecessary waste of the funds of the charity, and would expose every charity in the kingdom to a suit for an account. As to the second point, the removal of the trustees, I am also of opinion, that the court cannot make any decree. It is true, that, by the statutes, the feoffees are to be chosen of the most honest gentlemen and persons resident in the parish of Manchester; but, for a very considerable period, that rule has been departed from, by nominating as trustees persons of the neighbourhood, distinguished by their rank, property, and intelligence, to whom the charity is undoubtedly much indebted for the zeal and assiduity they have displayed in the management of its affairs; and to remove them, would be to do an injury to the charity. *Attorney-General v. Clarendon (Earl of)*, 17 Ves. 499. Although, however, the court cannot, in the absence of all proof of misconduct on the part of these trustees, comply with a prayer for their removal; it is a very different question, when the court comes to pronounce an opinion, as to what is to be done for the future. The statutes prescribe, that the trustees are to be resident; and whatever difficulty may have occurred in selecting fit persons at first, no such difficulty can occur now in selecting from the populous parish of Manchester a sufficient number of persons competent to fill the situation of trustees. It is desirable at all times to adhere as much as possible to the provisions of the statutes; and of the two classes of persons, those who are resident in the parish seem to be the most eligible for the discharge of the duties of trustees, when vacancies occur for their appointment. The most important question, that of the scheme of 1833, is all that remains now to be considered. The first difficulty occurs in the assertion of the defendants, that that scheme is conclusive, and cannot be disturbed; while the relators declare it to have been altogether *ex parte*, and therefore ought to go for nothing; and they call upon the court to disregard it. I cannot wholly concur in either of these propositions. That the decree was taken *ex parte* there can be no doubt. The attorney-general, it is admitted on all hands, was no party to the proceedings in the master's office; and it was the opinion of Sir John Leach, that the attorney-general ought at all times to be a party in such cases; and I trust that no proceeding of the same description, or where charity property is to be administered, will ever take place without the attorney-general being a party, unless it be intended to convert Sir Samuel Romilly's Act, under which such proceedings take place, from a great public

of the rolls for the time being, or to the court of exchequer, stating such complaint and praying such relief as the nature of the case may require: and it

STAT. 52 GEO.
3, c. 101

benefit into a serious mischief. And if I find that any practice prevails in the master's office, of sanctioning schemes without the presence of the attorney-general, it will be necessary for the court to make a general order on the subject, for the purpose of correcting such an abuse. But although the scheme was drawn up without the attorney-general, and I am clearly of opinion that such a proceeding cannot be conclusive against a well-founded complaint, that is no bar to the adoption by the court of such parts of that scheme, as it may consider proper; for although many parts of it are objectionable, there are other parts of which I fully approve. I propose, therefore, to intimate what parts he should correct or adopt, and then send it back to the master with such intimation of the opinion of the court, in order to enable the attorney-general to bring forward such suggestions as he may think proper. Of those parts of the scheme which are objectionable, I particularly refer to that, which makes extensive provision, out of the funds of the charity, for the reception of boarders by the head and other masters of the school. Undoubtedly the court, in many cases, and for weighty reasons, had sanctioned the practice of masters taking boarders; but the principle on which the court has acted in allowing this, has been a regard to the interests of the charity, on conviction that the purposes of the charity would not be prejudiced by it, and in some cases, that they would be advanced; as where, from the smallness of the income arising from the charity property, it might be desirable to augment the salary of the master by such means, with a view to providing a more efficient master for the school. These cases have no application to the present, where the funds of the charity are so ample; and it is quite impossible to justify, on any principle, that part of the scheme of 1833, by which 10,000*l.* has been expended in building houses for the masters out of the charity funds. The case of *the Attorney-General v. Clarendon (Earl of)* (17 Ves. 491,) is an authority for the system of taking boarders; but the circumstances of that case were special; and I confess that, looking at what was done in the *Attorney-General v. Coopers' Company*, (19 Ves. 186,) and looking also at the principle laid down by Lord Eldon in that case, I am very much at a loss to reconcile it, with what was done by him in other cases; and I cannot tell how Lord Eldon could get over these considerations. The money, however, in the present case, has unfortunately been spent in erecting these buildings; and although the court would not sanction such an expenditure, if called on now to do so, it must have regard to the fact, that the system of taking boarders took place from a very early period after the foundation of the school, and that the masters have accepted their situations with the understanding that such practice was to continue. It is not expedient to disappoint

these expectations; but, at the same time, the court must protect the funds of the charity from such abuses for the future. That part of the scheme, therefore, which gives the boarders of the masters a share of the exhibitions and other advantages intended solely for the scholars on the foundation, must be altered, for they are clearly not entitled to participate in them. The result of this portion of the scheme has been what might have been expected. Looking at the statements furnished me on that matter, I find that, from 1807 to 1836, there were fifty-seven exhibitions given to boarders, and only twenty-eight to day-scholars. I impute no partiality to any one in the distribution of them; but the superior degree of attention which the boarders naturally receive in their instruction leaves the day-scholars little or no chance in the competition for such advantages. The impropriety of such a course is, indeed, so obvious, that I propose to make that part of the scheme the subject of a declaration in the decree, and to declare that no exhibitions in future are to be given to those who are or have been boarders, although the payments are to be continued to those who may already have received them. There are, however, other parts of the scheme, such as the increase of the income of the masters, and the exclusion of scholars under six years of age, which are inconsistent with the statutes, and which will properly come under the consideration of the master in reviewing the scheme. This is the more necessary, as I perceive that, although the masters receive among them an annual income of more than 2000*l.* a year, and the charity has a large surplus fund, no addition has been made to the exhibitions. Of the system of teaching introduced in 1833, I approve. Under these circumstances, I propose to send the matter to the master, to revise the scheme of 1833 in such manner as will be found most likely to promote a general system of education, which will give all the children of the inhabitants of Manchester the benefits of instruction in all branches of learning; with liberty to the attorney-general to offer such suggestions as may appear to be conducive to that object, regard being had to the opinion of the court on the subject of the boarders, the admission of children of tender years, of whom all who are capable of instruction should be admitted, the emoluments of the masters, and such regulations as may be requisite to comply with the provisions of the statutes, and provide an efficient system of education for the children of the inhabitants of Manchester.

The court will interpose to establish a charity for the purpose of relieving the master of a free school, from conditions which had become impracticable, and for declaring in what manner the income ought, under the circumstances, to be applied. *In re Hutton's Charity*, 7 Aug. 1827; 21 Dec. 1827.

Governors of an eleemosynary corporation,

STAT. 52 GEO. shall be lawful for the lord chancellor, lord keeper, and commissioners for the custody of the great seal, and for the master of the rolls and the court of ex-

even where their election might be said to be a fraud, will not be removed without a petition to the lord chancellor in his visitatorial capacity; but corporations, constituted trustees, have sometimes been, by decree, divested of their trust for an abuse of it, as any other trustees. *Attorney-General v. Clarendon (Earl of)*, 17 Ves. 499.

The court, upon the application of the attorney-general, will interfere to ascertain what townships are entitled to the benefit of a charitable bequest, and will give directions for the due application thereof: (*In re Ward's Charity*, 26 July, 1823; 2 June, 1825:—) for proof of a balance due from a trustee of a charity, under a commission of bankruptcy against him, for payment of dividends, to be received into court for their investment, and for the appointment of new trustees, and the transfer of the stock to them: (*In re Modbury School, Devon*, 31 May, 1823:—) for directions for the administration of a charity with respect to the increased income: (*In re Wilkison's Charity*, 24 April, 1828; 1 August, 1829:—) for taking the accounts of trustees, and settling a scheme for the future application of the charity funds: (*In re Carter's Charity*, 13 Feb. 1830:—) and for confirming a compromise on payment of a sum in discharge of any claim of the charity on a particular estate. *In re Lady Calverley's Charity*, 10 Nov. 1830.

A charity founded by royal charter can be regulated on petition under Stat. 52 Geo. 3, c. 101, for a misapplication of the funds; if the application do not otherwise extend to regulate or alter the charity, or to carry it into execution. *In re Chertsey Market*, 6 Price, 261, 277.

If charitable property be in the possession of parish officers, an inquiry upon petition will be granted under Stat. 52 Geo. 3, c. 101, for ascertaining and restoring the lands. *Exp. Foulser*, 1 J. & W. 72.

If the question at issue, be simply upon the construction of a particular instrument, the court will interpose upon petition, under Stat. 52 Geo. 3, c. 101, as between the conflicting claims of different objects of a charity. *In re Upton Warren*, 1 M. & K. 410.

Under Stat. 52 Geo. 3, c. 101, where charity trustees upon petition did not appear, they were ordered to show cause, why the order prayed should not be made. *Exp. Seagears*, 1 V. & B. 496.

Jews are not entitled to the benefit of the Bedford charity; but whether that question could be decided on a petition presented under Stat. 52 Geo. 3, c. 101, has been questioned. *In re Bedford Charity*, 2 Swanst. 470.

Stat. 39 Geo. 3, cap. xciv.; Stat. 59 Geo. 3, cap. xxii.; Stat. 7 Geo. 4, cap. xxix.; Stat. 1 & 2 Gul. 4, cap. xvii.; have made express provisions for petitions to the court, relating to the grammar school of Wotton-under-Edge; St. Catherine's hospital in Ledbury; the Bedford charity; and the Birmingham free grammar school.

Cases in which the Court will not inter-

ferre. Stat. 52 Geo. 3, c. 101, was meant to extend only to cases of plain breaches of trust, committed by persons in their character of trustees, not to the case of benefits derived from such breaches of trust by third persons. *Exp. Skinner, in re Lawford Charity*, 2 Meriv. 453.

If the question be, respecting the nature of the trust, and who are the parties to manage it, it is not a case for a petition, but the party ought to proceed by information. *Ludlow (Corporation of) v. Greenhouse*, 1 Bligh N. S. 86.

Relief for charities by petition, instead of information, under Stat. 52 Geo. 3, c. 101, being limited to questions of abuse of trust, as between the trustees and the objects of the charity, is not applicable to an adverse claim to land, as having formerly belonged to the charity. *Exp. Rees*, 3 V. & B. 10.

Where an information had been filed, or petition presented with the same objects, it is not for the court to separate these objects and to give relief upon the petition as to such as are regularly within its limits, leaving the rest to be disposed of in the information. *Exp. Skinner, in re Lawford Charity*, 2 Meriv. 453.

Petitioners complaining of the acts of a trustee at such a distance of time, as renders it impossible for him to make such a defence as he might otherwise have done, will be precluded from relief against the petitioners. *In re Chertsey Market*, 6 Price, 285.

The court has no jurisdiction over charities supported by daily and voluntary contribution of the subscribers; because, where funds are supplied by subscribers, who know the purposes to which they are to be devoted, those persons may apply them to any purpose. *Exp. Pearson in re Macclesfield School*, 6 Price, 214. Shelford on Mortmain, 492.

The court has no jurisdiction under Stat. 52 Geo. 3, c. 101, to direct upon petition an account of assets of a person who had received the proceeds of charity estate against his personal representatives. *In re St. Wenn's Charity*, 2 S. & S. 666.

Constructive trusts are not within Stat. 52 Geo. 3, c. 101. *Exp. Brown, Cooper*, 295.

In re Reading Dispensary, (10 Sim. 118,) it was held, that the court had no jurisdiction to make an order on a petition presented under Stat. 52 Geo. 3, c. 101, for transferring the funds of a dispensary to an hospital, and amalgamating the two institutions, the lord chancellor observing, "Under Sir Samuel Romilly's Act, the court has no jurisdiction to do what is asked: because, ever since the passing of that act, the received opinion has been, that it is so to be dealt with, as to be made applicable only to cases where the conduct of the trustees of a charity comes under consideration, and to cases where it becomes necessary to give some order or direction for the administration of the funds of the charity. But I cannot conceive that an order or direc-

chequer, and they are hereby required to hear such petition in a summary way, and upon affidavits or such other evidence as shall be produced upon such hearing to determine the same, and to make such order therein and with respect to the costs of such applications as to him or them shall seem just; and such order shall be final and conclusive unless the party or parties who shall think himself or themselves aggrieved thereby shall, within two years from the time when such order shall have been passed and entered by the proper officer, have preferred an appeal from such decision to the house of lords, to whom it is hereby enacted and declared that an appeal shall lie from such order.

“II. Provided always, and be it further enacted, that every petition so to be preferred as aforesaid shall be signed by the persons preferring the same, in the presence of and shall be attested by the solicitor or attorney concerned for such petitioners, and every such petition shall be submitted to and be allowed by his majesty's attorney or solicitor-general, and such allowance shall be certified by him before any such petition shall be presented.

“III. (1) And be it further enacted, that neither the petitions, nor any proceedings upon the same or relative thereto, nor the copies of any such petitions or proceedings, shall be subject or liable to the payment of any stamp duty whatever.”

CCCCXLI. STAT. 52 GEORGII 3, c. 102. A.D. 1812.

“An Act for the registering and securing of Charitable Donations.”

“Whereas charitable donations have been given for the benefit of poor and other persons in England and Wales to a very considerable amount, and many of the aforesaid donations appear to have been lost, and others from the neglect of payment and the inattention of those persons who ought to superintend them, are in danger of being lost, or rendered very difficult to be preserved; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that a memorial or statement of the real and personal estate, and of the gross annual income, investment, and the general and particular objects of all and every charity and charities, and charitable donations, for the benefit of any poor or other persons in any place in England and Wales, which shall have been founded, established, made, benefitted, increased, or secured, together with the names of the respective founders of or benefactors thereto, where known, and also of the person or persons in whose custody, possession, or control, the deeds, wills, and other instruments whereby such charities or charitable donations shall have been founded, established, made, benefitted, increased, or secured, may be, and also of the names of the then trustee or trustees, feoffee or feoffees, possessor or possessors, of such real or personal estate, shall,

STAT. 52 GEO. 3, c. 101.

cellor, &c. who shall hear the same in a summary way, and make order therein.

Appeal to the house of lords.

Petitions to be signed and certified, &c.

Proceedings not liable to any stamp duty.

STAT. 52 GEO. 3, c. 102.

A memorial of deeds, &c. respecting charitable donations already founded, to be registered.

tion, the direct effect of which, is to put an end to a charity, can be considered as an order or a direction for its management.”

“Inasmuch, then, as no complaint is made about the management of the dispensary as an existing society; but the sole object of this petition is, in effect, to put an end to it, by amalgamating the funds with the funds of the hospital, which will be governed in a totally different manner, and which would make it cease to have a separate existence; I am of opinion, that the petition asks what the court is not authorized to do, at any rate, under Sir Samuel Romilly's Act.”

Practice. Under Stat. 52 Geo. 3, c. 101, after one order on petition, the subsequent orders may be obtained on motion. *In re Slewringe's Charity*, 3 Meriv. 707.

An order upon a petition for the relief of a charity under Stat. 52 Geo. 3, c. 101, which has not been signed by the attorney or

solicitor-general, is a nullity. *Attorney-General v. Green*, 1 J. & W. 303.

On a reference in a petition under Stat. 52 Geo. 3, c. 101, the master may receive affidavits in evidence. *Exp. Greenhouse*, 1 Swanst. 60.

Costs. The court has no power to give costs in proceedings under the summary powers of an act of parliament, unless express power for that purpose be given. *In re Bedford Charity*, 2 Ibid. 532.

Appeal. An appeal will lie against an order made upon a petition by the court of Chancery, to the House of Lords, but the appeal must be made within two years from the time, when such order has been entered by the officer.

The appellant must have been a party to the petition in the court below; and if a stranger appeal, he will have to pay the costs.

(1) Repealed by Stat. 5 Geo. 4. c. 41.

STAT. 52 GEO. 3, c. 102. from and after six calendar months after the passing of this act, be registered by such person or persons who shall then be the trustee or trustees, feoffee or feoffees, possessor or possessors thereof, or some or one of such persons, in manner and in the form contained in the schedule to this act annexed, in the office of the clerk of the peace of the county, or city or town being a county of itself, within which such poor or other persons shall be; and such memorial or statement shall be signed by such person or persons causing the same to be registered and left in the said office of such clerk of the peace, who shall forthwith transmit a duplicate or copy of the same unto the enrolment office of the high court of Chancery.

The like of charitable donations which may hereafter be founded.

“II. And be it further enacted, that wherever any such charity or charitable donations shall be founded, established, made, or benefitted, increased, or secured, by any deed, will, or other instrument hereafter to be made or executed by any person or persons, that then a like memorial or statement, according to the directions herein-before contained, shall be registered and left and transmitted as aforesaid, by such person or persons as are herein-before mentioned, within twelve months after the decease of such person or persons by whom any such will, deed or deeds, or other instrument, shall have been made or executed.

Clerks of the peace to provide proper books wherein registries shall be made.

“III. And be it further enacted, that for the purpose of such registries of such memorials or statements, the clerk of the peace for the time being of each and every county, or city, or town being a county of itself, or riding within England and Wales, shall, as there shall be occasion, provide proper books of parchment or vellum, wherein such registers shall be made and entered; and every such original memorial or statement, and every such book provided as aforesaid, shall be carefully kept and preserved for public use and inspection in the office to which it shall belong, together with a correct index, to be made from time to time by such clerk of the peace, of such charities and charitable donations, distinguishing each by the name of the original, or first donor or founder thereof, where known, or the appellation or title most generally used for such charity or charitable donations.

Notice to be given in the London Gazette if persons to be benefitted shall not be wholly within one county.

“IV. And be it further enacted, that in case the persons to be benefitted by any such charity or charitable donations as aforesaid, shall not be wholly within any one county, then and in such case such clerk of the peace of the county where any such charity or charitable donation shall be registered, shall forthwith notify in the London Gazette the name or title thereof, according to the appellation or title used in the index aforesaid, and the names of the several places wherein the objects of such charity or charitable donations shall be, and the particular or general objects thereof, and also the name of the county wherein such memorial or statement shall have been registered.

If donations shall not be registered, a petition may be presented to the lord chancellor, &c. complaining thereof.

“V. And be it further enacted, that if any such charity or charitable donation shall not be duly memorialized, stated, and registered, according to the provisions of this act, it shall and may be lawful for any two persons or more, interested in such charity or charitable donation, to present a petition to the lord chancellor, lord keeper, or lords commissioners for the custody of the great seal, or master of the rolls for the time being, or the court of Exchequer, complaining thereof; and they are hereby required to hear such petition in a summary way, and upon affidavits, or such other evidence as shall be produced upon such hearing, to determine the same, and to make such order therein, and with respect to the costs of such application and proceedings, as to him or them shall seem fit, and which order shall be final and conclusive.

No proceedings to decide any right or title.

“VI. Provided always, and be it further enacted, that no proceedings under the provisions herein-before mentioned, shall extend, or be construed to extend, to decide any right or title as to the property that shall be so registered, or as to the persons who shall be entitled, or claim to be entitled, to the benefit thereof, or any interest therein.

Clerk of the peace to make searches, and give copies of registers.

“VII. And be it further enacted, that all and every clerk of the peace of the several counties and ridings in England and Wales, shall, as often as required, make searches concerning all memorials and statements directed by this act to be entered in his or their office as aforesaid, and shall also give copies of the same under his hand, if required by any person whatsoever, who shall tender or be

willing to pay him the sum or sums herein-after directed to be allowed to him for such copies of such memorials or statements as aforesaid.

STAT. 52 GEO.
3, c. 102.

“VIII. And be it further enacted, that every such clerk of the peace shall be allowed for the registering every such memorial or statement as is by this act directed, the sum of four shillings, and no more, in case the same do not exceed four hundred words, but if such memorial or statement shall exceed four hundred words, then after the rate and proportion of one shilling a hundred for all the words contained in such entry, and the like fees for the like number of words contained in every copy of any entry given out of the said register, and no more; and for every notification in the London Gazette, the costs of such notification, and the further sum of ten shillings for drawing and inserting the same, and transmitting the duplicate or copy herein-before mentioned unto the enrolment office of the high court of Chancery, and no more.

Allowance to clerk of the peace;

and to the person inserting notification in the Gazette.

“IX. And be it further enacted, that where any difficulty shall occur in making and preparing such memorial or statement as aforesaid, so as to render it necessary to employ any longer time than is allowed by the provisions of this act for registering such memorial or statement as herein-before is mentioned, it shall and may be lawful for the court of quarter sessions for the county, or city, or town, being a county of itself, wherein such memorial or statement is intended to be registered, to allow, on application made to them, and on examination of the circumstances, such further time, not exceeding six calendar months, as to such court shall seem necessary to be given for the purpose of duly registering such memorial or statement as herein-before is mentioned.

Further time to be allowed to register memorial where difficulties occur in preparing the same.

“X. And be it further enacted, that it shall and may be lawful for the court of quarter sessions of the county, or city, or town, being a county of itself, wherein such statement or memorial shall have been registered, to allow such reasonable costs and charges attending the preparing and registering, notifying and transmitting such memorial or statement, with reference to the income of the charity or charitable donation, to such person or persons causing the same to be registered, as such court shall think fit; and it shall and may be lawful for such person or persons who shall have caused such memorial or statement to be registered, to deduct out of the income, funds, rents, and profits, in his or their hands, of such charity or charitable donation so by him or them memorialized, and stated, and registered, the sum and sums so allowed, and no more: provided always, that the said court of quarter sessions shall not allow any sum whatever for and in respect of such costs and charges, unless it shall be stated to them, upon the declaration in writing of the person or persons applying for such allowance, and signed by him or them, that such memorial or statement is to the best of his, her, or their knowledge and belief, true in every respect, and that it doth contain to the best of his, her, or their knowledge and belief, a true and full account of the real and personal estate, annual gross income, investment, and the particular or general objects of the charity or charitable donation of which such memorial or statement shall have been registered, together with the names of the respective donors or benefactors thereto, where known, and also of the person or persons in whose custody, possession, or control, the deeds, wills, and other instruments herein-before mentioned, shall at such time be, and also the names of the trustee or trustees, feoffee or feoffees, possessor or possessors, of such real and personal estate: provided always, that none of the provisions herein-before contained, shall be construed to extend to any charity or charitable donation not issuing out of or secured upon any lands, tenements, or hereditaments, or directed by the founder or donor thereof to be secured thereon, or to be permanently invested in government, or any public stocks or funds; nor to any charitable donation whatsoever, which by the direction of the donors thereof, or by the lawful rules of any charitable institution whatsoever, may be wholly or in part expended in and about the charitable purposes for which the same may have been given, at the discretion of the governors, directors, managers, or the trustee or trustees of such charitable institution at any time whatsoever.

Costs attending the preparing memorials to be allowed.

Not to extend to any donation not secured upon lands; nor to charitable institutions.

“XI. And be it further enacted, that nothing in this act shall be construed to

Act not to

STAT. 52 GEO.
3, c. 102.

extend to any
royal founda-
tions; nor to
certain institu-
tions;

Nor to chari-
table institu-
tions of
quakers;

Nor to chari-
table founda-
tions, the ac-
counts of which
are directed to
be passed in
the court of
Chancery, &c.

Divers chari-
ties may be
stated in the
memorial.

Saving clause.

extend to any hospital, school, or other charitable institution whatsoever, which shall have been founded, improved, or regulated by or under the authority of the king's most excellent majesty, or any of his royal predecessors, or of any special act of parliament thereunto particularly relating; nor to any charitable donation under the superintendence of any such hospital, school, or institution, nor to the governors of the corporation of the charity for the relief of poor widows and children of clergymen, nor to any friendly society, the rules whereof shall have been confirmed according to the provisions of the act or acts for the encouragement and relief of friendly societies; nor to either of the universities of Oxford or Cambridge, nor to any college or hall thereto belonging, or to any charitable bequest, devise, gift, or foundation whatsoever belonging thereto, or under the control, direction, superintendence, or management of the said universities, or either of them, or any college or hall therein respectively; nor to the Radcliffe infirmary within the university of Oxford; nor to the colleges of Westminster, Eton, or Winchester, or any of them; nor to any cathedral or collegiate church within England and Wales; nor to the Charter house; nor to the corporation of the Trinity house of Deptford Strand; nor to any funds applicable to charitable purposes for the benefit of any persons of the Jewish nation.

"XII. Provided always, that nothing in this act contained shall extend to any charitable foundation or donation which shall have been or shall be given to and for the benefit of any person or persons of the society of people called quakers, and which shall be under the superintendence and control of persons of that persuasion.

"XIII. Provided always, and be it further enacted, that nothing in this act contained shall extend to any charity or charitable donation or foundation, the accounts of the income and expenditure whereof shall have been directed to be annually passed in the high court of Chancery, nor to any charity or charitable donation or foundation, the annual gross income whereof shall not exceed forty shillings, and of which the trustee or trustees, feoffee or feoffees, possessor or possessors, some or one of them, shall within six months after the passing of this act, deposit in the hands of the minister of the parish wherein any of the objects of such charity, charitable donation, or foundation shall be, a written memorial or statement in like form as in the schedule hereunto annexed is contained, and which by such minister shall be forthwith deposited in the parish chest.

"XIV. And be it further enacted, that where any body corporate, guild, or fraternity, shall be entrusted with the possession or distribution of divers charities or charitable donations or foundations, or of the rents and profits thereof, that in such cases all such charities, charitable donations, and foundations may be registered and stated in one and the same memorial.

"XV. Saving always to the king's most excellent majesty, and to all other persons, such power of superintending and regulating charities and charitable establishments, and the property and funds thereof, as they respectively had before the making of this act."

"SCHEDULE TO WHICH THIS ACT REFERS.

"A memorial or statement in pursuance of an act for the registering and securing of charitable donations; whereby it is declared by the undersigned [state the name or names of the persons who sign the memorial or statement] that the real or personal estate [state this as the case may be] of the [state the title or appellation of the charity or charitable donation] consists of [state this as the case may be; and if real estate, whether it be in lands, tenements, or hereditaments, and of what tenure, and where the same are situate, or whether of any charge or incumbrance on any lands, tenements, or hereditaments, and where situate; and if personal estate, describe the nature of it, and how secured,] and the gross annual income arising therefrom amounts to [state the sum] and the objects of which charity or charitable foundation are [state the general or particular objects of the charity] and which charity or charitable foundation was, according to the best of my [or, our, as the case may be] knowledge and belief, founded by [state by whom; and if benefited, increased, or secured by any other person, state the same

and by whom] and the deeds, wills, and other instruments [state this as the case may be; and if no deeds, wills, or other instruments exist, state the same] are, to the best of my [or, our, as the case may be] knowledge and belief, in the custody, possession, or control [state this as the case may be] of [state the name of the body corporate or natural person] and the trustees, feoffees, or possessors, [state this as the case may be] of the said real and personal estate [state this as the case may be] are, to the best of my [or, our, as the case may be] knowledge and belief [state the name of the body corporate or natural person, as the case may be.]

“(Signed) A. B.,
C. D.,
E. F.,

“Trustee or trustees, feoffees, possessor or possessors, of the real or personal estate [as the case may be] of the charity or charitable donation hereby memorialized and registered.”

CCCCXLII. STAT. 52 GEORGII 3, CAP. CIX. A.D. 1812.

STAT. 52 GEO.
3, CAP. CIX.

“An Act for repairing the Parish Church of Saint Sidwell, in the City and County of the City of Exeter.”

CCCCXLIII. STAT. 52 GEORGII 3, CAP. CX. A.D. 1812.

STAT. 52 GEO.
3, CAP. CX.

“An Act for repairing the Parish Church of Bishop Stortford, in the County of Hertford.”

CCCCXLIV. STAT. 52 GEORGII 3, CAP. CXXIII. A.D. 1812.

STAT. 52 GEO.
3, CAP. CXXIII.

“An Act for confirming and rendering valid and effectual an Exchange made between Thomas Fowler, Gentleman, and Mary his Wife, both deceased, and the Vicar of Walberton, in the County of Sussex, of Lands and Hereditaments of the said Thomas Fowler in the Parish of Walberton, for a small part of the Glebe belonging to the said Parish.”

CCCCXLV. STAT. 52 GEORGII 3, C. 146(1). A.D. 1812.

STAT. 52 GEO.
3, C. 146.

“An Act for the better regulating and preserving Parish and other Registers of Births, Baptisms, Marriages, and Burials in England.”

“Whereas the amending the manner and form of keeping and of preserving registers of baptisms, marriages, and burials of his majesty’s subjects in the several parishes and places in England, will greatly facilitate the proof of pedigrees of persons claiming to be entitled to real or personal estates, and be otherwise of great public benefit and advantage; be it therefore enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the thirty-first day of December, one thousand eight hundred and twelve, registers of public and private baptisms, marriages, and burials solemnized according to the rites of the united church of England and Ireland within all parishes or chapelries in England, whether subject to the ordinary or peculiar or other jurisdiction, shall be made and kept by the rector, vicar, curate, or officiating minister of every parish, (or of any chapelry where the ceremonies of baptism, marriage, and burial have been usually and may according to law be performed,) for the time being, in books of parchment, or of good and durable paper, to be provided by his majesty’s printer as occasion may require, at the expense of the respective parishes or chapelries; whereon shall be printed, upon each side of every leaf, the heads of information herein required to be entered in the registers of baptisms, marriages, and burials respectively, and every such entry shall be numbered progressively from the beginning to the end of each book, the first entry to be distinguished by number one; and every such entry shall be

Officiating ministers to keep registers of public and private baptisms, of marriages, and of burials.

Parishes to provide suitable books for that purpose.

(1) Repealed in part, and other provisions made, by Stat. 11 Geo. 4 & 1 Gul. 4, c. 66, ss. 20–22, and Stat. 6 & 7 Gul. 4, c. 86, s. 1; but the registration of baptisms and burials was not affected by Stat. 6 & 7 Gul. 4, c. 86, s. 49. *Vide etiam* Stat. 7 Gul. 4 & 1 Vict. cc. 22 & 44; Stat. 3 & 4 Vict. c. 92. 3 Burn’s E. L. by Phillimore, 461.

STAT. 52 GEO.
3, c. 146.

King's printer
to transmit to
each parish a
printed copy of
this act, and
register books
adapted to the
forms herein
prescribed.

Registers to be
in separate
register books.

Certificate of
baptism or
burial when
performed in
any other place
than the parish
church or
churchyard, to
be according to
Schedule (D),
and the entry
of such baptism
or burial to be
distinguished
accordingly.

Register books
to be kept in
custody of the
officiating
minister, in an
iron chest,
which is to be
provided at the
expense of the
parish.

divided from the entry next following by a printed line according to the forms contained in the schedules (A) (B) (C) hereto annexed; and every page of every such book shall be numbered with progressive numbers, the first page being marked with the number I. in the middle of the upper part of such page, and every subsequent page being marked in like manner with progressive numbers from number I. to the end of the book.

“II. And for better ensuring the regularity and uniformity of such register books, be it further enacted, that a printed copy of this act, together with one book so prepared as aforesaid, and adapted to the form of the register of baptisms prescribed in the schedule (A) to this act annexed, and also one other book so prepared as aforesaid, and adapted to the form prescribed for the register of marriages in the schedule (B) to this act annexed, and also one other book so prepared as aforesaid, and adapted to the form prescribed for the register of burials in the schedule (C) to this act annexed, shall, as soon as conveniently may be after the passing of this act, be provided and transmitted by his majesty's printer to the officiating ministers of the several parishes and chapelries in England respectively, who are hereby required to use and apply the same in and to the purposes of this act; and such books respectively shall be proportioned to the population of the several parishes and chapelries, according to the last returns of such population made under the authority of parliament; and other books of like form and quality shall for the like purposes be furnished from time to time by the churchwardens or chapelwardens of every parish or chapelry, at the expense of the said parish or chapelry, whenever they shall be required by the rector, vicar, curate, or officiating minister to provide the same; and all such books shall be of paper, unless required to be of parchment by such churchwardens or chapelwardens respectively.

“III. And be it further enacted, that such registers shall be kept in such separate books aforesaid, and that every such rector, vicar, curate, or officiating minister, shall as soon as possible after the solemnization of every baptism, whether private or public, or burials respectively, record and enter in a fair and legible hand-writing, in the proper register book to be provided, made, and kept as aforesaid, the several particulars described in the several schedules herein-before mentioned, and sign the same; and in no case, unless prevented by sickness or other unavoidable impediment, later than within seven days after the ceremony of any such baptism or burial shall have taken place.

“IV. And be it further enacted, that whenever the ceremony of baptism or burial shall be performed in any other place than the parish church or churchyard of any parish, (or the chapel or chapel-yard of any chapelry providing its own distinct registers,) and such ceremony shall be performed by any minister not being the rector, vicar, minister, or curate of such parish or chapelry, the minister who shall perform such ceremony of baptism or burial shall, on the same or on the next day, transmit to the rector, vicar, or other minister of such parish or chapelry, or his curate, a certificate of such baptism or burial in the form contained in the schedule (D) to this act annexed, and the rector, vicar, minister, or curate of such parish or chapelry shall thereupon enter such baptism or burial according to such certificate in the book kept pursuant to this act for such purpose; and shall add to such entry the following words, ‘According to the Certificate of the Reverend
transmitted to me on the day of .’

“V. And be it further enacted, that the several books wherein such entries shall respectively be made, and all register books heretofore in use, shall be deemed to belong to every such parish or chapelry respectively, and shall be kept by and remain in the power and custody of the rector, vicar, curate, or other officiating minister of each respective parish or chapelry as aforesaid, and shall be by him safely and securely kept in a dry well painted iron chest to be provided and repaired as occasion may require, at the expense of the parish or chapelry, and which said chest containing the said books shall be constantly kept locked in some dry, safe, and secure place within the usual place of residence of such rector, vicar, curate, or other officiating minister, (if resident within the parish or chapelry,) or in the parish church or chapel: and the said books shall not nor shall any of them be taken or removed from or out of the said chest, at any time or for any cause what

ever, except for the purpose of making such entries therein as aforesaid, or for the inspection of persons desirous to make search therein, or to obtain copies from or out of the same, or to be produced as evidence in some court of law or equity, or to be inspected as to the state and condition thereof, or for some of the purposes of this act; and that immediately after making such respective entries, or producing the said books respectively for the purposes aforesaid, the said books shall forthwith again be safely and securely deposited in the said chest.

“VI. And be it further enacted, that at the expiration of two months after the thirty-first day of December, one thousand eight hundred and thirteen, and at the expiration of two months after the end of every subsequent year, fair copies of all the entries of the several baptisms, marriages, and burials which shall have been solemnized or shall have taken place within the year preceding, shall be made by the rector, vicar, curate, or other resident or officiating minister, (or by the churchwardens, chapelwardens, clerk, or other person duly appointed for the purpose under and by the direction of such rector, vicar, curate, or other resident or officiating minister,) on parchment, in the same form as prescribed in the schedules hereunto annexed; (to be provided by the respective parishes;) and the contents of such copies shall be verified and signed in the form following by the rector, vicar, curate, or officiating minister of the parish or chapelry to which such respective register book shall appertain:

“I, *A. B.*, rector [or as the case may be] of the parish of *C.* [or of the chapelry of *D.*] in the county of *E.*, do hereby solemnly declare, that the several writings hereto annexed, purporting to be copies of the several entries contained in the several register books of baptisms, marriages, and burials of the parish or chapelry aforesaid, from the day of to the day of are true copies of all the several entries in the said several register books respectively from the said day of to the said day of ; and that no other entry during such period is contained in any of such books respectively, are truly made according to the best of my knowledge and belief. (Signed) *A. B.*”

“Which declaration shall be fairly written, without any stamp, on the said copy immediately after the last entry therein; and the signature to such declaration shall be attested by the churchwardens or chapelwardens, or one of them, of the parish or chapelry to which such register books shall belong.

“VII. And be it further enacted, that *copies of the said register books*, verified and attested as aforesaid, *shall*, whether such parish or chapelry shall be subject to the ordinary, peculiar, or other jurisdiction, *be transmitted* (1) by such churchwardens or chapelwardens, after they or one of them shall have signed the same, by the post, to the registrars of each diocese in England within which the church or chapel shall be situated, on or before the first day of June, one thousand eight hundred and fourteen, and on or before the first day of June, in every subsequent year.

“VIII. And be it further enacted, that the registrar of every diocese in England shall, on or before the first day of July, one thousand eight hundred and fourteen, and on or before the first day of July in every subsequent year, make a report to the bishop of such diocese whether the copies of the registers of the baptisms, marriages, and burials in the several parishes and places within such diocese have been sent to such register in the manner and within the time herein required; and in the event of any failure of the transmission of the copies of the registers, as herein required, by the churchwardens and chapelwardens of any parish or cha-

STAT. 52 GEO. 3, c. 146.

Annual copies of registers to be made, and to be verified by the officiating minister

Annual copies of register books to be transmitted to the registrars of each diocese by the churchwarden.

Registrars to make reports to bishops whether the said copies have been sent in.

(1) *Copies of the said register books . . . shall . . . be transmitted:*—“By an existing statute, [52 Geo. 3, c. 146,] copies of all parochial registers are directed to be sent, at stated times, to the different diocesan registries. In consequence of the imperfections in the details of this act, and the want of adequate remuneration for the duties imposed, these copies are not transmitted with regularity; nor are they, when received, so

arranged, as to admit of easy access. In many instances also, the existing registries have not accommodation adequate for the purpose; and if it be deemed expedient, that the main provisions of this statute should be carried into complete execution, we are of opinion that some further measures are indispensably requisite.” Ecclesiastical Commissioners’ Report, February 15th, 1832.

STAT. 52 GEO.
3, c. 146.

In case of neglect or refusal of officiating minister to verify copies of the register books, churchwardens to certify the default.

In places where there is no church or chapel, a memorandum of every baptism or burial may be delivered to the officiating minister of some adjoining parish.

Letters and packets containing annual copies of register books to go free of postage.

Annual copies of register books, when transmitted to registrars, to be safely kept from damage, and alphabetical lists to be made.

Report to the privy council on or before 1st March, 1813, respecting proper places for the preservation of copies of register books, as well as original wills in each diocese; and for remuneration

in England, the registrar shall state the default of the parish or chapelry specially in his report to the bishop.

“IX. And be it further enacted, that in case the rector, vicar, or other officiating minister or curate of any parish or chapelry shall neglect or refuse to verify and sign such copies of such several register books, and such declaration as aforesaid, so that the churchwardens or chapelwardens shall not be able to transmit the same, as required by this act, such churchwardens or chapelwardens shall, within the time required by this act for the transmission thereof, certify such default to the registrar of the diocese within which such parish or chapelry shall be, who shall specially state the same in his report to the bishop of such diocese.

“X. And for the obtaining of returns and registers of baptisms and burials in extra-parochial places in England where there is no church or chapel, be it further enacted, that in all cases of the baptism of any child, or the burial of any person in any extra-parochial place in England, according to the rites of the established church, where there is no church or chapel, it shall be lawful for the officiating minister, within one month after such baptism or burial, to deliver to the rector, vicar, or curate of such parish immediately adjoining to the place in which such baptism or burial shall take place, as the ordinary shall direct, a memorandum of such baptism or burial signed by such parent of the child baptized, or a memorandum of such burial signed by the person employed about the same, together with two of the persons attending the same, according as the nature of the case may respectively require; and every such memorandum respectively shall contain all such particulars as are hereinbefore required; and every such memorandum delivered to the rector, vicar, or curate of any such adjoining parish or chapelry shall be entered in the register of his parish, and form a part thereof.

“XI. And be it further enacted, that the superscription upon all letters and packets containing the copies of such parish or other registers, to be transmitted by the post to the several officers of the said registrars as aforesaid, shall be indorsed and signed by the churchwardens or chapelwardens of every respective parish and chapelry in England, in the form contained in schedule (E), and that all such letters and packets shall be carried and conveyed by means of his majesty's post office to and be delivered at the offices of the said registrars, without postage or other charge being paid or payable for the same.

“XII. And be it further enacted, that when and so often as the copies of the said register books of baptisms, marriages, and burials as aforesaid, and also the said lists of births, baptisms, marriages, or burials as aforesaid, shall be transmitted to the office of the said registrars respectively as aforesaid, pursuant to the directions hereinbefore contained for that purpose, the said registrars shall respectively cause all the said books and lists to be safely and securely deposited, kept, and preserved from damage or destruction by fire or otherwise, and to be carefully arranged for the purpose of being resorted to as occasion may require; and the said registrars respectively shall also cause correct alphabetical lists to be made, and kept in books suitable to the purpose, of the names of all persons and places mentioned in such books and lists as shall have been transmitted to the said registrars respectively, which alphabetical lists and books, and also the copies of registers and lists so transmitted to the said registrars as aforesaid, shall be open to public search at all reasonable times on payment of the usual fees.

“XIII. And whereas in many dioceses the places wherein the copies of the parochial registers of baptisms, marriages, and burials, as well as the original wills proved within the same respectively, are kept, are insufficient for their being preserved with due care, for which a remedy should be applied in those dioceses where it shall be found necessary; be it further enacted, that in order to a due examination thereof, the bishop, together with the *custodes rotulorum* of the several counties within each diocese, and the chancellor thereof, shall, before the first day of February, one thousand eight hundred and thirteen, cause a careful survey to be made of the several places in which the parochial registers, and the wills proved within the diocese, are kept, and shall make a report to his majesty's most honourable privy council of the state of the same, on or before the first day

of March following, setting forth in each case whether the buildings are in all respects fit and proper for the preservation of papers of the above description, as well with respect to space as to security from fire and to protection from damp, and if not, at what probable expense they can be made so; and where the instruments and papers before mentioned are kept in dwelling-houses or other places which cannot be made fit and secure for the due preservation thereof, then and in such case the persons before named shall inquire and report in like manner at what expense proper buildings may be provided, and in what places, so as to have one place within each diocese for the due preservation of all such registers and wills, together with their opinion upon the most suitable mode of remunerating the officers employed in each registry for their additional trouble and expense in carrying the provisions of this act into execution.

“XIV. And be it further enacted, that if any person shall knowingly and wilfully insert, or cause, or permit to be inserted in any such register book of such baptisms, burials, or marriages as aforesaid, or in any such copy of any such register so directed to be transmitted to the registrars as aforesaid, or in any such lists or declarations also directed to be transmitted to such registrars as aforesaid, any false entry of any matter or thing relating to any baptism, burial, or marriage; or shall falsely make, alter, forge, or counterfeit, or cause, or procure, or wilfully permit to be falsely made, altered, forged, or counterfeited, any part of any such register, list, or declaration, or of any such copy of any such register; or shall wilfully destroy, deface, or injure, or cause, or procure, or permit to be destroyed, defaced, or injured, any such register book, or any part thereof; or shall knowingly and wilfully sign or certify any copy of any such register hereby required to be transmitted as aforesaid which shall be false in any part thereof, knowing the same to be false; every person so offending, and being thereof lawfully convicted, shall be deemed and adjudged to be guilty of felony, and shall be transported for the term of fourteen years.

“XV. Provided always, and be it enacted, that no rector, vicar, curate, or officiating minister of any parish or chapel, who shall discover any error to have been committed in the form or substance of the entry in the register book of any such baptism, burial, or marriage respectively by him solemnized, shall be liable to all or any of the penalties herein mentioned if he shall within one calendar month after the discovery of such error, in the presence of the parent or parents of the child whose baptism may have been entered in such register, or of the parties married, or in the presence of two persons who shall have attended at any burial, or in case of the death or absence of the respective parties aforesaid, then in the presence of the churchwardens or chapelwardens, (who shall respectively attest the same,) alter and correct the entry which shall have been found erroneous, according to the truth of the case, by entry in the margin of the book wherein such erroneous entry shall have been made, without any alteration or obliteration of the original entry, and shall sign such entry in the margin, and add to such signature the day of the month and year when such correction shall be made: provided also, that in the fair copy of the registers respectively which shall be transmitted to the registrars of the dioceses, the said rector, vicar, curate, or officiating minister, shall certify the alterations so made by him as aforesaid.

“XVI. Provided always, that nothing in this act contained shall in any manner diminish or increase the fees heretofore payable or of right due to any minister for the performance of any of the before-mentioned duties, or to any minister or registrar for giving copies of such registrations, but that all due, legal, and accustomed fees on such occasions, and all powers and remedies for recovery thereof, shall be and remain as though this act had not been made.

“XVII. Provided also, and be it enacted, that no duplicate or copy of any register of baptism, marriage, or burial, made under the directions and for the purposes of this act, shall be chargeable with any stamp duty thereon; any act now in force to the contrary thereof in anywise notwithstanding.

“XVIII. And be it further enacted, that one half of the amount of all fines or penalties to be levied in pursuance of this act, shall go to the person who shall

STAT. 52 GEO.
3, c. 146.

neration of
registrars?
officers.

Any person
making false
entries, or
false copies of
entries, or
altering or
destroying
register book,
to be adjudged
guilty of felony,
and transported
for fourteen
years;

but not to
affect persons
committing
accidental
errors, if duly
and timely
corrected
according to
the truth of
the case.

Fees heretofore
payable not to
be altered by
this act.

Annual copy
of register
books not
subject to
stamp duty.

Application of
penalties.

STAT. 52 GEO. 3, c. 146. inform or sue for the same, and the remainder of such fines as shall be imposed on any churchwarden or chapelwarden, shall go to the poor of the parish or place for which such churchwarden or chapelwarden shall serve, and the remainder of such fines as shall be imposed on any rector, vicar, minister, or curate, or registrar, shall be paid and applied to such charitable purposes in the county within which the parish or place shall be as shall be appointed and directed by the bishop of the diocese.

List of all extant register books to be transmitted by the officiating minister to the registrar before 1st June, 1813. “XIX. And be it further enacted, that the rector, vicar, curate, or officiating minister of every parish and chapelry in England, whether subject to the ordinary, peculiar, or other jurisdiction, shall transmit to the registrar of the diocese in which the parish or chapelry shall be situated, before the first day of June one thousand eight hundred and thirteen, a list of all registers which now are in such parish or chapelry respectively, stating the periods at which they respectively commence and terminate, the periods (if any) for which they are deficient, and the places where they are deposited.

Provisions of this act to extend to churches and chapels not parochial. “XX. And be it further enacted, that all and every the provisions in this act shall extend, so far as circumstances will permit, to cathedral and collegiate churches, and chapels of colleges or hospitals, and the burying grounds belonging thereto, and to the ministers who shall officiate in such cathedral or collegiate churches and chapels of colleges or hospitals and burying grounds respectively, and shall baptize, marry, or bury any person or persons, although such cathedral or collegiate churches or chapels of colleges or hospitals, or the burying grounds belonging thereto, may not be parochial, or the ministers officiating therein may not be, as such, parochial ministers, and there shall be no churchwarden or churchwardens thereof; and in all such cases the books herein-before directed to be provided, shall be provided at the expense of the body having right to appoint the officiating minister in every such cathedral or collegiate church or chapel of a college or hospital; and copies thereof shall be transmitted to the registrar of the diocese within which such cathedral or collegiate church or chapel of a college or hospital shall be, by the officiating minister of such church, in like manner as is herein directed with respect to parochial ministers, and shall be attested by two of the officers of such church, college, or hospital, as the copies of parochial registers are herein directed to be attested by churchwardens; provided always, that nothing in this act contained shall extend to repeal any provision contained in an act passed in the twenty-sixth year of the reign of his late majesty King George the Second, intituled ‘An Act for better preventing Clandestine Marriages.’”

Not to repeal any provision of the marriage act, 26 Geo. 2, c. 33.

“SCHEDULES TO WHICH THIS ACT REFERS.

“Schedule (A).

1.					
<i>Baptisms solemnized in the Parish of St. A. in the County of B. in the year One thousand eight hundred and thirteen.</i>					
When baptized.	Child's Christian name.	PARENTS' NAME.		Abode.	Quality, trade, or profession.
		Christian.	Surname.		
1813. 1st February No. 1.	John, son of	William Elizabeth		Lambeth	
3rd March No. 2.	Ann, daughter of	Henry Martha		Fulham	

“Schedule (B).

STAT. 52 GEO.
3, c. 146.

1.				
<i>Marriages solemnized in the Parish of St. A. in the County of B. in the year One thousand eight hundred and thirteen.</i>				
A. B. of { the } parish,		and C. D. of { the } parish,		
were married in this { church } by { banns, } with consent of { parents, } this				
day of { chapel } in the year				
		By me, I. I. { rector. } { vicar. } { curate. }		
This marriage was solemnized between us, { A. B. } { C. D. }				
in the presence of { E. F. } { G. H. }				

“Schedule (C).

1.				
<i>Burials in the Parish of A. in the County of B. in the year One thousand eight hundred and thirteen.</i>				
Name.	Abode.	When buried.	Age.	By whom the ceremony was performed.
John Wilson, No. 1.	Duke Street, Westminster.	1813. 1st May.	62	

“Schedule (D).

I do hereby certify, that I did on the day of
baptize according to the rites of the united church of England and Ireland,
son (or daughter) of and his wife, by the name of
To the Rector [or, as the case may be] of

I do hereby certify, that on the day of
A. B. of aged was buried in [stating the place of
burial], and that the ceremony of burial was performed according to the rites of the united
church of England and Ireland, by me.

To the Rector [or, as the case may be] of

“Schedule (E).

To the Registrar of the Diocese of at	
A. B. } Churchwardens (or chapelwardens) of the parish (or chapelry) of	
C. D. }	[or such other description as the case shall require].”

CCCCXLVI. STAT. 52 GEORGII 3, c. 155 (1). A.D. 1812.

STAT. 52 GEO.
3, c. 155.

“An Act to repeal certain Acts, and amend other Acts, relating to Religious
Worship and Assemblies, and Persons teaching or preaching therein.”

“Whereas it is expedient that certain acts of parliament made in the reign of
his late majesty King Charles the Second, relating to nonconformists and conven-

(1) Vide Stat. 53 Geo. 3, c. 160. Stat. In *Carr v. Marsh*, (2 Phill. 203.) which
67 Geo. 3, c. 70. Stat. 5 Geo. 4, c. 68, s. 3. was a proceeding against a clergyman for

STAT. 52 GEO.
3, c. 155.

13 & 14 Car.
2, c. 1,

17 Car. 2, c. 2,

22 Car. 2, c. 1,
repealed.

All places of
religious wor-
ship to be cer-
tified and
registered.

Penalty on
persons teach-
ing or preach-
ing without
consent of
occupiers.

ties, and refusing to take oaths, should be repealed, and that the laws relating to certain congregations and assemblies for religious worship, and persons teaching, preaching, or officiating therein, and resorting thereto, should be amended; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the passing of this act an act of parliament made in the session of parliament held in the thirteenth and fourteenth years of his late majesty King Charles the Second, intituled, 'An Act for preventing the Mischiefs and Dangers that may arise by certain Persons called Quakers, and others, refusing to take lawful Oaths;' and another act of parliament made in the seventeenth year of the reign of his late majesty King Charles the Second, intituled, 'An Act for restraining Nonconformists from inhabiting in Corporations;' and another act of parliament made in the twenty-second year of the reign of the late King Charles the Second, intituled, 'An Act to prevent and suppress seditious Conventicles:.' shall be and the same are hereby repealed.

"II. And be it further enacted, that from and after the passing of this act no congregation or assembly for religious worship of protestants (at which there shall be present more than twenty persons besides the immediate family and servants of the person in whose house or upon whose premises such meeting, congregation, or assembly shall be had) shall be permitted or allowed unless and until the place of such meeting, if the same shall not have been duly certified and registered under any former act or acts of parliament relating to registering places of religious worship, shall have been or shall be certified to the bishop of the diocese, or to the archdeacon of the archdeaconry, or to the justices of the peace at the general or quarter sessions of the peace for the county, riding, division, city, town, or place in which such meeting shall be held; and all places of meeting which shall be so certified to the bishop's or archdeacon's court shall be returned by such court once in each year to the quarter sessions of the county, riding, division, city, town, or place; and all places of meeting which shall be so certified to the quarter sessions of the peace shall be also returned once in each year to the bishop or archdeacon; and all such places shall be registered in the said bishop's or archdeacon's court respectively, and recorded at the said general or quarter sessions, the register or clerk of the peace whereof respectively is hereby required to register and record the same; and the bishop, or registrar, or clerk of the peace to whom any such place of meeting shall be certified under this act shall give a certificate thereof to such person or persons as shall request or demand the same, for which there shall be no greater fee nor reward taken than two shillings and sixpence; and every person who shall knowingly permit or suffer any such congregation or assembly as aforesaid to meet in any place occupied by him, until the same shall have been so certified as aforesaid, shall forfeit, for every time any such congregation or assembly shall meet contrary to the provisions of this act, a sum not exceeding twenty pounds nor less than twenty shillings, at the discretion of the justices who shall convict for such offence.

"III. Provided always, and be it further enacted, that every person who shall teach or preach in any congregation or assembly as aforesaid in any place, without the consent of the occupier thereof, shall forfeit for every such offence any sum not exceeding thirty pounds nor less than forty shillings, at the discretion of the justices who shall convict for such offence.

preaching in a chapel without consent of the incumbent, Sir *John Nicholl* observed, "There is jurisdiction then over the place and person unless the law is altered. It is contended, that it is altered by the act of 1812, [52 Geo. 3, c. 155.] This statute, however, in my judgment, does not, in the slightest degree, apply to the case; notwithstanding the word 'Protestant' stands without 'Dissenter' in one clause, (s. 2,) still, taking the preamble and the context toge-

ther, and especially considering the proviso in s. 3, I am clearly of opinion, that it was not intended to alter the laws and discipline of the church of England, but confined to dissenters. The place here is not a place to be certified under the Toleration Acts, but a chapel of worship according to the church of England. If the act would bear the construction contended for, it would be a complete alteration of the fundamental laws of the church of England."

“IV. And be it further enacted, that from and after the passing of this act every person who shall teach or preach at or officiate in or shall resort to any congregation or congregations, assembly or assemblies for religious worship of protestants, whose place of meeting shall be duly certified according to the provisions of this act, or any other act or acts of parliament relating to the certifying and registering of places of religious worship, shall be exempt from all such pains and penalties under any act or acts of parliament relating to religious worship as any person who shall have taken the oaths and made the declaration prescribed by or mentioned in an act made in the first year of the reign of King William and Queen Mary, intituled, ‘An Act for exempting their Majesties’ Protestant Subjects dissenting from the Church of England from the Penalties of certain Laws,’ or any act amending the said act, is by law exempt, as fully and effectually as if all such pains and penalties, and the several acts enforcing the same, were recited in this act, and such exemptions as aforesaid were severally and separately enacted in relation thereto.

“V. Provided always, and be it further enacted, that every person not having taken the oaths and subscribed the declaration hereinafter specified, who shall preach or teach at any place of religious worship certified in pursuance of the directions of this act, shall, when thereto required by any one justice of the peace, by any writing under his hand, or signed by him, take and make and subscribe, in the presence of such justice of the peace, the oaths and declaration specified and contained in an act passed in the nineteenth year of the reign of his majesty King George the Third, intituled, ‘An Act for the further Relief of Protestant Dissenting Ministers and Schoolmasters;’ and no such person who, upon being so required to take such oaths and make such declaration as aforesaid, shall refuse to attend the justice requiring the same, or to take and make and subscribe such oaths and declaration as aforesaid, shall be thereafter permitted or allowed to teach or preach in any such congregation or assembly for religious worship until he shall have taken such oaths and made such declaration as aforesaid, on pain of forfeiting for every time he shall so teach or preach any sum not exceeding ten pounds nor less than ten shillings, at the discretion of the justice convicting for such offence.

“VI. Provided always, and be it further enacted, that no person shall be required by any justice of the peace to go to any greater distance than five miles from his own home, or from the place where he shall be residing at the time of such requisition, for the purpose of taking such oaths as aforesaid.

“VII. And be it further enacted, that it shall be lawful for any of his majesty’s protestant subjects to appear before any one justice of the peace, and to produce to such justice of the peace a printed or written copy of the said oaths and declaration, and to require such justice to administer such oaths and to tender such declaration to be made, taken, and subscribed by such person; and thereupon it shall be lawful for such justice, and he is hereby authorized and required, to administer such oaths and to tender such declaration to the person requiring to take and make and subscribe the same, and such person shall take and make and subscribe such oaths and declaration in the presence of such justice accordingly, and such justice shall attest the same to be sworn before him, and shall transmit or deliver the same to the clerk of the peace for the county, riding, division, city, town, or place for which he shall act as such justice of the peace, before or at the next general or quarter sessions of the peace for such county, riding, division, city, town, or place.

“VIII. And be it further enacted, that every justice of the peace before whom any person shall make and take and subscribe such oaths and declaration as aforesaid, shall forthwith give to the person having taken, made, and subscribed such oaths and declaration, a certificate thereof under the hand of such justice in the form following; (that is to say,)

“‘I, *A. B.*, one of his majesty’s justices of the peace for the county [riding, division, city, or town, or place, as the case may be] of _____ do hereby certify that *C. D.*, of, &c. [describing the christian and surname and place of abode of the party] did this day appear before me, and did make and take and subscribe the several oaths and declaration specified in an act made in the fifty-

STAT. 52 GEO. 3, c. 155.

Preachers in and persons resorting to religious assemblies certified under this act exempt from same penalties as persons taking oaths under the statute of William.

Oaths and declaration to be taken by all preachers, &c. when thereto required by a magistrate.

19 Geo. 3, c. 44.

No person to be compelled to go more than five miles.

Any person may require a justice of peace &c. to administer the oaths, &c. under this act.

Justices shall give the parties a certificate of having made such oath.

STAT. 52 GEO. 3, c. 155. second year of the reign of King George the Third, intituled [set forth the title of this act]. Witness my hand this day of one thousand eight hundred and ?

Fee, 2s. 6d.

“And for the making and signing of which certificate, where the said oaths and declaration are taken and made on the requisition of the party taking and making the same, such justice shall be entitled to demand and have a fee of two shillings and sixpence, and no more; and such certificate shall be conclusive evidence that the party named therein has made and taken the oaths, and subscribed the declaration in manner required by this act.

Certificate conclusive evidence.

Teachers having taken the oaths, &c. exempt from offices and from the militia.

“IX. And be it further enacted, that every person who shall teach or preach in any such congregation or assembly or congregations or assemblies as aforesaid, who shall employ himself solely in the duties of a teacher or preacher, and not follow or engage in any trade or business, or other profession, occupation, or employment, for his livelihood, except that of a schoolmaster, and who shall produce a certificate of some justice of the peace of his having taken and made and subscribed the oaths and declaration aforesaid, shall be exempt from the civil services and offices specified in the said recited act passed in the first year of King William and Queen Mary, and from being balloted to serve and from serving in the militia or local militia of any county, town, parish, or place in any part of the United Kingdom.

Penalty on producing false certificate.

“X. And be it further enacted, that every person who shall produce any false or untrue certificate or paper as and for a true certificate of his having made and taken the oaths and subscribed the declarations by this act required, for the purpose of claiming any exemption from civil or military duties as aforesaid, under the provisions of this or any other act or acts of parliament, shall forfeit for every such offence the sum of fifty pounds; which penalty may be recovered by and to the use of any person who will sue for the same by any action of debt, bill, plaint, or information in any of his majesty's courts of record at Westminster, or the courts of great sessions in Wales, or the courts of the counties palatine of Chester, Lancaster, and Durham, (as the case shall require,) wherein no essoin, privilege, protection, or wager of law, or more than one imparlance, shall be allowed.

Doors of religious assemblies not to be bolted or barred.

“XI. And be it further enacted, that no meeting, assembly, or congregation of persons for religious worship shall be had in any place with the door locked, bolted, or barred, or otherwise fastened, so as to prevent any persons entering therein during the time of any such meeting, assembly, or congregation; and the person teaching or preaching at such meeting, assembly, or congregation shall forfeit, for every time any such meeting, assembly, or congregation shall be held with the door locked, bolted, barred, or otherwise fastened as aforesaid, any sum not exceeding twenty pounds nor less than forty shillings, at the discretion of the justice convicting for such offence.

Penalty on disturbing religious assemblies.

“XII. And be it further enacted, that if any person or persons, at any time after the passing of this act, do and shall wilfully and maliciously or contemptuously disquiet or disturb any meeting, assembly, or congregation of persons assembled for religious worship, permitted or authorized by this act or any former act or acts of parliament, or shall in any way disturb, molest, or misuse any preacher, teacher, or person officiating at such meeting, assembly, or congregation, or any person or persons there assembled, such person or persons so offending, upon proof thereof before any justice of the peace by two or more credible witnesses, shall find two sureties to be bound by recognizances in the penal sum of fifty pounds to answer for such offence, and in default of such sureties shall be committed to prison, there to remain till the next general or quarter sessions, and upon conviction of the said offence at the said general or quarter sessions, shall suffer the pain and penalty of forty pounds.

Saving the ecclesiastical jurisdiction of the church.

“XIII. Provided always, and be it further enacted, that nothing in this act contained shall affect or be construed to affect the celebration of divine service according to the rites and ceremonies of the united church of England and Ireland by ministers of the said church in any place hitherto used for such purpose, or being now or hereafter duly consecrated or licensed by any archbishop or bishop or

other person lawfully authorized to consecrate or license the same, or to affect the jurisdiction of the archbishops or bishops or other persons exercising lawful authority in the church of the United Kingdom over the said church, according to the rules and discipline of the same, and to the laws and statutes of the realm, but such jurisdiction shall remain and continue as if this act had not passed.

“XIV. Provided also, and be it further enacted, that nothing in this act contained shall extend or be construed to extend to the people usually called quakers, nor to any meetings or assemblies for religious worship held or convened by such persons, or in any manner to alter or repeal or affect any act, other than and except the acts passed in the reign of King Charles the Second hereinbefore repealed, relating to the people called quakers, or relating to any assemblies or meetings for religious worship held by them.

“XV. And be it further enacted, that every person guilty of any offence for which any pecuniary penalty or forfeiture is imposed by this act, in respect of which no special provision is made, shall and may be convicted thereof by information upon the oath of any one or more credible witness or witnesses before any two or more justices of the peace acting in and for the county, riding, city, or place wherein such offence shall be committed; and that all and every the pecuniary penalties or forfeitures which shall be incurred or become payable for any offence or offences against this act shall and may be levied by distress under the hand and seal or hands and seals of two justices of the peace for the county, riding, city, or place in which any such offence or offences was or were committed, or where the forfeiture or forfeitures was or were incurred, and shall, when levied, be paid, one moiety to the informer, and the other moiety to the poor of the parish in which the offence was committed; and in case of no sufficient distress whereby to levy the penalties, or any or either of them, imposed by this act, it shall and may be lawful for any such justices respectively before whom the offender or offenders shall be convicted to commit such offender to prison for such time, not exceeding three months, as the said justices in their discretion shall think fit.

“XVI. And be it further enacted, that in case any person or persons who shall hereafter be convicted of any of the offences punishable by this act, shall conceive him, her, or themselves to be aggrieved by such conviction, then and in every such case it shall and may be lawful for such person or persons respectively, and he, she, or they shall or may appeal to the general or quarter sessions of the peace holden next after such conviction in and for the county, riding, city, or place, giving unto the justices before whom such conviction shall be made notice in writing, within eight days after any such conviction, of his, her, or their intention to prefer such appeal; and the said justices in their said general or quarter sessions shall and may and they are hereby authorized and empowered to proceed to the hearing and determination of the matter of such appeal, and to make such order therein, and to award such costs to be paid by and to either party, not exceeding forty shillings, as they in their discretion shall think fit.

“XVII. And be it further enacted, that no penalty or forfeiture shall be recoverable under this act unless the same shall be sued for, or the offence in respect of which the same is imposed is prosecuted before the justices of the peace or quarter sessions, within six months after the offence shall have been committed; and no person who shall suffer any imprisonment for nonpayment of any penalty shall thereafter be liable to the payment of such penalty or forfeiture.

“XVIII. And be it further enacted, that if any action or suit shall be brought or commenced against any person or persons for anything done in pursuance of this act, that every such action or suit shall be commenced within three months next after the fact committed, and not afterwards, and shall be laid and brought in the county wherein the cause or alleged cause of action shall have accrued, and not elsewhere; and the defendant or defendants in such action or suit may plead the general issue, and give this act and the special matter in evidence on any trial to be had thereupon, and that the same was done in pursuance and by authority of this act; and if it shall appear so to be done, or if any such action or suit shall be brought after the time so limited for bringing the same, or shall be brought in any other

STAT. 52 GEO.
3, c. 155.

The act not
to extend to
quakers.

Offenders to be
convicted be-
fore two or
more justices.

Forfeitures to
be levied by
distress.

Appeal after
conviction to
general quarter
sessions.

Penalties to be
sued for and
prosecuted
within six
months.

Limitation of
actions.

STAT. 52 GEO. 3, c. 155. county, city, or place, that then and in such case the jury shall find for such defendant or defendants; and upon such verdict, or if the plaintiff or plaintiffs shall become nonsuited, or discontinue his, her, or their action or actions, or if a verdict shall pass against the plaintiff or plaintiffs, or if upon demurrer judgment shall be given against the plaintiff or plaintiffs, the defendant or defendants shall have and may recover treble costs, and have the like remedy for the same as any defendant or defendants hath or have for costs of suit in other cases by law.

Public act.

“XIX. And be it further enacted, that this act shall be deemed and taken to be a public act, and shall be judicially taken notice of as such by all judges, justices, and others, without specially pleading the same.”

STAT. 52 GEO. 3, CAP. CLVIII.

CCCCXLVII. STAT. 52 GEORGH 3, CAP. CLVIII. A.D. 1812.

“An Act to enable the Vicar, for the time being, of the Vicarage of Kidderminster, in the County of Worcester, to grant Building Leases of certain Glebe Lands belonging to the said Vicarage, and to sell the present Vicarage House, Garden, and Out Offices occupied therewith, and certain part of the Glebe Land, and to purchase Land, and build thereon a new Vicarage House.”

STAT. 52 GEO. 3, 161.

CCCCXLVIII. STAT. 52 GEORGH 3, c. 161 (1). A.D. 1812.

“An Act . . . for enabling the Commissioners of the Treasury to appropriate small Portions of Land for Ecclesiastical Purposes.”

51 Geo. 3, c. 115, s. 1.

“XXVII. And whereas in and by an act passed in the fifty-first year of the reign of his present majesty, intituled, ‘An Act for amending the Act forty-third George the Third, to promote the building, repairing, or otherwise providing the Churches and Chapels, and of Houses for the Residence of Ministers, and for providing of Churchyards and Glebes,’ it was, among other things, enacted, that the king’s most excellent majesty, his heirs, and successors, should have full power, licence, and authority, by deed or writing, under the great seal, to give and grant, and vest in any person or persons, bodies politic and corporate, and their heirs and successors respectively, all such his, her, or their estate, interest, or property, in any lands or tenements, within the survey of the court of Exchequer, for or towards the erecting, rebuilding, repairing, purchasing or providing any church or chapel where the liturgy and rites of the united church of England and Ireland are or shall be used or observed, or any mansion house, for the residence of any minister of the said united church officiating or to officiate in any such church or chapel, or any outbuildings, offices, churchyards, or glebe, for the same respectively, and to be for those purposes applied in and by such deed as aforesaid expressed, provided that nothing in this act now in recital contained, should extend or be construed to extend to enable his majesty, his heirs, or successors, to grant more than five acres in any one grant for any of the purposes aforesaid: and whereas it is found expedient that the powers of the same act should be extended to ground for curtilages, accesses, or any other conveniences or accommodations of or to any of such churches or chapels as aforesaid: and whereas the passing of deeds or writings under the great seal for the purposes aforesaid, by reason of the great expense attending the same, may in some cases produce inconvenience and frustrate the intention of the said act; be it therefore enacted, that his said majesty, his heirs, and successors, shall have full power, licence, and authority, to give and grant and vest in any person or persons, body or bodies politic or corporate, and their heirs and successors respectively, in manner hereinafter mentioned, all such his, her, or their estate, interest, or property in any lands or tenements within the survey of the court of Exchequer, or of the duchy of Lancaster, for curtilages, or for accesses, or for any other conveniences or accommodations of any such churches or chapels as aforesaid; and such person or persons, body or bodies politic or corporate, and their heirs and successors respectively, shall have full capacity and ability to receive, take, hold, and enjoy the same, according to the intent and

His majesty may grant land for curtilages and accesses to churches or chapels.

meaning of the said act, and whenever it shall be the pleasure of his majesty, his heirs, or successors, to make a grant for any of the purposes aforesaid, it shall and may be lawful for the Lord high treasurer, or the commissioners of the treasury, or any three of them, to grant a warrant under his or their hand or hands to any such person or persons, or body or bodies politic or corporate, specifying the premises so to be vested in such person or persons, body or bodies politic or corporate, as aforesaid, which warrant shall be enrolled in the office of the auditor of the land revenue for the division or county within which the premises shall be situate, and also in the office of the commissioners of his majesty's woods, forests, and land revenues, or in the office of the surveyor-general of his majesty's land revenue for the time being; and such auditor, and such commissioners or surveyor-general, having enrolled the said warrant, shall certify such enrolment at the foot or on the back thereof, under their hands, and return the said warrant to the grantee or grantees of the premises therein named, and from and immediately after such enrolment and thenceforth for ever the respective grantee named in such warrants, and their heirs and successors, shall by force of this act be adjudged, deemed, and taken to be in the actual seisin and possession of the premises in the said warrants specified, and shall hold and enjoy the same peaceably and quietly, freed and discharged of and from all claims and demands which can or may be made by his majesty, his heirs, or successors, or by any person or persons lawfully claiming by, from, or under him or them, and of and from all manner of incumbrances whatsoever, as fully and amply to all intents and purposes as his majesty, his heirs, or successors, might or could have held or enjoyed the same: provided always, that nothing in this act contained shall extend, or be construed to extend, to enable his majesty, his heirs, and successors, to grant more than five acres in any one grant for any of the purposes aforesaid."

STAT. 52 GEO.
3, c. 161.

Proviso.

CCCCXLIX. STAT. 52 GEORGII 3, CAP. CXIII. A.D. 1812.

STAT. 52 GEO.
3, CAP. CXIII.

"An Act to enable the Mayor and Commonalty and Citizens of the City of London to sell, and the Right Reverend the Lord Bishop of London, and his Lessees of the Estate at Paddington, belonging to the See of London, to purchase certain Waters and Springs, and the Conduits and other Appurtenances thereto, within the several Parishes of Mary-le-Bone and Paddington, in the County of Middlesex."

CCCCL. STAT. 52 GEORGII 3, CAP. CCV. A.D. 1812.

STAT. 52 GEO.
3, CAP. CCV.

"An Act to enable the Dean of Saint Paul, London, to grant a Lease of Messuages, Tenements, Lands, and Hereditaments, in the Parish of Saint Paul, Shadwell, in the County of Middlesex, and to enable the Lessees to grant Sub-Leases for building on and repairing that Estate."

CCCCLI. STAT. 52 GEORGII 3, CAP. CCVI. A.D. 1812.

STAT. 52 GEO.
3, CAP. CCVI.

"An Act for effectuating an Exchange of the Advowson of the Rectory of the Church of South Cove, in the County of Suffolk, belonging to His Majesty, for the Advowson of the Rectory of the Church of Depding, otherwise Depden, in the same County, belonging to Sir Thomas Gooch, Baronet."

CCCCLII. STAT. 53 GEORGII 3, CAP. XXVIII. A.D. 1813.

STAT. 53 GEO.
3, CAP. XXVIII.

"An Act for effecting an Exchange between the Dean and Chapter of the Cathedral Church of Hereford, and the Right Honourable John Sommers, Lord Sommers, of certain Estates in the County of Hereford."

CCCCLIII. STAT. 53 GEORGII 3, CAP. XLIX. A.D. 1813.

STAT. 53 GEO.
3, CAP. XLIX.

"An Act for enabling the Prebendary of Cantlowes, in the Cathedral Church of Saint Paul in London, to grant a Lease, with powers of Renewal, of the Prebendal Lands of Kentish Town, in the County of Middlesex."

STAT. 53 GEO.
3, c. 66. [IR.]

CCCCLIV. STAT. 53 GEORGII 3, c. 66 (1). [IRELAND.] A.D. 1813.

"An Act for explaining and clearing up certain Doubts respecting the Sites of Parish Churches within Ireland."

Explaining
certain doubts
respecting the
sites of parish
churches in
Ireland.

"Whereas in cases where it has been necessary to rebuild parish churches, doubts have been entertained whether any change could lawfully be made in the site thereof, even within the limits of the churchyard of the parish; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that every church in Ireland which has been rebuilt within the last fifty years, shall be deemed and taken to be the parish church of the parish or union in which it is situated, to all intents and purposes, notwithstanding the site or position of such new church shall be different from that of the old one, provided it has been erected on ground set apart as a churchyard for the parish; and that in all cases hereafter, when it shall be necessary to rebuild any parish church, such new church shall be deemed and taken to be the parish church, to all intents and purposes, notwithstanding the site or position of the new church shall be different from that of the old one: provided always, that such new church shall be erected on the ground set apart as a churchyard for the parish; and provided also, that the plan of such new church, and the change in the position thereof, shall be approved by the archbishop of the province and the ordinary of the diocese in which it is situated."

STAT. 53 GEO.
3, CAP. LXXXV.

CCCCLV. STAT. 53 GEORGII 3, CAP. LXXXV. A.D. 1813.

"An Act for providing additional Burying Ground for the Parish of Saint Mary Abbots, Kensington, in the County of Middlesex."

STAT. 53 GEO.
3, CAP.
LXXXVI.

CCCCLVI. STAT. 53 GEORGII 3, CAP. LXXXVI. A.D. 1813.

"An Act for building a Chapel of Ease for the Parish of Clapham, in the County of Surrey."

STAT. 53 GEO.
3, c. 92. [IR.]

CCCCLVII. STAT. 53 GEORGII 3, c. 92 (2). [IRELAND.] A.D. 1813.

"An Act for the removal of Doubts respecting the Powers of Archbishops and Bishops in Ireland as to demising the Mensal Lands, not being Demesne Lands, to their respective Sees belonging."

Irish acts,
15 Geo. 2.

19 Geo. 3.

"Whereas by an act made by the parliament of Ireland in the fifteenth year of the reign of his late majesty King George the Second, intituled, 'An Act to enable Archbishops and Bishops to demise Part of their Demesne Lands and to change the Site of their Mansion Houses;' and also by an act made by the said parliament in the nineteenth year of the said reign, intituled, 'An Act for amending the Laws in relation to Demesne Lands belonging to Archbishops, and in relation to the Building of New Parish Churches;' provision was made for the appointment of commissioners to be empowered to view the demesne or mensal lands belonging to any archbishop or bishop of the said kingdom of Ireland, to cause surveys to be taken and maps to be made thereof respectively, and in such maps to distinguish and set apart such part of such lands in any diocese for which such commissioners should be appointed, as to them should appear fit and sufficient (not less than two hundred and fifty acres plantation measure,) as and for a demesne for the archbishop or bishop of such diocese and his successors, and to certify the same in the manner and to the persons by the said act directed: and whereas power was given by the said act to the lord lieutenant or other chief governor or governors of Ireland for the time being, in the case of an archbishop and in the case of a bishop to the archbishop of the province wherein the diocese of such bishop was situate in manner therein prescribed, and after return being so made by commissioners as aforesaid to set out and settle a proper demesne for such archbishop or bishop respectively, not containing less than two hundred and fifty acres plantation measure, which lands so set out as demesne or mensal lands should

always from thenceforth be esteemed and taken to be the demesne or mensal lands belonging to the said archbishop or bishop and his successors respectively; and it was by the said act further enacted, 'That it should and might be lawful to and for any archbishop or bishop, and for the successors of any such archbishop or bishop, for whom a demesne was in such manner set apart, to demise the remaining part of the demesne or mensal lands to such archbishop or bishop belonging, for such term and terms as is thereafter mentioned, that is to say, all such lands as do lie within any town corporate, or market town, or within half a mile thereof, for any term not exceeding forty years in possession, and all the rest and residue of such lands for such term of years as by the laws then in being he was empowered to demise other lands to such archbishop or bishop belonging; provided always, that the full yearly value of the lands so to be demised at the time of leasing or demising the same without any fine, should be always reserved to the archbishop or bishop demising the same, and his successors, upon every such demise;' and whereas by another act, made by the parliament of Ireland in the thirty-fifth year of the reign of his present majesty, intituled, 'An Act to explain and amend an Act passed in the tenth and eleventh years of the Reign of King Charles the First, intituled, "An Act for Preservation of the Inheritance, Rights, and Profits of Lands belonging to the Church and Persons Ecclesiastical,"' it is enacted, 'That it should and might be lawful to and for archbishops, bishops, deans, deans and chapters, *et cetera, et cetera*, from time to time to accept of a surrender or surrenders of any lease or leases of any lands or hereditaments, and thereupon to demise such lands or other hereditaments belonging to their respective sees, churches, *et cetera*, (the dwelling houses used for any their respective habitations and demesne lands thereunto belonging, and therewith used and occupied as the demesnes of their said houses, only excepted,) unto the person or persons in such manner and form as by the therein recited act of the tenth and eleventh of King Charles the First, or by any other act then in force, they were enabled to do; provided, that the yearly rent or profits which should be reserved upon every such lease thereafter to be made should not be less than the yearly rent or profits paid and payable thereout for the last twenty years preceding the making of such lease;' and whereas commissions have issued, and demesnes have been set apart, pursuant to the provisions of the said first recited act of the fifteenth year of his late majesty's reign in some dioceses of the said kingdom of Ireland, and leases for terms not exceeding twenty-one years have at various times been made of the remaining mensal lands in such dioceses respectively, which leases of several of them are now subsisting, and doubts have been entertained, notwithstanding the provisions of the said recited act of the thirty-fifth year of the reign of his present majesty, whether if surrenders were made and accepted of the said leases so granted as aforesaid of the said lands as aforesaid, and if new leases were granted thereof, such leases would be considered valid and effectual in the law, which doubts are prejudicial to the interests both of the archbishops and bishops to whom such lands so demised do respectively belong, and also of the tenants to whom they are so demised, and it is expedient that the said doubts should be removed, and that power should unequivocally be given to the said archbishops and bishops to accept of surrenders of leases so made, and to demise again the said lands as by the said recited act of the thirty-fifth year of his present majesty's reign is provided; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and immediately after the passing of this act, it shall and may be lawful to and for any archbishop or bishop in Ireland having belonging to him mensal lands so separated from a sufficient and actual demesne, (not less than two hundred and fifty acres,) as by the said recited act of the fifteenth year of his late majesty's reign is provided, and for his successors from time to time, to accept of a surrender or surrenders of each and every or any of the leases heretofore made and now outstanding, or which shall hereafter be made of all or any part of the said mensal lands, (so belonging to him, and over and above the demesne so set out for him and his successors as by the said recited acts of the fifteenth and nineteenth years of his late majesty's reign is directed and appointed,)

STAT. 53 GEO.
3, c. 92. [Ir.]

35 Geo. 3, c. 23.

Power of
granting leases.

STAT. 53 GEO. 3, c. 92. [IR.] with their and every of their appurtenances, and thereupon to demise and lease the same, or any part or parts thereof, unto any person or persons whomsoever, for any term not exceeding twenty-one years from the time of making such lease or leases, provided that there be reserved upon every such lease, hereafter to be made, a yearly rent not less than the yearly rent paid and payable thereout for the last twenty years preceding the making of such lease; anything in the said recited acts of the fifteenth and nineteenth years of the reign of his late majesty King George the Second to the contrary thereof in anywise notwithstanding."

STAT. 53 GEO. 3, CAP. CVI. CCCCLVIII. STAT. 53 GEORGII 3, CAP. CVI. A.D. 1813.

"An Act for inclosing and exonerating from Tithes, Lands in the Parish of Stukeley, in the County of Huntingdon."

[No lease of lands by the rector of King's Ripton, without consent of his majesty as patron of the rectory.]

STAT. 53 GEO. 3, c. 107. [IR.] CCCCLIX. STAT. 53 GEORGII 3, c. 107 (1). [IRELAND.] A.D. 1813.

"An Act for the Appointment of Commissioners for the Regulation of the several endowed Schools of Public and Private Foundation in Ireland."

STAT. 53 GEO. 3, CAP. CXII. CCCCLX. STAT. 53 GEORGII 3, CAP. CXII. A.D. 1813.

"An Act for the better Relief and Employment of the Poor, and for the Enlargement of the Burial Grounds, in the Parish of Saint Leonard, Shoreditch, in the County of Middlesex; and for other Purposes relating to the said Parish."

STAT. 53 GEO. 3, CAP. CXIII. CCCCLXI. STAT. 53 GEORGII 3, CAP. CXIII. A.D. 1813.

"An Act for the better Relief and Maintenance of the Poor, and for making a more adequate Provision for the Rector of the Parish of Saint Matthew, Bethnal Green, in the County of Middlesex; and for more effectually lighting, watching, cleansing, and improving the Streets and other Public Places of and within the said Parish."

STAT. 53 GEO. 3, CAP. CXIV. CCCCLXII. STAT. 53 GEORGII 3, CAP. CXIV. A.D. 1813.

"An Act for erecting a Church in the Township of Everton, in the Parish of Walton-on-the-Hill, in the County of Lancaster."

STAT. 53 GEO. 3, c. 121. CCCCLXIII. STAT. 53 GEORGII 3, c. 121. A.D. 1813.

"An Act for making a more convenient Communication from Mary-le-Bone Park and the northern parts of the Metropolis, in the Parish of St. Mary-le-Bone, to Charing Cross, within the Liberty of Westminster; and for making a more convenient Sewage for the same."

[XLII. Indemnity to rectors, &c. for church dues.]

STAT. 53 GEO. 3, c. 123. CCCCLXIV. STAT. 53 GEORGII 3, c. 123. A.D. 1813.

"An Act to amend and render more effectual several Acts passed for the Redemption and Sale of the Land Tax (2)."

Sales already made of land "XXVI. And whereas in some cases in which one living hath been united to and consolidated with another living, part of the lands or other hereditaments

(1) Amended by Stat. 3 Geo. 4, c. 79; and Stat. 11 Geo. 4 & 1 Gul. 4, c. 56.

(2) *Land Tax*:—The land tax, made up from the accounts of the year ending the 25th of March, 1843, is distributed as follows: In Bedford, land tax redeemed, 9,865*l.*, land tax unredeemed, 18,567*l.*; Berks, 19,035*l.*... 21,162*l.*; Buckingham, 21,411*l.*... 25,406*l.*; Cambridge, 9,454*l.*... 23,007*l.*; Chester, 7,707*l.*... 19,769*l.*; Cornwall, 12,373*l.*... 18,104*l.*; Cumberland, 2,091*l.*... 1,636*l.*; Derby, 7,071*l.*... 16,332*l.*; Devon, 29,200*l.*... 48,572*l.*; Dorset, 10,520*l.*... 21,505*l.*; Durham, 5,756*l.*... 4,688*l.*; Essex, 46,560*l.*... 42,086*l.*; Gloucester, 19,765*l.*... 26,891*l.*; Hereford, 7,343*l.*... 12,763*l.*; Hertford, 21,018*l.*... 20,765*l.*; Huntingdon, 4,275*l.*... 11,003*l.*; Kent, 42,784*l.*... 37,710*l.*; Lancaster, 8,045*l.*... 11,361*l.*; Leicester, 12,792*l.*... 21,446*l.*; Lincoln, 19,055*l.*... 51,493*l.*; Monmouth, 3,029*l.*... 6,582*l.*; Norfolk, 19,334*l.*... 62,485*l.*; Northampton, 14,807*l.*... 32,351*l.*; Northumberland, 5,319*l.*... 8,141*l.*; Nottingham, 9,160*l.*... 17,572*l.*; Oxford, 14,898*l.*... 23,229*l.*; Rutland, 1,235*l.*... 4,237*l.*; Salop, 7,777*l.*... 20,906*l.*; Somerset, 24,736*l.*... 45,165*l.*; Southampton, 25,563*l.*... 27,033*l.*; Stafford, 9,808*l.*... 16,331*l.*; Suffolk, 22,754*l.*

belonging to one of such livings hath been sold for the purpose of redeeming the land tax charged upon the lands, tithes, and other hereditaments of both of such livings; and it is expedient that such sales should be confirmed, and that future sales for the like purpose should be authorized; and that due provision should be made in the event of the disunion of such livings; be it therefore further enacted, that all such sales as have been so made as last mentioned, and all contracts that have been entered into for any such sales, shall be and the same are hereby confirmed; and that all such sales as shall hereafter be made of any land or other hereditaments belonging to any living united to or consolidated with any other living, for the purpose of redeeming the land tax charged on the glebe lands and other hereditaments belonging to both such livings, shall be as valid and effectual as if the same had been made merely for redeeming the land tax charged on the lands and other hereditaments of the living, any land belonging to which shall be so sold, and as if such living had not been united to or consolidated with any other living; but that in case any consolidated livings, the land tax charged upon which hath been so redeemed as aforesaid, or shall hereafter be redeemed, shall at any time hereafter become disunited and held by different incumbents, either by reason of the want of lawful consent to the union thereof, or from any other cause, the incumbent for the time being of the living, by sale of any lands belonging to which such land tax hath been or shall be redeemed, shall be entitled to an annual rent charge issuing out of the other of such livings, equivalent to the amount of the land tax charged thereon at the time of such redemption as aforesaid.

“XXVII. And be it further enacted, that in all cases in which the profits of any livings are or shall be under sequestration, (whether there shall or not be any incumbent thereof,) or any incumbents of any livings are or shall be outlawed, it shall be lawful for the sequestrator of such living, with the consent of the college, cathedral church, bodies politic or corporate, or companies, or feoffees or trustees for charitable or other public purposes, or other person or persons, having the patronage of such livings respectively, and with the consent of the ordinary, or it shall be lawful for such patron or patrons as aforesaid, with the consent of the ordinary, at any time during the continuance of such sequestration, or until such outlawry shall be reversed, to contract and agree, for the benefit of such living, for the redemption of the land tax charged upon the glebe land, tithes, or other profits of any such living, and to provide for such redemption by sale or mortgage of any of the glebe lands, tithes, or other hereditaments belonging to such living, or by grant of any rent charge thereout, in such and the same manner in all respects as any incumbent of such living could or might have done under the provisions of the said act of the forty-second year of his present majesty, in case of the profits of such living or livings had not been sequestered, or such incumbent or incumbents had not been outlawed.

“XXVIII. And be it further enacted and declared, that where any bodies politic, corporate, or collegiate, or companies, or feoffees or trustees for charitable or other public purposes, or any other person or persons, who by the said act of the forty-second year of his present majesty, or this act, are authorized to redeem the land tax charged upon livings in their patronage, shall be entitled to an alternate right of patronage to any living or livings, the land tax charged upon which shall not have been redeemed by the incumbent or incumbents of such living or livings, it shall be lawful for the body politic, corporate or collegiate, or companies, or feoffees or trustees, or other person or persons entitled to any such alternate right of patronage, who shall first apply to the commissioners for executing this act for that purpose, to contract and agree for the redemption of the land tax

STAT. 53 GEO. 3, c. 123.

belonging to one of two consolidated livings, for redeeming the land tax on both livings, confirmed; and similar sales in future authorized.

In case of disunion, the incumbent of the living, the land of which has been sold, to be entitled to a rent charge.

Patrons of livings under sequestration, or where the incumbent is outlawed, may redeem the land tax thereon.

Patrons of livings having an alternate right of presentation may contract for the redemption of the land tax thereon not redeemed by incumbents.

...49,745*l.*; Surrey, 28,596*l.*...36,513*l.*; Sussex, 27,424*l.*...30,974*l.*; Warwick, 15,311*l.*...23,794*l.*; Westmorland, 1,780*l.*...1,250*l.*; Wilts, 20,450*l.*...30,537*l.*; Worcester, 12,784*l.*...19,626*l.*; York, 44,402*l.*...44,003*l.*
Anglesea, 548*l.*...986*l.*; Brecon, 941*l.*...2,013*l.*; Cardigan, 396*l.*...882*l.*; Carmarthen, 1,186*l.*...2,962*l.*; Carnarvon, 606*l.*...1,666*l.*; Denbigh, 1,662*l.*...5,055*l.*; Flint, 743*l.*...1,502*l.*; Glamorgan, 1,608*l.*...6,063*l.*; Merioneth, 485*l.*...1,937*l.*; Montgomery, 1,073*l.*...4,732*l.*; Pembroke, 1,280*l.*...1,622*l.*; Radnor, 831*l.*...1,822*l.*
Middlesex, including London and Westminster, 87,794*l.*...148,455*l.*
For the gross total amount, *vide ante* 978, n. (2).

STAT. 53 GEO.
3, c. 123.

charged upon the glebe lands, tithes, or other profits of such living or livings, in the same manner as such bodies, companies, or other persons so applying, if entitled to the exclusive patronage to such living, might have contracted to redeem the same under the provisions of the said act of the forty-second year of his present majesty; and it shall be lawful for all such bodies, companies, or other persons, to provide for such redemption by sale of any lands, tenements, or hereditaments, belonging to them respectively, or by the grant of any rent charge thereout, as they respectively could or might lawfully make under the said act of the forty-second year of his present majesty, for the redemption of any land tax charged on the lands belonging to them respectively; and the land tax so redeemed shall be forthwith extinguished; but every such body, company, or other person or persons by whom or on whose behalf such land tax shall be so redeemed, and their respective heirs and successors, shall nevertheless be entitled to an annual rent charge issuing out of such living, equal to the amount of the land tax redeemed; unless it shall be declared in writing under the common seal, or seal of the bodies or companies, or their respective successors, or under the hands of such other person or persons or their respective heirs, at the time of presenting or nominating any clerk or clerks to such living or livings, that such rent charge shall be suspended during his or their incumbency or respective incumbencies; which declaration the bodies or companies, or other person or persons for the time being entitled to nominate to such living or livings, shall from time to time be competent to make; provided always, that such suspension shall be without prejudice to the right of such bodies or companies, or other persons, and their respective heirs and successors, to recover such rent charge after the next or any future avoidance; provided also, that any declaration made by such bodies or companies, or other person or persons, at the time of redeeming such land tax, shall be as available during the incumbency of the then rector, vicar, or curate, as if it had been made at the time of his being presented to such living.

Incumbents of livings, the land tax charged on which shall have been redeemed or purchased by any prior incumbent, &c. may, after purchasing an assignment of the land tax, raise money by sale, &c. of the glebe, to reimburse himself.

“XXIX. And whereas by an act passed in the forty-fifth year of his present majesty, to amend and render more effectual the said act of the forty-second year of his present majesty, it was enacted, that where the land tax charged upon the glebe lands, tithes, or other profits of any living, should have been or should be redeemed or purchased by the patron or patrons, or any former incumbent thereof, or by any other person or persons, it should be lawful for the incumbent for the time being of such living, to treat and agree for the purchase of an assignment of such land tax for the benefit of such living; and for the purpose of raising money to purchase such assignment, to carry into execution the powers which by the said act of the forty-second year of his present majesty, are given in order to raise money by sale, mortgage, or grant, for the redemption of land tax; provided that the monies to arise from any such sale, mortgage, or grant, or so much thereof as should be requisite, should, under the order of any two of the commissioners appointed under the great seal as aforesaid, be paid to the person or persons assigning such land tax, and the remainder of such monies, in case any such should be after payment of the costs and expenses which should have been incurred on account of such sale, mortgage, or grant and assignment, should in pursuance of the like order be paid into the Bank of England, or to the receiver general or collector, as the case might require, and be applied in like manner as by the said act of the forty-second year of his present majesty is directed in the case of monies arising from sales, mortgages, or grants, made for the purpose of purchasing assignments of land tax under that act; and whereas it is doubtful whether incumbents of livings can, after having purchased with their own money an assignment of the land tax, raise money by sale, mortgage, or grant, for the purpose of reimbursing any sum of money that may have been laid out by them in the purchase of such assignment; and it is expedient that such power should be given; be it therefore further enacted, that in all cases wherein any incumbent for the time being of any living shall purchase an assignment of the land tax charged upon the glebe lands, tithes or other profits of such living, from the patron or patrons or former incumbent of such living, or from any other person who shall have redeemed or purchased the same, or from his, her, or their heirs, executors, administrators, or assigns, it shall be

lawful for such incumbent for the time being, for the purpose of reimbursing any sum of money which shall have been paid by him out of his own money as the consideration for any such assignment, to carry into execution all and every or any of the powers which by the said act of the forty-fifth year of his present majesty are given, in order to raise money by sale, mortgage or grant, for the purpose of purchasing an assignment of such land tax: provided always, that the monies to arise from any such sale, mortgage, or grant, to be made by virtue of this act, or so much thereof as shall be requisite, shall, under the order of any two of the commissioners appointed or to be appointed under the great seal of Great Britain as aforesaid, be paid to such incumbent for the time being, whose receipt in pursuance of such order shall be an effectual discharge to the respective purchasers or mortgagees; and the remainder of such monies, in case any such shall be, shall be paid and applied in such and the same manner as by the said act of the forty-fifth year of his present majesty is directed concerning the remainder of the monies arising by the sales, mortgages, or grants thereby authorized to be made.

“XXX. And be it further enacted, that where the land tax charged upon the glebe land, tithes, or other profits of any living, hath been redeemed by the patron or patrons, or any former incumbent thereof, or by any other person or persons, and the incumbent for the time being of such living hath, under the powers contained in the said act of the forty-fifth year of his present majesty, purchased an assignment of such land tax, for the benefit of such living, every such assignment shall, and the same is hereby required to be transmitted within six calendar months after the passing of this act to the officer appointed for the registry of contracts for redemption of the land tax; and that whenever any incumbent for the time being of any living, the land tax charged upon the glebe land, tithes, or other profits whereof has been or shall be redeemed or purchased by the patron or patrons or any incumbent thereof, shall under the provisions of the said act of the forty-fifth year of his present majesty, or of this act, purchase an assignment of such land tax, for the benefit of such living, every such assignment shall, within six calendar months after the date thereof, be in like manner transmitted to such officer for the registry of contracts; and such officer shall, upon the production to him of every such assignment as aforesaid, register the same gratis, and a copy of the registry of such assignment, signed by such officer, shall be allowed in all courts and places, and before all persons, to be good and sufficient evidence of such assignments; and no copy of the registry thereof shall be liable to any stamp duty.

“XXXI. And be it further enacted, that in order to provide for the purchase of any land tax under the powers and provisions of the said act of the forty-second year of his present majesty, by any bodies politic or corporate, or companies, or any feoffees or trustees, for charitable or other public purposes, it shall be lawful for such bodies politic or corporate, or companies, or feoffees or trustees, to sell any lands, tenements, or hereditaments, belonging to such bodies politic or corporate, or companies, or feoffees or trustees, or to mortgage the same, or to grant any rent charge out of the same, or to enfranchise any messuages, lands, tenements, or hereditaments, which are or shall be holden by copy of court roll or other customary tenure of any manor belonging to any such bodies politic or corporate, or companies, or feoffees or trustees; and to sell and dispose of any heriots, or fee-farm rents, chief rents, or quit rents, or other emoluments or advantages, issuing or payable from or in respect of any freehold or copyhold or customary manors or other hereditaments, or incident thereto or accruing therefrom, in such and the same manner and under and subject to the same directions and regulations as such bodies politic or corporate, or companies, or feoffees or trustees, are respectively authorized to do under the provisions of the said act of the forty-second year of his present majesty, for the purpose of providing for the redemption of any land tax, charged on the manors or other hereditaments belonging to such bodies politic or corporate, or companies, or feoffees or trustees.

“XXXVIII. And whereas some sales have been made and conveyances executed by bodies politic or corporate, or companies, or feoffees or trustees for charitable or other public purposes, of tithes and other hereditaments, which have not been rated to the land tax, for the purpose of redeeming the land tax charged on

STAT. 53 GEO.
3, c. 123.

Assignments of land tax already purchased by incumbents from the patrons or other persons who have redeemed the land tax charged on livings, to be registered within six months.

All future assignments to be registered within six months from the date of the contract.

Corporations or trustees may sell or mortgage part of their lands, or grant any rent charge, &c. for purchasing land tax.

STAT. 53 GEO.
3, c. 123.

other hereditaments; and doubts may arise as to the validity of such sales and conveyances; and it has frequently happened that certain tithes or other hereditaments belonging to livings, have not been rated to the land tax at the time of the contract for the redemption of the land tax charged on the messuages, lands, and other hereditaments belonging to such livings respectively; and such tithes or other hereditaments so omitted to be rated are still liable to be rated to the land tax; and it appears that in some instances certain tithes or other hereditaments belonging to livings or other ecclesiastical benefices and charitable institutions, exonerated or intended to be exonerated from the land tax, by the commissioners appointed under the great seal, by virtue of the powers contained in the said acts of the forty-sixth, forty-ninth, and fiftieth years of his present majesty, were not, at the respective times of such exoneration, rated to the land tax; and such tithes or other hereditaments, not so rated, are still liable to be rated to the land tax; be it therefore further enacted, that in all cases where any tithes or other hereditaments have been sold or conveyed by any body or bodies politic or corporate, or companies, or any feoffees or trustees for charitable or other public purposes as last aforesaid, the sales and conveyances thereof shall be valid and effectual to all intents and purposes whatsoever, and the tithes and hereditaments therein comprised discharged from the land tax, and all future assessments thereof, notwithstanding the tithes or other hereditaments so sold and conveyed, or any of them, may not have been at the time of such sales or conveyances rated to the land tax, and the land tax charged thereon may not have been previously redeemed or purchased; and that all such tithes and other hereditaments belonging to any livings comprised in any contract entered into for the redemption of the land tax charged on the messuages, lands, tithes, or other hereditaments belonging to any such livings, as at the time of the contract for the redemption of such land tax were not rated to the land tax, shall nevertheless be discharged from land tax, and all future assessments thereof; and further, that all such messuages, lands, tithes, and other hereditaments belonging to the several livings or other ecclesiastical benefices and charitable institutions which have been, or have been intended to be, exonerated from land tax, under the powers and provisions contained in the said acts of the forty-sixth, forty-ninth, and fiftieth years of his present majesty, or either of them, shall be absolutely exonerated and discharged from all land tax, from the respective periods of their exonerations and from all future assessments of land tax, notwithstanding certain portions or parts of the tithes or other hereditaments belonging to such livings or other ecclesiastical benefices or charitable institutions were not, at the respective periods of such exonerations, included in the rate or assessment to the land tax."

46 Geo. 3,
c. 133, ss. 2,
3, 4, & 5.
49 Geo. 3,
c. 67, ss. 1, 2,
3, & 4.
50 Geo. 3,
c. 58, s. 1.
Sales by corporations confirmed, where tithes, &c. sold may not have been rated to the land tax.

Tithes, &c. discharged from the land tax, although not rated at the time of redemption. Lands and tithes which have been exonerated from land tax, discharged, though not rated to it at the time of exoneration.

STAT. 53 GEO.
3, c. 127.

CCCCXLV. STAT. 53 GEORGII 3, c. 127(1). A.D. 1813.

"An Act for the better Regulation of Ecclesiastical Courts in England; and for the more easy Recovery of Church Rates and Tithes."

"Whereas it is expedient that excommunication, together with all proceedings following thereupon, should, saving in certain cases, be discontinued, and that other proceedings should be substituted in lieu thereof; and that certain other regulations should be made in the proceedings of the ecclesiastical courts; and that more convenient modes of recovering tithes and church rates in certain cases should be provided: be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the passing of this act, excommunication, together with all proceedings following thereupon, shall, in all cases, save those hereafter to be specified, be discontinued throughout that part of the United Kingdom of Great Britain and Ireland called England; and that in all causes which, according to the laws of this realm, are cognizable in the ecclesiastical courts, when any person or persons having been duly cited to appear in any ecclesiastical court, or required to comply with the lawful orders or decrees, as well final as interlocutory, of any such court, shall neglect or refuse to appear, or neglect or refuse to pay obedience to such law-

Excommunication discontinued, except in certain cases hereafter specified.

ful orders or decrees, or when any person or persons shall commit a contempt in the face of such court, no sentence of excommunication shall be given or pronounced, saving in the particular cases hereafter to be specified, but instead thereof it shall be lawful for the judges or judge who issued out the citation, or whose lawful orders or decrees have not been obeyed, or before whom such contempt in the face of the court shall have been committed, to pronounce such person or persons contumacious and in contempt, and within ten days to signify the same, in the form to this act annexed, to his majesty in Chancery, as hath heretofore been done in signifying excommunications; and thereupon a writ *de contumace capi-endo* (1), in the form to this act annexed, shall issue from the court of Chancery,

STAT. 53 GEO.
3, c. 127.

The same as in
the writ *de*
excommuni-
cato capi-endo.

(1) *De contumace capi-endo*.—The court will pronounce an Irish peer in contempt for non-payment of costs, and direct such contempt to be signified, leaving the lord chancellor to decide whether the writ *de contumace capi-endo* should issue. *Westmeath v. Westmeath*, 2 Hagg. 653.

The ecclesiastical court has no jurisdiction over trusts, and therefore where a party sued as a trustee, was arrested on a writ *de contumace capi-endo*, the court of Queen's Bench discharged him out of custody. *Exp. Thomas Jenkins*, 1 B. & C. 655.

In *Reg. v. Thorogood*, (12 A. & E. 183,) it was held, that it was not necessary, under Stat. 53 Geo. 3, c. 127, s. 1, that the *significavit* of contempt, from the spiritual court, should purport to be issued within ten days of the judgment of contempt:—that in a *significavit*, after the statement, (according to schedule (A) to Stat. 53 Geo. 3, c. 127,) of the party being pronounced in contempt, these words were added: “in not appearing (as by our citation under the seal of our said court duly and personally served upon him, he was required to appear) before,” &c.; the addition of the parenthetical words was an immaterial variance from the schedule:—that, assuming Stat. 53 Geo. 3, c. 127, s. 7, takes away the jurisdiction of the spiritual courts in cases of church rate, wherein the two justices have jurisdiction; it is not necessary that the citation, *significavit*, or subsequent proceedings, should negative the facts, which would give jurisdiction to the justices:—that, assuming, in a proceeding under Stat. 53 Geo. 3, c. 127, s. 1, the writ *de contumace capi-endo*, under Stat. 5 Eliz. c. 23, s. 13, the omission of it is no ground for discharging the party from an imprisonment for contempt, such imprisonment not being within the words of Stat. 5 Eliz. c. 23, s. 13, “all and every pains and forfeitures limited against such persons excommunicate by this statute:”—that the official principal and vicar-general of the bishop has jurisdiction within a district for which a commissary has been appointed (though for life), while the commissary is inhibited, pending the bishop's visitation:—that the appointment of such a commissary does not make the district a peculiar:—and that Stat. 23 Hen. 8, c. 9, s. 2, does not apply in such a case;—Lord Denman delivering the judgment of the court in the following language:

“We are called upon to quash a writ *de contumace capi-endo*, issued in a suit for non-payment of a church rate, on account of several defects appearing on the face of it,

and others arising on facts proved or admitted.

“The first objection was, that the *significavit* did not purport to have issued within ten days of the party's being pronounced guilty of a contempt. But we have no doubt, that this matter of practice must be presumed to have been duly acted upon; and the objection was scarcely persisted in.

“2d. That certain words were introduced into the *significavit* which are not in the form given by the schedule to Stat. 53 Geo. 3, c. 127. But these are merely superfluous, and do not alter the sense of the writ itself, which is complete without them.

“3d. It does not appear to be a matter of spiritual cognizance, because it does not assert, that there was a question on the validity of the rate, nor that the sum due was more than 10*l*. The answer is: all church rates were of spiritual cognizance before Stat. 53 Geo. 3, c. 127; which, by giving power of enforcing them to the justice of the peace, when their validity is unquestioned, and the sum due is less than 10*l*. may possibly, by implication, deprive the ecclesiastical courts of their power in the same description of cases: on which point, however, it is not necessary for us now to decide. For we are of opinion, that it lies on the defendant to show the exception, not on the court to negative its existence. We must presume, so far as the citation goes, that they are acting in a case where they have jurisdiction. [Vide *Reg. v. Baines*, 12 A. & E. 210.]

“4th. The writ is bad for want of an addition to the party's name. The answer is: if this is not rendered unnecessary by the form of writ given in schedule (B) to Stat. 53 Geo. 3, c. 127, still, on looking to the act 5 Eliz. c. 23, we find that the writ was not vitiated, but only the pains and forfeitures enacted by that statute, and which are subsequent to the writ, are made void. Imprisonment is not inflicted on this occasion, by way of penalty, but is under the writ itself, and merely for enforcing execution of the sentence pronounced by the court. The decisions that have been made on the act of Elizabeth, throw little light upon it; but its own language is clear.

“5th. The spiritual judge by whom this sentence has been pronounced has two offices, that of commissary, which he holds for his life in the district where the contempt is charged to have been committed, and that of official principal. Dr. *Lushington* appears to have acted here in the latter character, whereas his power is only in the former.

STAT. 53 GEO. 3, c. 127. directed to the same persons to whom the writs *de excommunicato capiendo* have heretofore been directed, and the same shall be returnable in like manner as the

The two offices are said to be as distinct as if they were holden by two persons; and, if they were, it is argued that the official principal could not act within the jurisdiction of the commissary. This objection in respect to facts, appearing on affidavit, is answered in the same manner; for we find that, at the time of this sentence, [*Vide* 12 A. & E. 187. The sentence appears to have been pronounced after the inhibition terminated; but the citation, issued during the inhibition.] an inhibition had suspended Dr. *Lushington* from acting as commissary, and so remitted him to his power as official principal. It was argued, that an inhibition suspends the commissary from acting in cases of contentious jurisdiction only, not in those matters of voluntary jurisdiction in which the bishop, during his visitation, may personally act. [The proposition contended for on behalf of the defendant appears to be accidentally reversed.] This distinction is expressly denied in the treatises to which we must have recourse as stating the practice of the spiritual courts; and it is not founded in principle. The inhibition follows upon the bishop's personal presence; but it suspends all the powers and authorities of the officer affected by it. The bishop brings with him, not only the means of visiting the churches and directing ecclesiastical affairs, but the power of acting judicially by his ordinary officers, of whom the official principal holds the highest place. We, therefore, think that his authority in that character was revived by the inhibition against his acting as commissary, supposing it to have been merged in that office within the same district. We are consequently relieved from the necessity of inquiring whether the official principal may not have a concurrent jurisdiction with the commissary.

"6th. Another objection, arising on Stat. 23 Hen. 8, c. 9, assumed, that the appointment of a commissary constituted the district a peculiar; but we are clearly of opinion that the word peculiar is there employed in the ordinary sense of some district exempt from the diocesan's jurisdiction, and that the commission appointing Dr. *Lushington* judge for a particular part of the diocese within the bishop's jurisdiction, does not make a peculiar.

"It appears, therefore, to us, that the objections to this writ are answered, and on grounds that by no means call in question Lord *Tenterden's* judgment in *Rex v. Dugger*, (5 B. & A. 791,) or the doctrine of Lord *Talbot*, (*Rex v. Eyre*, 2 Str. 1067,) to which he there referred." [*Vide etiam Lucy v. St. David's (Bishop of)*, 2 Ld. Raym. 817. *Rev v. Hill*, 1 Salik. 294.]

The citation to which reference has been made, was in the following form:

"Charles James, by divine permission Lord Bishop of London, to all and singular clerks and literate persons, whomsoever and wheresoever, in and throughout our whole diocese of London, greeting. We do hereby authorize, empower, and strictly enjoin and command you, jointly and severally, pe-

remptorily to cite, or cause to be cited, John Thorogood of the parish of Chelmsford, in the county of Essex, within our diocese of London, to appear personally, or by his proctor duly constituted, before the Right Honourable Stephen Lushington, doctor of laws, our vicar-general and official principal of our consistorial and episcopal court of London, lawfully constituted, his surrogate, or some other competent judge in this behalf, in the common hall of Doctors' Commons, situate in the parish of St. Benedict, near Paul's wharf, London, and place of judicature there, on the sixth day after the service of these presents, if it be by a general session, by day, caveat day, or additional court day of our said court, then next ensuing, at the hour of ten in the forenoon, and there to abide, if occasion require, during the sitting of the court; then and there to answer to William Baker, Thomas Morgan Gepp, and Thomas Moss, churchwardens of the said parish of Chelmsford, in a certain cause of subtraction of church rates; and further to do and to receive as unto law and justice shall appertain, under pain of the law and contempt thereof, at the promotion of the said William Baker, &c. and what you shall do or cause to be done in the premises you shall duly certify our vicar-general and official principal aforesaid, his surrogate, or some other competent judge in his behalf, together with these presents. Given at London, this 12th day of November, A.D. 1838, and in the eleventh year of our translation."

A writ *de contumace capiendo*, under Stat. 53 Geo. 3, c. 127, s. 1, for disobeying the monition of the Arches court, may issue on a *significavit* from the official principal. *Reg. v. Baines*, 12 A. & E. 210.

If the writ purport to have issued against the defendant for not paying a sum of money and costs, according to the monition of the Arches court, the proceedings being carried on in pain of the contumacy of the defendant, duly cited to appear in the cause, &c. with the usual intimation, but not appearing, the court of Queen's Bench will not discharge him on *habeas corpus*. For a practice of the ecclesiastical court to give judgment against a party on such non-appearance may be legal; and, if no such practice exists, the party should appeal. *Ibid.*

The writ shows sufficiently, that the ecclesiastical court had jurisdiction, if it state that defendant was contumacious in not paying the churchwardens of St. M. the sum of two pounds five shillings, "rated and assessed" upon him, and costs, pursuant to a monition, &c. "in a certain cause or business of subtraction of church rate," depending, &c. *Ibid.*

The form of a writ *de contumace capiendo*, given by Stat. 53 Geo. 3, c. 127, schedule (B), addressed "To the sheriff of —," describes the contumacious party as "— of —, in your county of —." *Quære*, whether a writ describing the defendant as "W. B. of the market-place, in the borough of Leicester, hatter, a parishioner

writ *de excommunicato capiendo* hath been by law returnable heretofore, and shall have the same force and effect as the said writ; and all rules and regulations, not hereby altered, now by law applying to the said writ and the proceedings following thereupon, and particularly the several provisions contained in a certain act passed in the fifth year of Queen Elizabeth, intituled, 'An Act for the due Execution of the Writ *de excommunicato capiendo*,' shall extend and be applied to the said writ *de contumace capiendo*, and the proceedings following thereupon, as if the same were herein particularly repeated and enacted; and the proper officers of the said court of Chancery are hereby authorized and required to issue such writ *de contumace capiendo* accordingly; and all sheriffs, gaolers, and other officers, are hereby authorized and required to execute the same by taking and detaining the body of the person against whom the said writ shall be directed to be executed; and upon the due appearance of the party so cited, and not having appeared as aforesaid, or the obedience of the party so cited, and not having obeyed as aforesaid, or the due submission of the party so having committed a contempt in the face of the court, the judges or judge of such ecclesiastical court shall pronounce such party absolved from the contumacy and contempt aforesaid, and shall forthwith make an order upon the sheriff, gaoler, or other officer in whose custody he shall be, in the form to this act annexed, for discharging such party out of custody, and such sheriff, gaoler, or other officer shall, on the said order being shown to him, so soon as such party shall have discharged the costs lawfully incurred by reason of such custody and contempt, forthwith discharge him.

STAT. 53 GEO.
3, c. 127.

"II. Provided always, and be it further enacted, that nothing in this act contained shall prevent any ecclesiastical court from pronouncing or declaring persons to be excommunicate in definitive sentences, or in interlocutory decrees having the force and effect of definitive sentences, such sentences or decrees being pronounced as spiritual censures for offences of ecclesiastical cognizance, in the same manner as such court might lawfully have pronounced or declared the same, had this act not been passed.

In what cases
excommunica-
tion shall
continue.

"III. And be it further enacted, that no person who shall be so pronounced or declared excommunicate shall incur any civil penalty or incapacity whatever in consequence of such excommunication, save such imprisonment, not exceeding six months, as the court pronouncing or declaring such person excommunicate shall direct; and in such case the said excommunication, and the term of such imprisonment, shall be signified or certified to his majesty in Chancery in the same manner as excommunications have been heretofore signified, and thereupon the writ *de excommunicato capiendo* shall issue, and the usual proceedings shall be had, and the party being taken into custody shall remain therein for the term so directed, or until he shall be absolved by such ecclesiastical court.

Proceedings
in case of ex-
communica-
tion.

"IV. And whereas in the seventh and eighth years of King William the Third, an act was made and passed, intituled, 'An Act for the more easy Recovery of Small Tithes,' whereby, amongst other things therein enacted, two or more of his majesty's justices of the peace are authorized and required to hear and determine complaints touching tithes, oblations, and compositions subtracted or withheld, not exceeding forty shillings: and whereas it has become expedient to enlarge such amount, and also to extend the said act to all tithes whatsoever of certain limited amount; be it enacted, that such justices of the peace shall from and after the passing of this act be authorized and required to hear and determine all complaints touching tithes, oblations, and compositions subtracted or withheld, where the same shall not exceed ten pounds in amount from any one person, in all such

Justices of
peace may de-
termine com-
plaints re-
specting tithes,
not exceeding
ten pounds.

and inhabitant of the parish of St. M. in the said borough of L. in the county of Leicester," sufficiently complies with the statute. *Reg. v. Baines*, 12 A. & E. 210.

But it was held upon motion for discharge on *habeas corpus*, that the alleged variance could not be taken advantage of on a return setting out the writ, though the motion was supported by an affidavit verifying a copy of

the writ; for that the proper course was to move that the writ itself might be set aside for irregularity. *Ibid.*

It is no objection to the writ, that it purports to have been delivered of record to the sheriff in the court of Queen's Bench, but does not appear to have been "opened" at that time, pursuant to Stat. 5 Eliz. c. 23, s. 2. *Ibid.*

STAT. 53 GEO.
3, c. 127.

Limitation of
actions re-
specting tithes.

Extending the
provisions of
the acts 7 & 8
Gul. 3, and
1 Geo. 1, as
to quakers
neglecting to
pay tithes, &c.

For recovery
of church or
chapel rates.

cases, and by all such means, and subject to all such provisions and remedies by appeal or otherwise, as contained in the said act of King William, touching small tithes, oblations, and compositions not exceeding forty shillings: provided always nevertheless, that from and after the passing of this act one justice of the peace shall be competent to receive the original complaint, and to summon the parties to appear before two or more justices of the peace, as in the said act is set forth.

“V. And be it further enacted, that from and after the passing of this act no action shall be brought for the recovery of any penalty for the not setting out tithes, nor any suit instituted in any court of equity or in any ecclesiastical court to recover the value of any tithes, unless such action shall be brought or such suit commenced within six years from the time when such tithes became due.

“VI. And whereas in the seventh and eighth years of King William the Third, an act was made and passed, intituled, ‘An Act that the solemn Affirmation and Declaration of the People called Quakers shall be accepted instead of an Oath in the usual Form,’ whereby, among other things, it is therein enacted, where any quaker shall refuse to pay for or compound for his great or small tithes, or to pay any church rates, two or more of his majesty’s justices of the peace are authorized to hear and determine the same, not exceeding the value of ten pounds: and whereas by a statute made and passed in the first year of King George the First, the said act is extended to other objects; and whereas it is become expedient to enlarge the said sum; be it enacted, that from and after the passing of this act all the provisions of the said acts of King William and King George shall be deemed and taken to extend to any value not exceeding fifty pounds; provided always nevertheless, that from and after the passing of this act one justice of the peace shall be competent to receive the original complaint, and to summon the parties to appear before two or more justices of the peace as in the said act is set forth.

“VII. And whereas it is expedient that church rates or chapel rates of limited amount, unduly refused or withheld, should in certain cases be more easily and speedily recovered; be it enacted, that from and after the passing of this act, if any one *duly rated* (1) to a church rate or chapel rate, *the validity whereof has not been questioned in any ecclesiastical court* (2), shall refuse or neglect to pay the same

(1) *Duly rated*.—A rate to reimburse the churchwardens such sums as they had expended, or might thereafter expend on the parish church, would be bad on the face of it, as in part retrospective; and therefore the court would not grant a *mandamus* to the chapel-wardens of a township within the parish, to make such a rate for raising their accustomed proportion of the whole; and their refusal to make such a rate, when demanded, applying as well to the form as to the substance of the demand, the court would not grant the *mandamus* to raise the money in the common form of such a rate prospectively, out of which the churchwardens might repay themselves. *Rex v. Haworth (Chapelwardens of)*, 12 East, 556.

(2) *The validity whereof has not been questioned in any ecclesiastical court*.—Under Stat. 53 Geo. 3, c. 127, s. 7, a party summoned before two justices, for non-payment of a church rate, may give them notice, that he disputes the validity of the rate, or his liability to pay the same, although no proceeding is commenced in the ecclesiastical court; and where a party so summoned told the justices that he would immediately bring an action against any person who ventured to levy the rate, as he thought he had no right to pay it, because he had no claim to or seat in the chapel.—it was held, that this was sufficient notice, that he disputed his liability to be rated, and therefore the order was quashed. *Rex v. Milnrow (Chapelwar-*

dens of), 5 M. & S. 248.

A mere statement to the justices, by the party complained of, that he disputes the rate, and that he has entered a *caveat* in the ecclesiastical court against its being allowed, does not deprive the justices of jurisdiction; they must still hear and examine, to ascertain whether the writ is *bonâ fide* disputed. *Rex v. Wrottesley (Clerk)*, 1 B. & Ad. 648.

In *Rex v. Sillifant*, (4 A. & E. 354,) an application was made for a *mandamus* to a justice to enforce payment of a church rate under Stat. 53 Geo. 3, c. 127, s. 7: it appeared that the party assessed had objected to the rate as invalid in the Consistorial court, but that the rate had there been confirmed; and that the party, being afterwards summoned before a petty session, repeated his former objection: it was held that, the validity of the rate having been questioned in the ecclesiastical court, although it did not appear that such question was any longer depending, the jurisdiction of the justices under s. 7 of the act, was so far doubtful, that a *mandamus* could not issue. The rate was regular on the face of it; but appeared (by affidavit) to have been voted by the parishioners in vestry for the purpose of meeting past disbursements. It seems, that the rate was not therefore bad, whatever objection might be raised to a retrospective application of the money, on passing the churchwardens’ accounts:—

Lord Denman stating, “It is not easy to

sum at which he is so rated, it shall and may be lawful for any one justice of the peace of the same county, riding, city, liberty, or town corporate where the church or chapel is situated in respect whereof such rate shall have been made, upon the *complaint of any churchwarden* (1) or *churchwardens* (2), chapelwarden or chapelwardens, who ought to receive and collect the same, by warrant under the hand and seal of such justice, to convene before any two or more such justices of the peace *any person so refusing or neglecting to pay such rate* (3), and to examine upon oath (which oath the said justices are hereby empowered to administer) into the merits of the said complaint, and by order under their hands and seals to direct the payment of what is due and payable in respect of such rate, so as the sum ordered and directed to be paid as aforesaid do not exceed ten pounds over and above the reasonable costs and charges, to be ascertained by such justices; and upon refusal or neglect of such party to pay according to such order it shall and may be lawful for any one of such justices, by warrant under his hand and seal, to levy the money thereby ordered to be paid, together with the amount of such costs and charges, by distress and sale of the goods of such offender, his executors or administrators, rendering only the overplus to him or her, the necessary charges of distraining being thereout first deducted and allowed by the said justices; and any person finding him or herself aggrieved by any judgment given by two or more such justices may *appeal to the next general quarter sessions* (4) to be held for the county, riding, city, liberty, or town corporate wherein the church or chapel is

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3, c. 127.

Appeal.

construe the enactments of 53 Geo. 3, c. 127, on this subject. But there is a circumstance upon which the jurisdiction of justices in a case of this kind is said to be founded, and which does not exist here; namely, that the validity of the rate shall not have been questioned in any ecclesiastical court. Here, not only has the validity of the rate been questioned in an ecclesiastical court, but the same objection which was there raised was afterwards taken before the justices, and they were required, upon that ground, to treat the rate as illegal. It is therefore very doubtful, at least, whether they had jurisdiction to enforce the rate, and that is sufficient ground for refusing a *mandamus*. It is also a well-founded objection to this rule, that it is applied for against one justice only, whereas it does not appear that one only refused the order."

"I believe we are all satisfied that there is nothing in the objection that the purposes of this rate are retrospective, the rate being correct on the face of it. That point could be raised only in objecting to the accounts."

(1) *Churchwarden*.—The court will grant a *mandamus* to the inhabitants of a parish liable to contribute to the church rate, to meet and assemble together, with the minister, to elect churchwardens. *Rex v. Wix* (*Inhabitants of*), 2 B. & Ad. 197.

Where the return to such a *mandamus* stated an immemorial custom in the parish to have no churchwarden, and that the duties appertaining by law to the office of churchwardens had been, from time out of mind, discharged by the overseers of the poor:—it was held, that inasmuch as overseers had not existed time out of mind, and as there were necessary duties appertaining to churchwardens, and there must have been some persons bound by law to discharge those duties, the custom set out in the return was bad. *Ibid.*

(2) *Complaint of any churchwarden or churchwardens*.—Under Stat. 53 Geo. 3, c.

127, s. 7, which enables justices of the peace to adjudicate on charges of non-payment of church rate, "upon the complaint of any churchwarden or churchwardens," "who ought to receive and collect the same," it was held, in *Reg. v. Fenton*, (1 Q. B. 480,) that the justices may act upon the complaint of one churchwarden, though in a parish having ten:—Mr. Justice *Patteson* remarking, "In the cases where it was held, that a majority of overseers should act, the statute used only the plural number. Here the words are 'churchwarden or churchwardens.' The rule must be absolute." Vide *Morrell v. Martin*, 6 Bing. N. C. 373.

Where parties are unduly elected churchwardens, but are admitted and sworn in, and act, they may convene a vestry for laying a church rate; and a rate laid at such a vestry will be valid.

They may also complain of non-payment, under Stat. 53 Geo. 3, c. 127, s. 7, so as to give justices of peace jurisdiction, the sum not exceeding 10*l.* *Reg. v. St. Clement's, Ipswich* (*Inhabitants of*), 12 A. & E. 177.

(3) *Any person so refusing or neglecting to pay such rate*.—If proceedings against a person rated be commenced in the ecclesiastical court to enforce a rate, and afterwards abandoned, the same person may afterwards be summoned before justices, under Stat. 53 Geo. 3, c. 127, s. 7, and by them ordered to pay the rate. *Ibid.*

(4) *Appeal to the next general quarter sessions*.—In *Rex v. Staffordshire* (*Justices of*), (4 A. & E. 842,) it was held, that a party appealing against an order of justices for payment of a church rate under Stat. 53 Geo. 3, c. 127, s. 7, need not give notice of appeal to the justices making the order; that it was sufficient to give it to the churchwardens; and that if such notice to the justices were necessary, service of it upon one of the justices would suffice:—

Lord *Denman* observing, "The appellant has entitled himself to the writ. The ses-

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Saving of the
ecclesiastical
jurisdiction.

situated in respect whereof such rate shall have been made, and the justices of the peace there present, or the major part of them, shall proceed finally to hear and determine the matter, and to reverse the said judgment if they shall see cause; and if the justices then present, or the major part of them, shall find cause to affirm the judgment given by the first two or more justices, the same shall be decreed by order of sessions, with costs, against the appellant, to be levied by distress and sale of the goods and chattels of the said party appellant: provided always, that in case any such appeal be made as aforesaid, no warrant of distress shall be granted until after such appeal be determined: provided also, that nothing herein contained shall extend to alter or interfere with the *jurisdiction of the ecclesiastical courts*(1) to hear and determine causes touching the

sions have no right to introduce a new condition of appeal, which is not in the act of parliament. And, if notice to the justices were necessary, service on one would be sufficient. It has been so held under other statutes which require the giving of notice to justices."

(1) *Jurisdiction of the ecclesiastical courts*.—Whether Stat. 53 Geo. 3, c. 127, s. 7, which gives power to justices to enforce the payment of a sum not exceeding 10*l.* due upon a church rate, where neither the validity of the rate nor the liability of the party has been questioned, takes away the jurisdiction of the ecclesiastical court in such cases, is questionable.

But, assuming that it does, it seems that it is still competent to institute a suit in that court for payment of a sum under 10*l.* due upon a church rate, because, until the defendant has appeared in such a suit, there may be no means of knowing whether the validity or liability is in dispute or not. Therefore, where a *significavit*, as recited in the return to a writ of *habeas corpus*, stated that the prisoner had been pronounced guilty of contumacy, for non-payment of a sum of 2*l.* 5*s.* to certain churchwardens, with their costs of suit, pursuant to a monition duly issued in a certain cause of subtraction of church rate, the proceedings wherein were carried on in pain of the contumacy of the prisoner, who though duly cited with the usual intimation, had not appeared, an objection, that the cause was not sufficiently described, for want of an averment that the validity of the rate or the liability of the party was in dispute, was over-ruled.

The object of the control which the court of Chancery has over the ecclesiastical courts, by means of the writ of *habeas corpus*, is to keep those courts within the jurisdiction which the law has assigned to them, and not to correct any error into which they may fall in the exercise of it. And, therefore, objections taken to a *significavit* upon the ground, that it did not sufficiently show that the defendant had been regularly cited, and upon the further ground, that the ecclesiastical court was not, according to its own practice, authorized to proceed to judgment, upon the merits, against a party who had never appeared, were over-ruled.

Where an objection was raised, that the *significavit* appeared to be in the name of the official principal and not of the archbishop, it was over-ruled.

But it seems that, the memorandum upon a writ of *de contumace capiendo* need not show,

that all the formalities prescribed by the act 5 Eliz. c. 23, have been complied with.

Thus, *In re Baines*, (1 Cr. & Ph. 31,) Lord Chancellor Cottenham observed:

"When this case was first mentioned to me, I suggested that questions upon *significavit* from the ecclesiastical court had usually been made the subject of discussion here upon applications to discharge or quash the writ of *excommunicato*, or *de contumace capiendo*, when the writ not having been returned in the Queen's Bench, this court still had jurisdiction over it. The party has preferred, as he had an undoubted right to do, to rest his case upon the return to the *habeas corpus*, and my consideration is necessarily restricted, not to what has actually taken place in the ecclesiastical court, of which I know nothing, except from the *significavit* which that court has sent to me, but to what is stated in that *significavit* to have there taken place.

"It is important to keep in view the great difference between a court's assuming a jurisdiction which does not belong to it, and improperly exercising a jurisdiction with which it is legally invested. Upon this *habeas corpus* my duty is to protect the prisoner against the former, if it shall appear to have occurred. Another and a very different course would be to be pursued, if necessary, for the purpose of correcting the latter.

"The first objection to the *significavit* was, that it did not show, that the sum which the prisoner was ordered to pay was a church rate. I think that this is sufficiently stated, both with respect to the terms used, and to the form prescribed by the act. The *significavit* states the command to be to pay 2*l.* 5*s.* rated and assessed upon him, pursuant to a monition duly issued under the seal of the Arches court, in a certain cause or business of subtraction of church rate. I am not now considering the amount of the church rate, but whether the *significavit* states the 2*l.* 5*s.* to have been rated and assessed for a church rate; and of this being stated with sufficient certainty, I have no doubt; nor does it appear how, consistently with the form prescribed in the schedule to the act, it could be more specifically stated; for, by that form, the command is first to be stated, and then the cause in which it was made; but the command was probably merely to pay the sum in question, without repeating that it was for a church rate; that appearing from the proceedings; and if so, the form has been accurately followed.

"Connected with this objection was ano-

validity of any church rate or chapel rate, or from proceeding to enforce the payment of any such rate, if the same shall exceed the sum of ten pounds, from the

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ther, that the amount of the rate appeared to be under 10*l.*, and that the ecclesiastical court had, by the 53 Geo. 3, c. 127, been deprived of its jurisdiction in church rates, unless the sum demanded exceeded that sum, or the validity of the rate, or the liability of the party was in dispute. To raise this objection it must be assumed, that the jurisdiction is so taken away. Such the judges of the court of Queen's Bench stated to be their opinion, in *Ricketts v. Bodenham*; (4 A. & E. 433;) but that opinion did not regulate their judgment in that case; and had that opinion been different, the judgment must have been the same. It is not my wish to raise any doubt upon that point. In that case it was decided, that a previous proceeding before magistrates is not necessary to give the ecclesiastical court jurisdiction in cases of church rate under 10*l.* if the validity or liability be in question. It would seem, therefore, that it must be competent to institute the suit, for without a suit, in such a case, there may be no means of showing, that the validity or liability is in dispute; and if so, it does not seem very obvious how the suit can be objected to, upon the ground, that the validity or liability is not disputed, before the defendant appears. It was also decided, that in such a case, although the proceedings did not show that the validity or liability was in question, the party sued was not entitled to a prohibition; and it seems to have been the opinion of the judges, that, for that purpose, after sentence in the Arches court, unless want of jurisdiction appeared upon the proceedings, it would not be intended. I cannot, consistently with this doctrine, hold that the *significavit* does not state a suit of which the ecclesiastical court has jurisdiction. The cases of *Deybel*, (4 B. & A. 243,) and *Nash*, (Ibid. 295,) have no application: in those cases, there was no jurisdiction, except upon a particular fact, which was not sufficiently stated. In this case, there is a general jurisdiction, and the doubt is as to a particular fact, which, if it exists, may take it away.

"Another objection, much relied upon, was, that the *significavit* states, that the party prosecuted had never appeared, and that, without appearance, the court was not authorized to proceed to judgment upon the merits. In considering this objection, it must be assumed, that the court had jurisdiction over the subject matter; and if so, the objection, if well founded, would amount only to this, namely, that it has improperly exercised its jurisdiction, and pronounced an illegal judgment. There may be very many grounds upon which a judgment may be illegal, and in one sense, the court, in pronouncing such judgment, exceeds its jurisdiction; but this is not the sense in which the expression is used, when applied to such a case as the present. The object of the jurisdiction I am now exercising is to keep the ecclesiastical courts within the jurisdiction which the law has assigned, and not to

correct any error into which they may fall in the exercise of it. If this distinction be not carefully kept in view, every court and judge having authority to issue the *habeas corpus* would become a court of appeal from the court by whose authority the party was committed, and so usurp the jurisdiction which the law has reposed in those courts to which an appeal is given. In *Dr. Trebec's case*, (2 Atk. 498,) Lord *Hardwicke* very clearly marks the distinction, saying, 'It is not necessary for the ecclesiastical court to show they have rightly proceeded.' I do not say that a proceeding may not be so inconsistent with all principle as to justify the treating it as a nullity; but that cannot be said of this case, in which the course of proceeding has been one which has been made legal in other courts, and which is essential to the due administration of justice; I mean proceeding to judgment in cases in which the defendant, with full notice of the suit, and of its objects, does not choose to appear.

"I was told, during the argument, and with perfect accuracy, that I could not judicially know anything of the practice of the ecclesiastical court, and therefore that I could not know what was meant by the words 'usual intimation;' and yet I was referred to several books of practice in the ecclesiastical court, for the purpose of proving that the court would not be justified in pronouncing any decree *in absentia*; but if that be so, it is not within my province to correct it, in the present proceeding. If I were to commit a party for a contempt of this court, the court of Queen's Bench would not upon an *habeas corpus* inquire into the propriety of my order, but simply whether it appeared upon the return that I had kept within my jurisdiction.

"It was then argued, that the term 'usual intimation' was so uncertain, as to make the *significavit* bad, upon the authority of a decision that the term 'usual penance' had been held to be too uncertain. No doubt it would be so if it were essential for the court to know, what the intimation was, as in the case referred to, it must have been thought to be, to know, what had been the penance inflicted; but as part of the narrative of proceedings in a matter over which the court had jurisdiction, it is not, I think, material to know, what the intimation was, as it would not be competent for me to exercise my judgment, whether it was the usual intimation or not; besides which, it is twice stated that the party was duly cited; which expression is, indeed, as vague as the other, though it was not made the subject of observation. The terms are convertible, because the usual mode of citing was the due mode.

"Another objection was, that the *significavit* was in the name of Sir Herbert Jenner, the dean of the Arches, and not in the name of the Archbishop of Canterbury. The act is imperative upon the judge to make the certificate; but it was said that he ought to make it in the name of the archbishop, not

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from any expression in the act itself, (all such expressions tending to the conclusion that the whole duty of sending the *significavit* was reposed in the judge,) but because the form in the schedule is adapted to a *significavit* in the name of the archbishop. If the enacting part and the schedule cannot be made to correspond, the latter must yield to the former, and particularly in this case, in which the form given in the schedule cannot be made to apply to all or nearly all the cases which must arise; for a bishop could not send a *significavit* in that form. It must, therefore, be taken only as an example or precedent to be altered and adapted to each particular case. But what removed all doubt from my mind upon this subject, was the information I have received from the officer, that the dean of the Arches has always sent the *significavit* in his own name.

“One other objection remains, which may be disposed of in very few words. The act of Elizabeth directs, that the writ shall be brought into the Queen’s Bench, and in the presence of the justices shall be opened, and delivered of record, &c.; but the memorandum only states that the writ was allowed, enrolled, delivered, and before our lady the Queen at Westminster, according to the form of the statute in such case made and provided, omitting to state, that it was opened. This memorandum cannot be true, if there were any foundation for the fact assumed for the purpose of objection; but certainly nothing appears to have been done contrary to what the act requires; and the rule that ‘omnia presumuntur solenniter esse acta’ therefore applies.

“I am, for these reasons, of opinion, that none of the objections made to the *significavit* can be supported, and that the prisoner must be remanded.”

Stat. 53 Geo. 3, c. 127, s. 7, which gives power to a justice to enforce the payment of a sum under 10*l.* due upon a church rate, where the validity of the rate has not been questioned, nor the liability of the party, takes away the jurisdiction of the ecclesiastical court in such cases. But, if the validity or liability be in question, the ecclesiastical courts have jurisdiction, though the party has not been summoned before a justice. Therefore, in *Ricketts v. Bodenham*, (4 A. & E. 433,) where a party, not having been summoned before a justice, was libelled in the Consistory court for a sum which, on the face of the proceedings, was less than 10*l.*, due upon a church rate, and sentence was given against him, the court of Queen’s Bench refused to grant a prohibition, upon the ground, that the validity of the rate was questioned in the proceedings in the ecclesiastical courts. And afterwards, it appearing, by more particular reference to the pleadings themselves, that they did not disclose whether or not the validity was questioned, the court of Queen’s Bench held, that that circumstance alone, did not authorize it to issue a prohibition:—

Lord Denman delivering the judgment of the court as follows:

“There were three cases of application for a prohibition in the same cause; the first to the Consistory court of the diocese of Hereford, the second to the court of Arches, the last to the court of Delegates, in each of which courts successively, sentence had passed against the applicant.

“It appeared that the original suit had been to enforce the payment of a church rate amounting to 4*l.* 6*s.* 3*d.*, and that the defence had been, that the rate was made at a meeting of which no due and legal notice had been given; that it was made for an illegal purpose, and showed upon the face of it an unequal and fraudulent assessment.

“On showing cause against the motion, it was contended, that the only ground of prohibition suggested, was a supposed want of jurisdiction in the court below to proceed in the matter of a church rate, where the sum to be recovered did not exceed 10*l.*, but that the objection, coming after sentence, was too late, unless it appeared on the face of the proceedings in that court. And there is no doubt that, in the case of prohibitions to be granted for the sake of trial, as distinguished from those which are to be granted upon account of a wrong trial or erroneous judgment, the rule is established, that a party neglecting to contest the jurisdiction in the first instance, and taking his chance of a favourable decree, shall not be allowed after sentence to allege the want of jurisdiction as a ground of prohibition, unless the defect appears on the face of the pleadings. The justice of the rule is very apparent, and the propriety of the exception scarcely less so; for it is the duty of this court to restrain any encroachment of jurisdiction in the inferior courts, and therefore it interferes for the sake of the public, and not of the individual, where, the want of jurisdiction appearing on the face of the proceedings, the case might become a precedent, if allowed to stand without impeachment.

“In support of the application, Sir F. Pollock scarcely disputed this general doctrine; but he contended that, inasmuch as, on the face of the libel, the suit appeared to be for a rate under 10*l.*, the want of jurisdiction was from that circumstance alone, and by itself, apparent. It is necessary, therefore, to examine the Stat. 53 Geo. 3, c. 127, s. 7, to see whether this argument is maintainable.

“That section commences with a preamble, stating the expediency that church or chapel rates of limited amount, unduly refused or withheld, should in certain cases be more easily and speedily recovered. It then goes on to provide for the case of a refusal or neglect by any one duly rated to a church rate, or chapel rate, the validity of which has not been questioned in any ecclesiastical court, to pay the sum in which he is rated; and gives a summary mode of enforcement before two justices, who are empowered

and the party disputing the same give notice thereof to the justices, the justices shall forbear giving judgment thereupon, and the person or persons demanding

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to order the payment of what is due and payable in respect of such rate, so as the sum ordered to be paid do not exceed 10*l*. There is then an appeal given to the sessions against such order, with a stay of execution pending the appeal. And this is followed by the material proviso, 'that nothing herein contained shall extend to alter or interfere with the jurisdiction of the ecclesiastical courts to hear and determine causes touching the validity of any church rate or chapel rate, or from proceeding to enforce the payment of any such rate, if the same shall exceed the sum of 10*l*. from the party proceeded against.' If the section had stopped here, we should have thought it clear, that a distinction was made between suits in which the validity of a rate was questioned, and those in which, the rate being undisputed, the only object was to enforce the payment; that, as to the former, the jurisdiction of the ecclesiastical court was left wholly untouched; in the latter, it was by implication taken away where the sum does not exceed 10*l*. This interpretation makes the enacting part of the section and the proviso, consistent, and both together to form a complete enactment on the subject. But this view of the statute is made more clear by the proviso, which immediately follows, that, 'if the validity of such rate, or the liability of the person from whom it is demanded to pay the same, be disputed, and the party disputing the same give notice thereof to the justices, the justices shall forbear giving judgment thereupon, and the person or persons demanding the same may then proceed to the recovery of their demand, according to due course of law, as heretofore used and accustomed.' This proviso applies only to cases under 10*l*.; and the effect of it is that, even in such cases, the moment it appears, that the question is one not merely of enforcing payment, but touching the validity of the rate, the summary jurisdiction is at an end, and that of the ecclesiastical court attaches.

"If this interpretation of the section be correct, it is obvious, that the mere fact, that on the face of the proceedings the suit appears to relate to an assessment for a sum not exceeding 10*l*., cannot prove a want of jurisdiction in the ecclesiastical court to entertain the cause. Without entering into the argument at the bar, as to presumptions for or against the proceedings of inferior courts, or whether the doctrine applies to the ecclesiastical courts, it is at least undeniable, that this court ought to examine the whole of the proceedings, in order to collect from them, if it can, whether the suit, admitted to be for less than 10*l*., was a suit in which the validity of the rate or the liability of the defendant was questioned, or whether it was merely for enforcing the payment; this being the real point on which the question of jurisdiction must depend.

"Now, upon such examination, it is obvious, that the validity of the rate, and

nothing else, was in question; it follows, therefore, that there is no want of jurisdiction apparent on the face of the proceedings: and it becomes unnecessary to give any opinion upon other points made in the argument.

"Considering that Mr. Ricketts has proceeded through two stages of appeal without raising the ground of objection which is now made, we cannot regret that all the authorities warrant us in discharging this rule."

In *Richards v. Dyke*, (3 Q. B. 256,) it was held, that Stat. 53 Geo. 3, c. 127, s. 7, entirely takes away the jurisdiction of the ecclesiastical courts over complaints for non-payment of church rate, where the amount claimed does not exceed 10*l*., and the validity of the rate, or liability of the party charged, is not disputed.

To warrant a prohibition, where a suit is commenced in the ecclesiastical court for non-payment of rates, below the amount of 10*l*., it is doubtful how far it is necessary that the libel should show the existence of a dispute as to the validity of the rate, or liability of the party; but it seems that, on proceedings in prohibition, this would be deemed a matter of practice determinable only by the ecclesiastical court.

Where the declaration in prohibition stated a libel exhibited in the Consistory court for non-payment of church rate; that the party libelled appeared, and objected to the jurisdiction, and to the libel, and to any proceedings being had thereon, on the ground that the suit was for church rates under 10*l*., "the validity of which or of any of them had not been disputed or denied by the plaintiff," and did not appear by the libel to have been so, and that the proceeding ought to have been before justices of peace according to the statute; nevertheless, the court proceeded, &c.: and the plaintiff averred, that in fact no proceeding had been taken or complaint made against him before justices for recovery of such rates, nor had he at any time disputed the validity of such rates or any of them, or his liability to pay, and that the subject matter of the suit was not of ecclesiastical cognizance, and the rate should have been proceeded for before justices under the statute: it was held, in *Richards v. Dyke*, (3 Q. B. 256,) on general demurrer to the declaration, that it sufficiently showed the absence of a dispute within section 7, to oust the ecclesiastical court of jurisdiction:—

Lord Denman observing, "In this case the question is directly raised, whether the 7th section of Stat. 53 Geo. 3, c. 127, has taken away the jurisdiction of the ecclesiastical courts to enforce the payment of a church rate, where the sum does not exceed 10*l*., and where the validity of the rate and the liability of the party are undisputed.

"This court has already expressed a strong opinion in the affirmative in the case of *Ricketts v. Bodenham*, (4 A. & E. 442, 443;) but, as the validity of the rate was

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the same may then proceed to the recovery of their demand, according to due course of law, as heretofore used and accustomed; provided likewise, that nothing herein contained shall affect any regulations that may have been made by authority of parliament respecting the church rates or chapel rates of any particular parishes or districts.

Proctors
allowing their
names to be
used by persons
not entitled to
act as proctors,

“VIII. And be it further enacted, that from and after the passing of this act, if any proctor of the Arches court of Canterbury, or any other ecclesiastical court or courts in which he shall be entitled to act as proctor, shall act as such, or permit or suffer his name to be in any manner used in any suit, the prosecution or defence whereof shall appertain to the office of a proctor, or in obtaining probates

disputed in that case, the jurisdiction of the ecclesiastical court clearly remained, and it became unnecessary to act upon that opinion. So in the subsequent cases of *Regina v. Thorogood*, (12 A. & E. 183,) and *Regina v. Baines*, (Ibid. 210,) and *In re Baines* (1 Cr. & Ph. 31,) it was unnecessary to determine the question now raised. We adhere to the interpretation put upon the statute in the case of *Ricketts v. Bodenham*, (4 A. & E. 433,) and for the reasons there stated. The two provisos by which the jurisdiction of ecclesiastical courts is declared not to be altered or interfered with, whenever the validity of the rate or the liability of the party is disputed, or the sum demanded exceeds 10*l.*, show the intention of the legislature that such jurisdiction should be altered and interfered with where the sole object is to enforce an undisputed rate for a sum not exceeding 10*l.*, that being the only case in which jurisdiction is given to justices of the peace. The proviso was indeed unnecessary so far as regards cases where the sum exceeds 10*l.*, and can only have been inserted *ex majori cautela*: still it shows the intention of the legislature. If, however, the jurisdiction of the ecclesiastical courts be altered and interfered with in such cases, it can only be by taking it away.

“The general rule of law and construction undoubtedly is, that where an act of parliament does not create a duty or offence, but only adds a remedy in respect of a duty or offence which existed before, it is to be construed as cumulative; but this rule must in all cases be applied with due attention to the language of each act of parliament. For instance, the 4th section of the act in question extends the provisos of Stat. 7 & 8 Gul. 3, c. 6, s. 1, respecting the recovery of small tithes before justices, from 40*s.* to 10*l.*; and on reference to that act, sect. 8, it will be found that, if any person charged before the justices shall insist upon any prescription, composition, or modus, the justices shall forbear to give any judgment in the matter, and that then and in such case the person complaining shall be at liberty to prosecute in any other court where he might have sued before the making of this act, any thing in this act to the contrary notwithstanding. This section is nearly as strong as sect. 7 of the act now under consideration, except that it does not mention in express terms *altering or interfering with* the jurisdiction of the ecclesiastical courts: yet it is plain, that the legislature did not intend to take away that jurisdiction; for, by sect.

14, it is provided that any person who shall begin any suit for small tithes in the court of Exchequer, or in any of the ecclesiastical courts, shall have no benefit by this act, for the same matter; evidently treating the remedies as concurrent. The omission of any similar clause in the act under consideration, strengthens our opinion, that it was intended to take away the jurisdiction of the ecclesiastical courts.

“We are not called upon in this, any more than in the former cases already referred to, to determine whether it be necessary, in order to give jurisdiction to the ecclesiastical court, that the fact of a dispute existing respecting the validity of the rate or the liability of the party should appear upon the face of the libel.

“That court has general jurisdiction in matters regarding church rates; and perhaps this is rather a question of practice or pleading in that court. It is sufficient for us to say that it does appear, that the absence of any dispute as to the validity of the rate, or the liability of the party, was shown to the ecclesiastical court, and it is averred and not denied, that the court proceeded notwithstanding. Objections were taken as to the form in which that was shown by the plaintiff in this action; and it was contended, that he might, notwithstanding anything which he has alleged in the ecclesiastical court, set up before the justices, that he disputed the validity of the rate, or his liability to pay it. We think that those objections cannot prevail, and that he is concluded by what he has alleged.

“Our judgment will therefore be for the plaintiff.”

The spiritual courts have power to construe a statute, the effect of which comes incidentally before them in the course of a proceeding where they have jurisdiction. Therefore, in *Hall v. Maule*, (7 A. & E. 721,) where, on objection taken to a declaration in prohibition, on general demurrer, it appeared only that, in a proceeding to enforce a church rate, the spiritual court would have to determine the effect of an act of parliament, this court gave judgment for the defendant in prohibition, on the ground, that the spiritual court did not appear to have done anything as yet, and it was not to be presumed, that they would construe the statute erroneously.

And, under such circumstances, the court of Queen's Bench would not give leave to amend, for the purpose of raising the question on the effect of the statute.

of wills, letters of administration, or marriage licences to or for or on account or for the profit and benefit of any person or persons not entitled to act as a proctor, or shall permit or suffer any such person or persons to demand or participate in such profit and benefit, and complaint thereof shall be made to the court or courts wherein such proctor hath been admitted and enrolled, and proof given to the satisfaction of the said court or courts that such proctor hath offended therein as aforesaid, then and in such case every such proctor so offending shall be struck off the roll of proctors, and be for ever after disabled from practising as a proctor, or be suspended from the office, function, and practice of a proctor in all and every the said court or courts for so long a period as the judge or judges of the said court or courts may deem fit, save and except as to any allowance or allowances, sum or sums of money, that are or shall be agreed to be made to the widows or children of any deceased proctor or proctors by any surviving partner or partners of such deceased proctor or proctors, and also save and except as to any agreement made or understood to have been made between proctors and articulated clerks, whose articles have been executed prior to the passing of this act.

STAT. 53 GEO.
3, c. 127.
to be struck
off the roll.

“IX. And be it further enacted, that from and after the passing of this act, in case any person or persons shall in his or in their own name, or in the name of any other person or persons, make, do, act, exercise or perform any act, matter, or thing whatsoever in any way appertaining or belonging to the office, function, or practice of a proctor for or in consideration of any gain, fee, or reward, or with a view to participate in the benefit to be derived from the office, functions, or practice of a proctor, without being admitted and enrolled, every such person for every such offence shall forfeit and pay the sum of fifty pounds, to be sued for and recovered in manner hereinafter mentioned.

Penalty on
persons exer-
cising the func-
tions of a
proctor not
being duly
enrolled as
such.

“X. Provided always, and be it further enacted, that nothing herein contained shall extend or be construed to extend to any salary which shall be agreed to be paid by a proctor, his partner or successor, to a clerk really and *bonâ fide* serving in his office at the time of the passing of this act, and who shall have been *bonâ fide* serving in the office of any proctor or proctors for seven years next before the passing of the same.

Not to extend
to the salaries
of clerks of
seven years'
standing.

“XI. And be it further enacted, that all pecuniary forfeitures and penalties imposed on any person or persons for offences committed against this act shall and may be sued for and recovered in any of his majesty's courts of record at Westminster by action of debt, bill, plaint, or information, wherein no essoin, protection, privilege, wager of law, or more than one imparlance, shall be allowed, and wherein the plaintiff, if he or she shall recover any penalty or penalties, shall receive the same for his or her own use, with full costs of suit.

Recovery of
penalties.

“XII. And be it further enacted, that if any action or suit shall be brought or commenced for anything done in pursuance of this act, every such action or suit shall be commenced *within three calendar months* (1) next after the fact committed, and not afterwards, and shall be laid and tried in the city or county wherein the cause of action shall have arisen, and not elsewhere; and the defendant or defendants in such action or suit shall and may plead the general issue, and give this act and the special matter in evidence at any trial to be had thereupon, and that the same was done in pursuance or by the authority of this act; and if the same shall appear to have been so done, or if any action or suit shall be brought after the time limited for bringing the same, or shall be laid in any other city, county, or place than as aforesaid, then the judge shall find for the defendant or defendants; and upon such verdict, or if the plaintiff or plaintiffs shall be nonsuited, or suffer a discontinuance of their action or suit after the defendant or defendants shall have appeared, or if upon demurrer judgment shall be given against the plaintiff or plaintiffs, the defendant or defendants shall have treble costs, and shall have such remedy for the same as any defendant or defendants hath or have for costs of suit in any other case by law.”

Limitation of
actions in
respect of
offences against
this act.

(1) *Within three calendar months*.—Vide *Collins v. Rose*, 7 Dowl. P. C. 796.

STAT. 53 GEO.
3, c. 127.

“SCHEDULES TO WHICH THIS ACT REFERS.

“Schedule (A).

Significavit of
party being
contumacious
and in con-
tempt.

“To his most excellent majesty and our sovereign lord George the Third, by the grace of God of the United Kingdom of Great Britain and Ireland king, defender of the faith, by divine providence, &c. health in him by whom kings and princes rule and govern : we hereby notify and signify unto your majesty, that one of in the county of hath been duly pronounced guilty of manifest contumacy and contempt of the law and jurisdiction ecclesiastical in not [as the case may be] appearing before [here set out the style of the ecclesiastical judge or his representative], or in not obeying the lawful commands [here set out the commands] of [such judge or representative], or in having committed a contempt in the face of the court of [such judge or representative] lawfully authorized by [here set out the nature and manner of such contempt], on a day and hour now long past, in a certain cause of [here set out the nature of the cause, and the names of the parties to the same]. We therefore humbly implore and entreat your said most excellent majesty would vouchsafe to command the body of the said to be taken and imprisoned for such contumacy and contempt. Given under the seal of our court the day of

“A. B., registrar or deputy registrar [as the case may be].”

“Schedule (B).

Writ de con-
tumace capi-
endo.

“George, &c., to the sheriff of greeting : the hath signified to us, that of in your county of is manifestly contumacious and contemns the jurisdiction and authority of [here fully state the non-appearance, disobedience, together with the commands disobeyed, or the contempt in the face of the court, as the case may be], nor will he submit to the ecclesiastical jurisdiction ; but forasmuch as the royal power ought not to be wanting to enforce such jurisdiction, we command you that you attach the said by his body, until he shall have made satisfaction for the said contempt ; and how you shall execute this our precept notify unto and in nowise omit this, and have you there this writ. Witness ourself at Westminster the day of in the year of our reign.”

“Schedule (C).

Writ of deli-
verance.

“Whereas of in your county of whom lately, at the denouncing of for contumacy, and by writ issued thereupon, you attach by his body until he should have made satisfaction for the contempt ; now he having submitted himself and satisfied the said contempt, we hereby empower and command you, that without delay you cause the said to be delivered out of the prison in which he is so detained, if upon that occasion and no other he shall be detained therein. Given under the seal of our of

“A. B., registrar [or deputy registrar, as the case may be].

“Extracted by E. F., Proctor.”

STAT. 53 GEO.
3, c. 128. [Ir.]

CCCCLXVI. STAT. 53 GEORGII 3, c. 128. [IRELAND.] A.D. 1813.

“An Act to relieve from the operation of the Statute of the twenty-fifth year of the Reign of King Charles the Second, intituled, An Act for preventing Dangers which may happen from Popish Recusants, all such of His Majesty's Popish or Roman Catholic Subjects of Ireland, as by virtue of the Act of Parliament of Ireland of the thirty-third year of His Majesty's Reign, intituled, An Act for the Relief of His Majesty's Popish or Roman Catholic Subjects of Ireland, hold, exercise, or enjoy any Civil or Military Offices, or Places of Trust or Profit, or any other Office whatsoever, of which His Majesty's said Subjects are by the said Act of Parliament of Ireland rendered capable.”

CCCCLXVII. STAT. 53 GEORGII 3, c. 142. A.D. 1813.

STAT. 53 GEO.
3, c. 142.

"An Act to explain and amend several Acts, [Stat. 38 Geo. 3, c. 5; Stat. 38 Geo. 3, c. 60,] relative to the Land Tax."

CCCCLXVIII. STAT. 53 GEORGII 3, c. 149(1). A.D. 1813.

STAT. 53 GEO.
3, c. 149.

An Act for the further Support and Maintenance of Stipendiary Curates."

CCCCLXIX. STAT. 53 GEORGII 3, c. 155(2). A.D. 1813.

STAT. 53 GEO.
3, c. 155.

"An Act for continuing in the East India Company, for a further term, the Possession of the British Territories in India, together with certain exclusive Privileges; for establishing further Regulations for the Government of the said Territories; and the better Administration of Justice within the same; and for regulating the Trade, to and from the Places within the Limits of the said Company's Charter."

"XLII. And be it further enacted, that the said board of commissioners for the affairs of India by force and virtue of this act shall have and be invested with full power and authority to superintend, direct, and control all orders and instructions whatsoever which in anywise relate to or concern any rules, regulations, or establishments whatsoever of the several colleges established by the said company at Calcutta or Fort Saint George, or of any seminaries which may be established under the authority of any of the governments of the said company, in the same manner to all intents and purposes, and under and subject to all such and the like regulations and provisions, as if such orders and instructions immediately related to and concerned the government and revenues of the said territorial acquisitions in the East Indies.

Colleges and seminaries abroad to be subject to the control of the board.

"XLIII. And be it further enacted, that it shall be lawful for the governor general in council to direct, that out of any surplus which may remain of the rents, revenues, and profits arising from the said territorial acquisitions, after defraying the expenses of the military, civil, and commercial establishments, and paying the interest of the debt, in manner hereinafter provided, a sum of not less than one lack of rupees in each year shall be set apart and applied to the revival and improvement of literature and the encouragement of the learned natives of India, and for the introduction and promotion of a knowledge of the sciences among the inhabitants of the British territories in India; and that any schools, public lectures, or other institutions for the purposes aforesaid, which shall be founded at the presidencies of Fort William, Fort Saint George, or Bombay, or in any other parts of the British territories in India, in virtue of this act, shall be governed by such regulations as may from time to time be made by the said governor general in council, subject nevertheless to such powers as are herein vested in the said board of commissioners for the affairs of India respecting colleges and seminaries: provided always, that all appointments to offices in such schools, lectureships, and other institutions, shall be made by or under the authority of the governments within which the same shall be situated.

Provision for schools, public lectures, or other literary institutions, for the benefit of the natives, to be regulated by governor general in council, subject to control of the board, but appointments to offices therein to be made by the local governments.

"XLIV. And whereas the said united company have lately established in England a college for the appropriate education of young men designed for their civil service in India, and also a military seminary for the appropriate education of young men designed for their military service in India; and whereas it is expedient that the said college and military seminary should be further continued and maintained, and that proper rules and regulations should be constituted and established by authority of law, for the good government of the said college and military seminary respectively; be it therefore enacted, that the said college and military seminary shall be continued and maintained by the said united company during the further term hereby granted to the said company; and that it shall and

College and military seminary in England to be continued, and the directors, with the approbation of the board, to make rules and regulations for the same.

(1) Amended by Stat. 54 Geo. 3, c. 175, s. 11; repealed, and other provisions made, by Stat. 57 Geo. 3, c. 99, which was repealed by Stat. 1 & 2 Vict. c. 106.

(2) This statute was partly repealed by Stat. 4 Geo. 4, c. 71. *Vide etiam* Stat. 6 Geo. 4, c. 85, and Stat. 3 & 4 Gul. 4, c. 85, ss. 89-100.

STAT. 53 GEO.
3, c. 155.

Directors may
make repre-
sentations re-
specting altera-
tions or addi-
tions by the
board.

Bishop of Lon-
don to exercise
visitatorial
jurisdiction.

No person to
be appointed a
writer unless
he shall have
kept four
terms at the
college, and
shall produce
a certificate of
conformity to
rules.

Establishment
of officers in
the college and
military semi-
nary to be sub-
ject to the
control of the
board.
Principal and
professors
exempted from
parochial resi-
dence.

4 GEO. 3, c. 84.

If a bishop and
three archdea-
cons shall be
established in

may be lawful for the said court of directors, and they are hereby required, forthwith after the passing of this act, to frame such rules and regulations for the good government of the said college and military seminary respectively as in their judgment shall appear best adapted to the purposes aforesaid, and to lay the same before the board of commissioners for the affairs of India, for their revisal and approbation, who shall thereupon proceed to consider the same, and shall and may make such alterations therein and additions thereto as they shall think fit; nevertheless all such rules and regulations shall and may be subject to such future revision and alteration by the said court of directors, with the approbation of the said board, as circumstances may from time to time require in that behalf; and all such rules and regulations so framed, approved, revised, or altered, shall be deemed and taken to be good and valid in law, and shall be binding and effectual upon all persons and in all matters belonging or relating to the said college and military seminary respectively, any law, charter, or other matter or thing to the contrary notwithstanding; provided always, that nothing herein contained shall prevent the said court of directors from making such representation, with respect to any alterations in or additions to such rules and regulations which may be made by the said board of commissioners, as the said court of directors shall at any time think fit.

“XLV. And be it further enacted, that from and after the passing of this act it shall and may be lawful for the lord bishop of London for the time being, to have and exercise, and he is hereby authorized and empowered to have and exercise, such visitatorial power and jurisdiction over all such persons, matters, and things, belonging or relating to the said college, and in such manner, as shall be appointed and established by the said rules and regulations of the said college in that behalf, any matter or thing whatsoever to the contrary notwithstanding.

“XLVI. And be it further enacted, that it shall not be lawful for the said court of directors to nominate, appoint, or send to the presidencies of Fort William, Fort Saint George, or Bombay, any person in the capacity of a writer, unless such person shall have been duly entered at such college, and have resided there four terms, according to the rules and regulations thereof, and shall also produce to the said court of directors a certificate under the hand of the principal of the said college, testifying that he has for the space of four terms been a member of and duly conformed himself to the rules and regulations of the said college.

“XLVII. And be it further enacted, that no order for the establishment of any office, or the appointment of any person to fill the situation of principal at the said college, or head master of the military seminary, shall be valid or effectual until the same shall have been approved by the said board of commissioners for the affairs of India.

“XLVIII. And whereas for the due performance of the public duties of religion at the said college, as well as for the maintenance of sound learning and religious education, it is expedient that the principal and some of the professors of the said college should be clergymen of the established church: and whereas it may be expected that among clergymen best qualified for such situations, from their character and attainments, some may be possessed of benefices in the church; be it enacted, that every spiritual person holding the situation of principal or professor in the said college, and actually performing the duties of the same, shall be and he is hereby exempted from residence on any benefice of which he may be possessed, in the same manner as the spiritual persons specified in an act passed in the forty-third year of his present majesty's reign, intituled, ‘An Act to amend the Laws relating to Spiritual Persons holding of Farms, and for enforcing the Residence of Spiritual Persons on their Benefices in England,’ are by the said act exempted from residence on their respective benefices, any act, matter, or thing to the contrary notwithstanding.

“XLIX. And whereas no sufficient provision hath hitherto been made for the maintenance and support of a church establishment in the British territories in the East Indies and other parts within the limits of the said company's charter;

be it therefore enacted, that in case it shall please his majesty, by his royal letters patent under the great seal of the said United Kingdom, to erect, found, and constitute one bishopric for the whole of the said British territories in the East Indies and parts aforesaid, one archdeaconry for the presidency of Fort William in Bengal, one archdeaconry for the presidency of Fort Saint George on the coast of Coromandel, and one archdeaconry for the presidency and island of Bombay on the coast of Malabar, and from time to time to nominate and appoint a bishop and archdeacons to such bishopric and archdeaconries respectively, the court of directors of the said company, during such time as the said territorial acquisitions shall remain in the possession of the said company, shall and they are hereby required to direct and cause to be paid certain established salaries to such bishop and archdeacons respectively; (that is to say,) from and out of the revenues of the said presidency of Fort William in Bengal, to the said bishop five thousand pounds by the year, at an exchange of two shillings for the Bengal current rupee, and to the said archdeacon of the said presidency of Fort William two thousand pounds by the year, at the like exchange; and from and out of the revenues of the presidency of Fort Saint George on the coast of Coromandel, to the archdeacon of the said presidency of Fort Saint George, two thousand pounds by the year, at an exchange of eight shillings for the pagoda at Madras; and from and out of the revenues of the presidency and Island of Bombay on the coast of Malabar, to the archdeacon of the said presidency and island of Bombay, two thousand pounds by the year, at an exchange of two shillings and three-pence for the Bombay rupee.

“L. And be it further enacted, that the said salaries shall take place and commence from and after the time at which such persons as shall be appointed to the said offices respectively shall take upon them the execution of their respective offices: and that all such salaries shall be in lieu of all fees of office, perquisites, emoluments, and advantages whatsoever; and that no fees of office, perquisites, emoluments, or advantages whatsoever, shall be accepted, received, or taken, in any manner or on any account or pretence whatsoever, other than the salaries aforesaid; and that such bishop and archdeacons respectively shall be entitled to such salaries so long as they shall respectively exercise the functions of their several offices in the East Indies or parts aforesaid, and no longer.

“LI. Provided always, and be it further enacted, that such bishop shall not have or use any jurisdiction, or exercise any episcopal functions whatsoever, either in the East Indies or elsewhere, but only such jurisdiction and functions as shall or may from time to time be limited to him by his majesty by letters patent under the great seal of the United Kingdom.

“LII. And be it further enacted, that it shall and may be lawful for his majesty from time to time, if he shall think fit, by his letters patent under the great seal of the said United Kingdom, to grant to such bishop so to be nominated and appointed as aforesaid such ecclesiastical jurisdiction, and the exercise of such episcopal functions, within the East Indies and parts aforesaid, as his majesty shall think necessary, for the administering holy ceremonies, and for the superintendence and good government of the ministers of the church establishment within the East Indies and parts aforesaid, any law, charter, or other matter or thing to the contrary notwithstanding.

“LIII. And be it further enacted, that when and as often as it shall please his majesty to issue any letters patent respecting any such bishopric or archdeaconry as aforesaid, or for the nomination or appointment of any person thereto, the warrant for the bill in every such case shall be countersigned by the president of the board of commissioners for the affairs of India.

“LIV. And be it further enacted, that it shall and may be lawful for his majesty, by warrant under his royal sign manual, countersigned by the chancellor of the exchequer for the time being, to grant to any such bishop and archdeacon respectively who shall have exercised in the East Indies or parts aforesaid for fifteen years, the office or offices of bishop or archdeacon, or either of them, the following pensions; that is to say, to any such bishop a pension not exceeding fifteen

STAT. 53 GEO.
3, c. 155.

India by his majesty's letters patent, their salaries to be paid by the company.

Salaries to commence on taking office, and to cease when functions cease.

Bishop to have no jurisdiction or functions, except such as may be limited by letters patent.

His majesty may grant to the bishop, by letters patent, such ecclesiastical jurisdiction as he may think necessary.

Warrant for letters patent to be countersigned by the president of the board.

His majesty may grant pensions to bishops and archdeacons who have discharged their functions in

STAT. 53 GEO. 3, c. 155. India for fifteen years. hundred pounds per annum, and to any such archdeacon a pension not exceeding eight hundred pounds per annum; which said pension shall be paid and defrayed quarterly by the said company, and shall be deemed and taken as part of the political charges of the said company."

STAT. 53 GEO. 3, c. 160. CCCCLXX. STAT. 53 GEORGII 3, c. 160 (1). A.D. 1813.

"An Act to relieve Persons who impugn the Doctrine of the Holy Trinity from certain Penalties."

19 Geo. 3, c. 44. "Whereas in the nineteenth year of his present majesty an act was passed, intituled, 'An Act for the further Relief of Protestant Dissenting Ministers and Schoolmasters;' and it is expedient to enact as hereinafter provided: be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that so much of an act passed in the first year of the reign of King William and Queen Mary, intituled, 'An Act for exempting his Majesty's Protestant Subjects dissenting from the Church of England, from the Penalties of certain Laws,' as provides that that act or anything therein contained should not extend or be construed to extend to give any ease, benefit, or advantage to persons denying the Trinity as therein mentioned, be and the same is hereby repealed.

Act of William and Mary, respecting the denial of the Trinity, repealed.

Provisions of 9 & 10 Gul. 3, in part repealed.

"II. And be it further enacted, that the provisions of another act passed in the ninth and tenth years of the reign of King William, intituled, 'An Act for the more effectual suppressing of Blasphemy and Profaneness,' so far as the same

(1) Extended to Ireland by Stat. 57 Geo. 3, c. 70. *Vide* Stat. 9 Geo. 4, c. 17. Stat. 10 Geo. 4, c. 7. *Vide antè* 667, n. (2).

A publication stating Jesus Christ to be an impostor and a murderer in principle, is a libel at common law; and it seems, that Stat. 53 Geo. 3, c. 160, does not alter the common law, but only removes the penalties imposed upon persons denying the Trinity, by Stat. 9 & 10 Gul. 3, c. 32, and extends to such persons the benefits conferred upon all the protestant dissenters, by Stat. 1 G. & M. c. 18, s. 1: thus, in *Rex v. Waddington*, (1 B. & C. 26.) Mr. Justice *Best* observed, "My lord chief justice reports to us, that he told the jury, that it was an indictable offence to speak of Jesus Christ in the manner that he is spoken of in the publication for which this defendant is indicted. It cannot admit of the least doubt, that this direction was correct. The 53 Geo. 3, c. 160, has made no alteration in the common law relative to libel. If, previous to the passing of that statute, it would have been a libel to deny, in any printed work, the divinity of the Second Person of the Trinity, the same publication would be a libel now. The 53 Geo. 3, c. 160, as its title expresses, is an act to relieve persons who impugn the doctrine of the Trinity from certain penalties. If we look at the body of the act, to see from what penalties such persons are relieved, we find that they are the penalties from which the 1 G. & M. Sess. 1, c. 18, exempted all protestant dissenters, except such as denied the Trinity, and the penalties, or disabilities which the 9 & 10 Gul. 3, imposed on those who denied the Trinity. The 1 G. & M. Sess. 1, c. 18, is, as it has been usually

called, an act of toleration, or one which allows dissenters to worship God in the mode that is agreeable to their religious opinions, and exempts them from punishment for non-attendance at the established church, and non-conformity to its rights. The legislature, in passing that act, only thought of easing the consciences of dissenters, and not of allowing them to attempt to weaken the faith of the members of the church. The 9 & 10 Gul. 3, was to give security to the government, by rendering men incapable of office who entertained opinions hostile to the established religion. The only penalty imposed by that statute, is exclusion from office; and that penalty is incurred by any manifestations of the dangerous opinion, without proof of intention in the person entertaining it, either to induce others to be of that opinion, or in any manner to disturb persons of a different persuasion. This statute rested on the principle of the test laws, and did not interfere with the common law relative to blasphemous libels. It is not necessary for me to say, whether it be libellous to argue from the Scriptures against the divinity of Christ; that is not what the defendant professes to do. He argues against the divinity of Christ, by denying the truth of the Scriptures. A work containing such arguments, published maliciously (which the jury in this case have found) is by the common law a libel; and the legislature has never altered this law, nor can it ever do so whilst the Christian religion is considered to be the basis of that law." Rule refused. *Vide etiam Rex v. Carlile*, 3 B. & A. 161. *Attorney-General v. Pearson*, 3 Meriv. 353.

relate to persons denying as therein mentioned, respecting the Holy Trinity, be and the same are hereby repealed.

STAT. 53 GEO.
3, c. 160.

“III. And whereas it is expedient to repeal an act, passed in the parliament of Scotland in the first parliament of King Charles the Second, intituled, ‘An Act against the Crime of Blasphemy;’ and another act, passed in the parliament of Scotland in the first parliament of King William, intituled, ‘Act against Blasphemy;’ which acts respectively ordain the punishment of death; be it therefore enacted, that the said acts and each of them shall be, and the same are and is hereby repealed.

Acts passed in
Scotland
against blas-
phemy, re-
pealed.

Public act.

“IV. And be it further enacted, that this act shall be deemed and taken to be a public act, and shall be judicially taken notice of as such by all judges, justices, and others, without being specially pleaded.”

CCCCLXXI. STAT. 53 GEORGII 3, CAP. CLXII. A.D. 1813.

STAT. 53 GEO.
3, CAP. CLXII.

“An Act for better assessing and collecting the Poor and other Rates, in the Parish of Saint Giles, Camberwell, in the County of Surrey, and regulating the Affairs thereof: for repairing or rebuilding the Parish Workhouse, and purchasing Ground for a Cemetery; and for other Purposes relating thereto.”

CCCCLXXII. STAT. 53 GEORGII 3, CAP. CXCI. A.D. 1813.

STAT. 53 GEO.
3, CAP. CXCI.

“An Act to enable the Vicar of the Parish and Parish Church of Camberwell, in the County of Surrey, to grant Leases of the Glebe belonging to the said Vicarage.”

CCCCLXXIII. STAT. 53 GEORGII 3, CAP. CCXIII. A.D. 1813.

STAT. 53 GEO.
3, CAP. CCXIII.

“An Act for altering the Rules, Statutes, and Ordinances of the Hospital of Robert Earl of Leicester, in Warwick; and for enabling the Master and Brethren of the said Hospital to raise Money on the Security of the Estates thereof, in order to provide for the Reception of additional Brethren therein.”

CCCCLXXIV. STAT. 54 GEORGII 3, c. 6(1). A.D. 1813.

STAT. 54 GEO.
3, c. 6.

“An Act to stay, until the twentieth day of April, One thousand eight hundred and fourteen, Proceedings in Actions under an Act passed in the forty-third year of His present Majesty, to amend the Laws relating to Spiritual Persons.”

CCCCLXXV. STAT. 54 GEORGII 3, CAP. XXXII. A.D. 1814.

STAT. 54 GEO.
3, CAP. XXXII.

“An Act for rebuilding the Chapel of Newton, in the Parish of Manchester, in the County Palatine of Lancaster.”

CCCCLXXVI. STAT. 54 GEORGII 3, c. 44(2). A.D. 1814.

STAT. 54 GEO.
3, c. 44.

“An Act to continue, until the twentieth day of May, One thousand eight hundred and fourteen, an Act passed in this Session of Parliament, intituled, An Act to stay, until the twentieth day of April, One thousand eight hundred and fourteen, Proceedings in Actions under an Act passed in the forty-third year of His present Majesty, to amend the Laws relating to Spiritual Persons.”

1) Expired. Vide Stat. 54 Geo. 3, c. 54.

(2) Ibid.

STAT. 54 GEO.
3, c. 54.

CCCCLXXVII. STAT. 54 GEORGII 3, c. 54(1). A.D. 1814.

"An Act to discontinue Proceedings in certain Actions already commenced, and to prevent vexatious Suits against Spiritual Persons, under an Act passed in the forty-third year of His present Majesty, and further to continue, until the twentieth day of July, One thousand eight hundred and fourteen, an Act of the present Session of Parliament, for staying Proceedings under the said Act."

STAT. 54 GEO.
3, CAP. LVI.

CCCCLXXVIII. STAT. 54 GEORGII 3, CAP. LVI. A.D. 1814.

"An Act for annexing the Vicarage of Almondsbury, in the County of Gloucester, to the Bishopric and See of Bristol."

STAT. 54 GEO.
3, CAP. LVII.

CCCCLXXIX. STAT. 54 GEORGII 3, CAP. LVII. A.D. 1814.

"An Act for effectuating an Exchange of the Advowson of the Rectory of the Church of Bignor, in the County of Sussex, belonging to His Majesty, for the Advowson of the Rectory of the Church of North Scarle, in the County of Lincoln, belonging to George Obrien, Earl of Egremont."

STAT. 54 GEO.
3, CAP. LXIII.

CCCCLXXX. STAT. 54 GEORGII 3, CAP. LXIII. A.D. 1814.

"An Act for enlarging and improving the Minster Yard of the Cathedral and Metropolitan Church of Saint Peter, in York, and other Places adjacent thereto."

STAT. 54 GEO.
3, c. 68. [IR.]

CCCCLXXXI. STAT. 54 GEORGII 3, c. 68(2). [IRELAND.] A.D. 1814.

"An Act for the better Regulation of Ecclesiastical Courts in Ireland; and for the more easy Recovery of Church Rates and Tithes."

Excommunica-
tion in certain
cases to be
discontinued.

"Whereas it is expedient that excommunication, together with all proceedings following thereupon, should in certain cases be discontinued, and that other proceedings should be substituted in lieu thereof; and that certain other regulations should be made in the proceedings of the ecclesiastical courts; and that more convenient modes of recovering tithes and church rates, in certain cases, should be provided; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the passing of this act, excommunication, together with all proceedings following thereupon, shall in all cases, save those hereafter to be specified, be discontinued throughout that part of the United Kingdom of Great Britain and Ireland called Ireland; and that in all causes, which according to the laws of this realm, are cognizable in the ecclesiastical courts, when any person or persons having been duly cited to appear in any ecclesiastical court, or required to comply with the lawful orders or decrees, as well final as interlocutory, of any such court, shall neglect or refuse to appear, or neglect or refuse to pay obedience to such lawful orders or decrees; or when any person or persons shall commit a contempt in the face of such court, no sentence of excommunication shall be given or pronounced, saving in the particular cases hereafter to be specified; but instead thereof it shall be lawful for the judges or judge who issued out the citation, or whose lawful orders or decrees have not been obeyed, or before whom such contempt in the face of the court shall have been committed, to pronounce such person or persons contumacious and in contempt, and within ten days to signify the same, in the form to this act annexed, to his majesty in Chancery, as hath heretofore been done in signifying excommunications; and thereupon a writ *de contumace capiendo*, in the form to this act annexed, shall issue from the court of

(1) Vide *Wright v. Lamb* (Clerk), 5 Taunt. 807. *Wynne v. Kay* (Clerk), Ibid. 843. *Wright v. Legge* (Clerk), 6 Ibid. 48.

(2) Repealed in part, and other provisions

made, by Stat. 4 Geo. 4, c. 86; Stat. 7 Geo. 4, c. 72; Stat. 3 & 4 Gul. 4, c. 37; Stat. 5 & 6 Gul. 4, c. 74; Stat. 7 Gul. 4 & 1 Vict. c. 58; and Stat. 1 & 2 Vict. c. 109.

Chancery, directed to the same persons to whom the writs *de excommunicato capi-endo* have heretofore been directed; and the same shall be returnable in like manner as the writ *de excommunicato capi-endo* hath been by law returnable heretofore, and shall have the same force and effect as the said writ; and all rules and regulations not hereby altered, now by law applying to the said writ, and the proceedings following thereupon, shall extend and be applied to the said writ *de contumace capi-endo* and the proceedings following thereupon, as if the same were herein particularly repeated and enacted; and the proper officers of the said court of Chancery are hereby authorized and required to issue such writ *de contumace capi-endo* accordingly; and all sheriffs, gaolers, and other officers, are hereby authorized and required to execute the same, by taking and detaining the body of the person against whom the said writ shall be directed to be executed; and upon the due appearance of the party so cited, and not having appeared as aforesaid, or the obedience of the party so cited, and not having obeyed as aforesaid, or the due submission of the party so having committed a contempt in the face of the court, the judges or judge of such ecclesiastical court shall pronounce such party absolved from the contumacy and contempt aforesaid, and shall forthwith make an order upon the sheriff, gaoler, or other officer in whose custody he shall be, in the form to this act annexed, for discharging such party out of custody; and such sheriff, gaoler, or other officer shall, on the said order being shewn to him, so soon as such party shall have discharged the costs lawfully incurred by reason of such custody and contempt, forthwith discharge him.

STAT. 54 GEO.
3, c. 68. [Ir.]

“II. Provided always, and be it further enacted, that nothing in this act contained shall prevent any ecclesiastical court from pronouncing or declaring persons to be excommunicate in definitive sentences, or in interlocutory decrees having the force and effect of definitive sentences, such sentences or decrees being pronounced as spiritual censures for offences of ecclesiastical cognizance, in the same manner as such court might lawfully have pronounced or declared the same, had this act not been passed.

Not to prevent ecclesiastical courts from passing, in certain cases, excommunication.

“III. And be it further enacted, that no person who shall be so pronounced or declared excommunicate, shall incur any civil penalty or incapacity whatever, in consequence of such excommunication, save such imprisonment, not exceeding six months, as the court pronouncing or declaring such person excommunicate, shall direct: and in such case the said excommunication and the term of such imprisonment shall be signified to his majesty in Chancery, in the same manner as excommunications have been heretofore signified; and thereupon the writ *de excommunicato capi-endo* shall issue, and the usual proceeding shall be had, and the party being taken into custody shall remain therein for the term so directed, or until he shall be absolved by such ecclesiastical court.

Punishment by imprisonment.

“IV. And whereas in the first year of King George the Second, an act was made and passed in that part of the united kingdom of Great Britain and Ireland, called Ireland, intituled, ‘An Act for the more easy Recovery of Tithes, and other Ecclesiastical Dues of Small Value;’ which act was at first temporary, but was by several subsequent acts of parliament in Ireland from time to time continued, and was at length made perpetual by an act of parliament made and passed in Ireland, in the thirteenth and fourteenth years of the reign of his present majesty, whereby amongst other things therein enacted, two or more of his majesty’s justices of the peace are authorized and required to hear and determine complaints concerning tithes, offerings, ecclesiastical dues or compositions, subtracted or withdrawn, not exceeding forty shillings; and whereas it has become expedient to enlarge such amount, and also to extend the said act to all tithes whatsoever, of a certain limited amount; be it enacted, that such justices of the peace shall, from and after the passing of this act, be authorized and required to hear and determine all complaints concerning tithes, offerings, ecclesiastical dues or compositions, subtracted or withdrawn, where the same shall not exceed ten pounds in amount from any one person, in all such cases, and by all such means, and subject to all such provisions and remedies, by appeal or otherwise, as contained in the said act of King George the Second, concerning tithes, offerings, ecclesiastical dues or compositions,

Justices empowered to determine tithe causes, where the amount exceeds not 10l.

STAT. 54 GEO. 3, c. 68. [IR.] not exceeding forty shillings; provided always nevertheless, that from and after the passing of this act, one justice of the peace shall be competent to receive the original complaint, and to summon the parties to appear before two or more justices of the peace, as in the said act is set forth.

Limitation of actions.

“V. And be it further enacted, that from and after the passing of this act, no action shall be brought for the recovery of any penalty for the not setting out of tithes, nor any suit instituted in any court of equity, or in any ecclesiastical court, to recover the value of any tithes, unless such action shall be brought, or such suit commenced within six years from the time when such tithes became due.

Extending Irish act, 7 Geo. 3, respecting quakers.

“VI. And whereas in the seventh year of the reign of his present majesty King George the Third, an act was made and passed, in Ireland, intituled, ‘An Act to continue and amend an Act, passed in the third year of His Majesty’s Reign, intituled, “An Act to amend and explain an Act, made in the thirty-third year of the Reign of Henry the Eighth, intituled, An Act for Tithes, and for other Purposes therein mentioned;”’ which act of the seventh year of the reign of his present majesty was at first temporary, but was afterwards from time to time continued by subsequent acts of parliament, and at length made perpetual by an act passed in Ireland, in the eleventh and twelfth years of the reign of his present majesty, intituled, ‘An Act for reviving and continuing several temporary Statutes that have lately expired, and for continuing others that are near expiring;’ by which said act of the seventh year of the reign of his present majesty, it is enacted, that where any quaker shall refuse to pay, compound for, or set out his great or small tithes, or pay any customary or other rights or dues belonging to any church or chapel, which by law or custom ought to be paid, two or more of his majesty’s justices of the peace are authorized to hear and determine the same, not exceeding the value of ten pounds; and whereas it is become expedient to enlarge the said sum; be it enacted, that from and after the passing of this act all the provisions of the said act of the seventh year of his present majesty, touching quakers, shall be deemed and taken to extend to any value not exceeding fifty pounds; provided always nevertheless, that from and after the passing of this act one justice of the peace shall be competent to receive the original complaint, and to summon the parties to appear before two or more justices of the peace, as in the said act is set forth.

Church rates and parish cesses.

“VII. And whereas it is expedient that church rates or parish cesses of limited amount unduly refused or withheld, should in certain cases be more easily and speedily recovered; be it enacted, that from and after the passing of this act, if any one duly rated to a church rate or parish cess, the validity whereof has not been questioned in any ecclesiastical court, shall refuse or neglect to pay the same sum at which he is so rated, it shall and may be lawful for any one justice of the peace of the same county, county of a city, or town corporate, where the church is situated, in respect whereof such rate or parish cess shall have been made, upon the complaint of any churchwarden or churchwardens who ought to receive and collect the same, by warrant under the hand and seal of such justice, to convene before any two or more of such justices of the peace, any person so refusing or neglecting to pay such rate or parish cess, and to examine upon oath, (which oath the said justices are hereby empowered to administer,) into the merits of the said complaint, and by order under their hands and seals to direct the payment of what is due and payable in respect of such rate or cess, so as the sum ordered and directed to be paid as aforesaid do not exceed ten pounds over and above the reasonable costs and charges to be ascertained by such justices; and upon refusal or neglect of such party to pay according to such order, it shall and may be lawful for any one of such justices, by warrant under his hand and seal, to levy the money thereby ordered to be paid, together with the amount of such costs and charges, by distress and sale of the goods of such offender, his executors or administrators, rendering only the overplus to him or her, the necessary charges of distraining being there-out first deducted and allowed by the said justices; and any person finding him or herself aggrieved by any judgment given by two or more such justices, may appeal

to the next general quarter sessions to be held for the county, county of a city, or town corporate, wherein the church is situated, in respect whereof such rate or cess shall have been made; and the justices of the peace then present, or the major part of them, shall proceed finally to hear and determine the matter, and to reverse the said judgment if they shall see cause; and if the justices then present, or the major part of them, shall find cause to affirm the judgment given by the first two or more justices, the same shall be decreed by order of sessions, with costs, against the appellant, to be levied by distress and sale of the goods and chattels of the said party appellant; provided always, that in case any such appeal be made as aforesaid, no warrant of distress shall be granted until after such appeal be determined: provided also, that nothing herein contained shall extend to alter or interfere with the jurisdiction of the ecclesiastical courts to hear and determine causes touching the validity of any church rate or cess, or from proceeding to enforce the payment of any such rate or cess, if the same shall exceed the sum of ten pounds from the party proceeded against: provided likewise, that if the validity of such rate or cess, or the liability of the person from whom it is demanded to pay the same be disputed, and the party disputing the same give notice thereof to the justices, the justices shall forbear giving judgment thereupon; and the person or persons demanding the same may then proceed to the recovery of their demand, according to the course of law as heretofore used and accustomed: provided also, that nothing herein contained shall extend to alter, change, or make void any clause, matter, or thing respecting the rebuilding and repairing of churches, contained in a certain act of parliament made and passed in Ireland, in the twelfth year of the reign of King George the First, intituled, ‘An Act for the more effectual erecting and better regulating of Free Schools, and for rebuilding and repairing of Churches.’

STAT. 54 GEO.
3, c. 68. [1B.]

“VIII. And whereas by the aforesaid in part recited act, passed in Ireland in the seventh year of the reign of his present majesty, it is enacted, that where any person or persons are condemned in any sum or sums of money for predial tithes or costs of suit, in any such cause (as in the act mentioned), and the party so condemned shall refuse or neglect, after service of a monition for that purpose from the court where such sentence is or shall be given, and proof made upon oath of the due service thereof, by the space of fifteen days after such service, to satisfy and pay to the party obtaining such sentence, such sum or sums as shall be so decreed, it shall and may be lawful for the person or persons so obtaining such sentence or sentences, their executors or administrators, to sue for the money so decreed, by civil bills, before the next going judges of assize for the county where the parties against whom such sentence was pronounced shall reside, or in any other court where civil bills are or shall be allowed to be brought, in such manner as suits by civil bills are now allowed to be brought, so as the same do not exceed the sum of twenty pounds: and whereas an act was made and passed, in Ireland, in the twenty-seventh year of the reign of his present majesty, intituled, ‘An Act for the better Execution of the Law and Preservation of the Peace within Counties at large;’ by virtue of which act, a barister-at-law, of six years’ standing at least, was appointed to act as a constant assistant to the justices at every session of the peace in each county in Ireland: and whereas an act was made and passed, in Ireland, in the thirty-sixth year of the reign of his present majesty, intituled, ‘An Act for the better and more convenient Administration of Justice, and for the Recovery of small Debts in a summary Way, at the Sessions of the Peace of the several Counties at large within this Kingdom, (except the County of Dublin,) and for continuing and amending an Act, intituled, “An Act for the better Execution of the Law, and Preservation of the Peace within the Counties at large;”’ and it is by said act enacted, that the aforesaid assistant barristers be authorized and empowered, at the general sessions or quarter sessions of the peace in their respective counties, to hear and determine in a summary way, by English bill or paper petition usually called a civil bill, among other actions therein recited, all actions on monitions issuing from ecclesiastical courts, for non-payment of sums in which the parties shall have been condemned in such ecclesiastical courts for predial tithes or

Extending the amount of decrees on monitions by the chairman of Dublin.

STAT. 54 GEO.
3, c. 68. [IR.]

costs of suit, according to the provisions of the hereinbefore in part recited act of the seventh year of the reign of his present majesty ; and that the said assistant barristers shall respectively be the sole and exclusive judges in such courts of general and quarter sessions of the peace, for hearing and determining in a summary way by English bill or paper petition usually called a civil bill, such causes as they are empowered as aforesaid to hear and determine, in like manner as the chairman of the county of Dublin now is : and whereas an act was made and passed, in Ireland, in the thirty-ninth year of the reign of his present majesty, intituled, ‘ An Act for the further Amendment of an Act passed in the thirty-sixth year of the Reign of his Majesty King George the Third, intituled, “ An Act for the better and more convenient Administration of Justice, and for the Recovery of small Debts in a summary Way, at the Sessions of the Peace within this Kingdom, (except the County of Dublin,) and for continuing and amending an Act for the better Execution of the Law, and Preservation of the Peace within Counties at large ;” ’ by which act it is enacted, that it shall and may be lawful for the aforesaid assistant barristers, at all times hereafter, to make decrees on all monitions issuing out of ecclesiastical courts, without any limitation on account of the sum therein contained : and whereas the chairman of the county of Dublin is always one of his majesty’s judges or counsel learned in the law, who, with the justices of the peace for the county of Dublin, holds the general quarter sessions of the peace for the said county ; and the said chairman of the county of Dublin is, by an act of parliament made and passed in Ireland, in the second year of the reign of King George the First, intituled, ‘ An Act for reviving and amending an Act, intituled, “ An Act for recovering of small Debts in a summary way, before the Judges of Assize,” ’ authorized and empowered to exercise a full civil bill jurisdiction, at the general quarter sessions for the said county, but he cannot make a decree for any greater sum on a monition issuing out of an ecclesiastical court than the sum of twenty pounds ; and it is expedient that he should have the same power and authority to make decrees on monitions issuing out of the metropolitical and consistorial court of the diocese of Dublin, within the county of Dublin, as the aforesaid assistant barristers are invested with, in the manner before mentioned, in their respective counties ; be it therefore enacted, that it shall and may be lawful for the chairman of the sessions of the peace for the county of Dublin, and he is hereby authorized and empowered, to hear and determine in a summary way, by English bill or paper petition usually called a civil bill, all actions on monitions issuing from the metropolitical and consistorial court of the diocese of Dublin, for non-payment of sums in which the parties shall have been condemned in the said ecclesiastical court, for predial tithes issuing, growing, and increasing within the said county of Dublin, and costs of suit, according to the provisions of the hereinbefore in part recited act of the seventh year of the reign of his present majesty, without any limitation respecting the amount of the sum therein contained.

Regulation for
proctors.

“ IX. And be it further enacted, that, from and after the passing of this act, if any proctor of his majesty’s court of prerogative in Ireland, or of the consistorial and metropolitical courts of Armagh and Dublin, or of any other ecclesiastical court or courts in Ireland, in which he shall be entitled to act as proctor, shall act as such, or permit and suffer his name to be in any manner used in any suit, the prosecution or defence whereof shall appertain to the office of a proctor, or in obtaining probates of wills, letters of administration, or marriage licences, to or for or on account or for the profit and benefit of any person or persons not entitled to act as a proctor, or shall permit or suffer any such person or persons to demand or participate in such profit and benefit, and complaint thereof shall be made in the court or courts wherein such proctor hath been admitted and enrolled, and proof given to the satisfaction of the said court or courts that such proctor hath offended therein as aforesaid ; then and in such case every such proctor so offending, shall be struck off the roll of proctors, and be for ever after disabled from practising as a proctor, or be suspended from the office, functions, and practice of a proctor, in all and every the said court or courts, for so long a period as the judge or judges of the said court or courts may deem fit ; save and except as to any allowance or allow-

ances, sum or sums of money that are or shall be agreed to be made to the widows or children of any deceased proctor or proctors, by any surviving partner or partners of such deceased proctor or proctors; and also save and except as to any agreement made or understood to have been made between proctors and articled clerks, whose articles have been executed prior to the passing of this act.

STAT. 54 GEO.
3, c. 68. [IR.]

“X. And be it further enacted, that from and after the passing of this act, in case any person or persons shall, in his or their own name, or in the name of any other person or persons, make, do, act, exercise, or perform any act, matter, or thing whatsoever, in any way appertaining or belonging to the office, function, or practice of a proctor, for or in consideration of any gain, fee, or reward, or with a view to participate in the benefit to be derived from the office, functions, or practice of a proctor, without being admitted and enrolled, every such person for every such offence shall forfeit and pay the sum of fifty pounds, to be sued for and recovered in manner hereinafter mentioned.

Penalty.

“XI. Provided always, and be it further enacted, that nothing herein contained shall extend or be construed to extend to any salary which shall be agreed to be paid to a proctor, his partner or successor, to a clerk really and *bonâ fide* serving in his office, at the time of the passing of this act, and who shall have been *bonâ fide* serving in the office of any proctor or proctors, for seven years next before the passing of the same.

Clerks.

“XII. And be it further enacted, that all pecuniary forfeitures and penalties, imposed on any person or persons, for offences committed against this act, shall and may be sued for and recovered in any of his majesty's four courts in the city of Dublin, by action of debt, bill, plaint, or information; wherein no essoign, protection, privilege, wager of law, or more than one imparlance, shall be allowed; and wherein the plaintiff, if he or she shall recover any penalty or penalties, shall receive the same for his or her own use, with full costs of suit.

Recovery of
penalties.

“XIII. And be it further enacted, that if any action or suit shall be brought or commenced for anything done in pursuance of this act, every such action or suit shall be commenced within three calendar months next after the fact committed, and not afterwards; and shall be laid and tried in the city or county wherein the cause of action shall have arisen, and not elsewhere; and the defendant or defendants in such action or suit shall and may plead the general issue, and give this act and the special matter in evidence at any trial to be had thereupon, and that the same was done in pursuance or by the authority of this act; and if the same shall appear to have been so done, or if any action or suit shall be brought after the time limited for bringing the same, or shall be laid in any other city, county, or place than as aforesaid, then the judge shall find for the defendant or defendants; and upon such verdict, or if the plaintiff or plaintiffs shall be nonsuited, or suffer a discontinuance of their action or suit, after the defendant or defendants shall have appeared; or if upon demurrer, judgment shall be given against the plaintiff or plaintiffs, the defendant or defendants shall have treble costs, and shall have such remedy for the same as any defendant or defendants hath or have for costs of suit in any other case by law.

Limitation of
actions.

“XIV. Provided always, that nothing in this act contained shall extend or be construed to extend to any part of the united kingdom, except Ireland.”

Act to extend
to Ireland
only.

“SCHEDULES TO WHICH THIS ACT REFERS.

“Schedule (A).

“*Significavit Party being Contumacious and in Contempt.*

“To his most excellent majesty and our sovereign lord George the Third, by the grace of God, of the united kingdom of Great Britain and Ireland, king, defender of the faith,
by divine providence [or, permission, as the case may be]
health in him by whom kings and princes rule and govern; we hereby notify and signify unto your majesty, that one
in the county of
hath been duly pronounced guilty of manifest contumacy and contempt of the law and jurisdiction ecclesiastical, in not [as the

STAT. 54 GEO. 3, c. 68. [IR.] case may be] appearing before [here set out the style of the ecclesiastical judge, or his representative] or, in not obeying the lawful commands [here set out the commands] of [such judge or representative] or in having committed a contempt in the face of the court of [such judge or representative] lawfully authorized by [here set out the nature and manner of such contempt] on a day and hour now long past, in a certain cause of [here set out the nature of the cause, and the names of the parties to the same] we therefore humbly implore and entreat your said most excellent majesty would vouchsafe to command the body of the said to be taken and imprisoned for such contumacy and contempt. Given under the seal of our courts, the day of

“A. B. registrar, or deputy registrar [as the case may be].”

“Schedule (B).

“*Writ de Contumace Capiendo.*

“George, &c. to the sheriff greeting :
The hath signified, to us, that of
in your county of is manifestly contumacious, and contemns the jurisdiction and authority of [here fully state the non-appearance, disobedience, together with the commands disobeyed, or, the contempt in the face of the court, as the case may be] nor will he submit to the ecclesiastical jurisdiction; but forasmuch as the royal power ought not to be wanting to enforce such jurisdiction, we command you, that you attach the said by his body, until he shall have made satisfaction for the said contempt: and how you shall execute this our precept, notify unto and in nowise omit this; and leave you there this writ. Witness day of in the year of our reign.”

“Schedule (C).

“*Writ of Deliverance.*

“Whereas of in your county of whom lately at the denouncing of for contumacy, and by writ issued thereupon, you attached by his body, until he should have made satisfaction for the contempt; now he having submitted himself and satisfied the said contempt, we hereby empower and command you that without delay you cause the said to be delivered out of the prison in which he is so detained, if upon that occasion, and no other, he shall be detained therein. Given under our seal of our of

“A. B. registrar [or, deputy registrar, as the case may be].
“Extracted by E. F. proctor.”

STAT. 54 GEO.
3, CAP.
LXXVII.

CCCCLXXXII. STAT. 54 GEORGII 3, CAP. LXXVII. A.D. 1814.

“An Act for building a Church [to be called *Christ's Church*] or Chapel of Ease in the Parish of Sculcoates, in the East Riding of the County of York.”

STAT. 54 GEO.
3, CAP.
LXXVIII.

CCCCLXXXIII. STAT. 54 GEORGII 3, CAP. LXXVIII. A.D. 1814.

“An Act for enlarging the Provisions of an Act passed in the forty-sixth year of His present Majesty, intituled, *An Act for altering and enlarging the Provisions of an Act passed in the Parliament of Ireland in the thirty-third year of His present Majesty, for making and constituting a new Parish, by the Name of The Parish of Saint George, on the Ground adjoining the City of Dublin, therein described; and for making and building a Parish Church therein.*”

CCCCLXXXIV. STAT. 54 GEORGII 3, c. 92. [IRELAND.] A.D. 1814.

STAT. 54 GEO.
3, c. 92. [IR.]

“An Act to secure the Payment of Stamp Duties on Probates and Letters of Administration, and on Receipts for Property obtained by Legacy or Intestacy in Ireland.”

CCCCLXXXV. STAT. 54 GEORGII 3, c. 106 (1). A.D. 1814.

STAT. 54 GEO.
3, c. 106.

“An Act to remove Doubts as to the Allowance of Drawbacks upon Bibles and Books of Prayer, to the King’s Printers, under an Act passed in the thirty-fourth year of His present Majesty.”

“Whereas an act was passed in the thirty-fourth year of the reign of his present majesty, intituled, ‘An Act for repealing the Duties on Paper, Pasteboard, Millboard, Scaleboard, and Glazed Paper, and for granting other Duties in lieu thereof;’ by which said act a drawback or allowance is given and made for all paper used in printing Bibles, Testaments, Psalm Books, Books of Common Prayer, and Confession of Faith, and the Larger and Shorter Catechism, upon certain conditions therein particularly specified, and among others, upon condition that oath shall be made, in manner prescribed by the said act, by the king’s printers in England and Scotland respectively, before the commissioners of excise or any two or more of them in England and Scotland respectively, that the whole of the impression or edition of such Bible, Testament, Psalm Book, Book of Common Prayer, Confession of Faith, or Larger or Shorter Catechism, in respect of which such allowance or drawback shall be claimed, has been printed by him or them, at his or their usual and ordinary printing house, on his or their own account: and whereas doubts have arisen as to what house, office, or premises, may or shall be considered to be the usual and ordinary printing house of the king’s printers, within the meaning of the said recited act, for the purpose of obtaining the said drawback or allowance; for removing and remedy thereof, be it declared and enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that every house, office, or place, heretofore approved of, or which may hereafter be approved of, by the lord high treasurer, or by the lords commissioners of his majesty’s treasury, or any two or more of them, in which the king’s printers in England and Scotland respectively shall have printed, or may hereafter print, by themselves or their own *bonâ fide* agents, and not by others, and for their own sole and undivided interest, the whole of any impression or edition of any Bible, Testament, Psalm Book, Book of Common Prayer, Confession of Faith, or Larger or Shorter Catechism, shall be deemed and taken to be a usual and ordinary printing house of such king’s printer within the true meaning of the said recited act, for all the purposes of the said recited act, and the administering and taking such oath respectively, and the entitling such king’s printer to the drawbacks and allowances to which they may be by law entitled in respect of the paper used in printing Bibles, Testaments, Psalm Books, Books of Common Prayer, Confession of Faith, or Larger or Shorter Catechism, at any such printing houses.”

34 Geo. 3,
c. 20.

Printing houses approved by the commissioners of the treasury, to be deemed the usual and ordinary printing house of the king’s printers.

CCCCLXXXVI. STAT. 54 GEORGII 3, c. 108. A.D. 1814.

STAT. 54 GEO.
3, c. 108.

“An Act to repeal two Acts of the thirtieth and thirty-second years of King Charles the Second, for burying in Woollen, and for indemnifying Persons against Penalties for Offences committed against the said Acts.”

CCCCLXXXVII. STAT. 54 GEORGII 3, CAP. CX. A.D. 1814.

STAT. 54 GEO.
3, CAP. CX.

“An Act for enlarging the Powers of an Act of His present Majesty, for repairing the Church of Saint Sidwell, in the City of Exeter.”

(1) Vide Stat. 2 & 3 Vict. c. 23.

STAT. 54 GEO.
3, CAP. CXI.

CCCCLXXXVIII. STAT. 54 GEORGII 3, CAP. CXI. A.D. 1814.

"An Act for building a new Church [to be called The Church of Saint Michael], within the Town and Parish of Liverpool, in the County Palatine of Lancaster."

STAT. 54 GEO.
3, CAP. CXII.

CCCCLXXXIX. STAT. 54 GEORGII 3, CAP. CXII. A.D. 1814.

"An Act for enlarging the Churchyard and Burial Ground for the Parish of Lambeth, in the County of Surrey; and for improving and widening the Approaches to the Church in the same Parish; and for other Purposes therein mentioned, relating thereto."

STAT. 54 GEO.
3, c. 117. [IR.]

CCCCXC. STAT. 54 GEORGII 3, c. 117 (1). [IRELAND.] A.D. 1814.

"An Act to extend, so far as relates to the building of new Churches, an Act of the Parliament of Ireland, passed in the thirty-third year of the Reign of His late Majesty King George the Second, intituled, An Act for reviving and amending an Act passed in the twenty-third year of His present Majesty's Reign, intituled, An Act for amending, continuing, and making more effectual, the several Acts now in force in this Kingdom for the more easy Recovery of Tithes and other ecclesiastical Dues of small Value; and also for the more easy providing a Maintenance for Parish Clerks, so far only as the same relates to the more easy providing a Maintenance for Parish Clerks, and to encourage the building of new Churches."

33 Geo. 3,
c. 11.

"Whereas by an act passed in the parliament of Ireland, in the thirty-third year of the reign of his late majesty King George the Second, intituled, 'An Act for reviving and amending an Act passed in the twenty-third year of his present Majesty's Reign, intituled, "An Act for amending, continuing, and making more effectual the several Acts now in force in this Kingdom for the more easy Recovery of Tithes and other Ecclesiastical Dues of small Value, and also for the more easy providing a Maintenance for Parish Clerks," so far only as the same relates to the more easy providing a Maintenance for Parish Clerks, and to encourage the building of New Churches;' it is enacted, that it should be lawful for every archbishop, bishop, dean, dean and chapter, archdeacon, dignitary or prebendary, and to every body politic and corporate, and to and for every person whatsoever seised in fee simple, fee tail, or for life, with immediate remainder over to their, his, or her issue, or of or in any land whereon any new church should be intended to be built, to grant by his, her, or their deeds respectively, such land not exceeding one acre plantation measure to the churchwardens of the parish wherein such new church should be to be built and their successors for ever, as and for a site for such new church, and for a churchyard for the use of the parishioners of the said parish, and that such grant should be good and effectual against such archbishop, bishop, dean, dean and chapter, archdeacon, dignitary, prebendary, body politic and corporate, and his and their successor and successors, and against every person claiming or to claim any estate, right, title, or interest in such land, by virtue of any limitation, remainder, or reversion in any settlement or settlements theretofore made; and that the churchwardens of such parish and their successors for ever, should be and were thereby made capable of receiving and enjoying the benefit of such grant for the purpose aforesaid: and whereas it is expedient to extend the said act so as to enable rectors and vicars to make like grants of glebe land belonging to their respective benefices; be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that it shall and may be lawful to and for any rector or vicar of any parish or united parishes in Ireland, by and with the consent of the bishop of the diocese wherein such parish shall be, by deed executed by such rector or vicar with such consent as aforesaid, testified by the execution of such deed by such bishop, to grant any part

Rectors or
vicars may
grant any part
of the glebe
land for the
site of a new

(1) Amended by Stat. 3 & 4 Gul. 4, c. 37; Stat. 4 & 5 Gul. 4, c. 90; and Stat. 6 & 7 Gul. 4, c. 99.

of the glebe land belonging to such rector or vicar, not exceeding one acre plantation measure, to the churchwardens of the said parish and their successors for ever, as and for the site of any new church to be built for the use of such parish, and for a churchyard for the use of the parishioners of the said parish, or to improve and extend the churchyard of any parish; and that such grant shall be good and effectual against such rector or vicar respectively, and his successors: and that the churchwardens of the said parish and their successors for ever, shall be and are hereby empowered and made capable of receiving and enjoying the benefit of such grant for the purposes aforesaid."

STAT. 54 GEO.
3, c. 117. [Ir.]
church and
churchyard.

CCCCXCI. STAT. 54 GEORGII 3, CAP. CXXVIII. A.D. 1814.

"*An Act to enable the Prebendary of the Prebend of Stoke Newton or Newton, otherwise Newington, in the County of Middlesex, founded in the Cathedral Church of Saint Paul, in London, to grant a Lease of the Manor of Stoke Newton or Newton, otherwise Newington, in the said County, parcel of the said Prebend, in manner therein mentioned, and to enable the granting of Sub-leases for Building thereon, and otherwise improving the same, and for other Purposes.*"

STAT. 54 GEO.
3, CAP.
CXXVIII.

CCCCXCII. STAT. 54 GEORGII 3, CAP. CXXXI. A.D. 1814.

"*An Act for amending and enlarging the Powers of an Act of the seventeenth year of His present Majesty, for enabling the Feoffees and Trustees of an Estate in the County of Middlesex, given by Lawrence Sheriff, for the founding and maintaining a School and Almshouses at Rugby, in the County of Warwick, to sell Part of the said Estate, or to grant Leases thereof; and for other Purposes.*"

STAT. 54 GEO.
3, CAP. CXXXI.

CCCCXCIII. STAT. 54 GEORGII 3, CAP. CXXXV. A.D. 1814.

"*An Act for amending an Act of King Charles the Second, [Stat. 29 & 30 Car. 2, c. 16.] relating to the Cathedral Church of Saint Asaph, in the County of Flint.*"

STAT. 54 GEO.
3, CAP. CXXXV.

CCCCXCIV. STAT. 54 GEORGII 3, CAP. CLXIX. A.D. 1814.

"*An Act to amend and render more effectual an Act passed in the nineteenth year of His present Majesty, for the better raising and securing a Fund for a Provision for the Widows and Children of the Ministers of the Church of Scotland, and of the Heads, Principals, and Masters in the Universities of Saint Andrew's, Glasgow, Edinburgh, and Aberdeen; and for repealing two Acts made in the seventeenth and twenty-second years of the Reign of His late Majesty King George the Second for these Purposes.*"

STAT. 54 GEO.
3, CAP. CLXIX.

CCCCXCV. STAT. 54 GEORGII 3, c. 173. A.D. 1814.

"*An Act to alter and amend certain of the Powers and Provisions of several Acts passed for the Redemption and Sale of the Land Tax; and for making further Provision for the Redemption thereof.*"

STAT. 54 GEO.
3, c. 173.

"VI. And be it further enacted, that for the purpose of redeeming any land tax by any rector or vicar, or for the purpose of raising any money for re-imbursing the stock or money previously transferred or paid for the redemption of such land tax, or for purchasing an assignment of such land tax, under the powers and provisions of the said acts, or any of them, the land sold or proposed to be sold for those purposes, or any of them, under the powers of the said acts, or any of them, shall not necessarily be confined to such a quantity of any lands belonging to such rector or vicar, as shall appear to the commissioners authorizing the same, necessary to be sold for such purposes, but that any sale of lands hereafter to be made for any of the purposes aforesaid shall be deemed and considered good and effectual sales, notwithstanding the restrictions contained in any of the said acts, although the lands so sold, or proposed to be sold, shall appear to the said commissioners

Sales by rec-
tors or vicars.

STAT. 54 GEO. 3, c. 173. more than shall be necessary for the purposes thereof; provided the said commissioners shall be satisfied that such proposed sale shall, under all circumstances, be beneficial or likely to prove beneficial to the rector or vicar making such sale, and to their respective successors; and provided the ordinary shall signify his consent to such sale, by any writing under his hand, to be produced before the said commissioners."

STAT. 54 GEO. 3, c. 175. CCCCXCVI. STAT. 54 GEORGII 3, c. 175 (1). A.D. 1814.

"An Act to explain and amend several Acts (2) relating to Spiritual Persons holding of Farms, and for enforcing the Residence of such Persons on their Benefices in England, for one year, and from thence until six weeks after the Meeting of the then next Session of Parliament."

STAT. 54 GEO. 3, CAP. CLXXXVII. CCCCXCVII. STAT. 54 GEORGII 3, CAP. CLXXXVII. A.D. 1814.

"An Act for the Sale of several Messuages and Lands in the Town of Northampton, and in the County of Buckingham, called Beckett's and Sargeant's Charity Estates, vested in Trustees for Charitable Purposes; and for investing the Money arising from the Sale thereof, in the Purchase of Three Pounds per Centum, Consolidated Bank Annuities, until a proper Purchase of Real Estate can be found; and in the mean time for applying the Dividends and Annual Produce thereof upon the Trusts of the Charity; and for other Purposes."

STAT. 54 GEO. 3, CAP. CXCI. CCCCXCVIII. STAT. 54 GEORGII 3, CAP. CXCI. A.D. 1814.

"An Act to enable Edward Mason of Edgehill, in the Parish of Walton, in the County of Lancaster, Esquire, to appoint a Curate to the New Church or Chapel of Edgehill, and for other Purposes therein mentioned."

STAT. 54 GEO. 3, CAP. CCIV. CCCCXCIX. STAT. 54 GEORGII 3, CAP. CCIV. A.D. 1814.

"An Act for vesting certain Lands belonging to the Right Honourable Hugh Earl Fortescue, situate in the Parish of Filleigh, in the County of Devon, and a Parsonage House to be built on the said Lands, in the Rector for the time being of the said Parish, in Exchange for the Parsonage House and certain Glebe Lands belonging to the said Parish."

STAT. 54 GEO. 3, CAP. CCXVIII. D. STAT. 54 GEORGII 3, CAP. CCXVIII. A.D. 1814.

"An Act for taking down the old Church, Tower, and Steeple of the Parish of Ombersley, in the County of Worcester, and erecting a new Church, and enlarging the Churchyard; and also for building a Workhouse for the Poor of the said Parish."

STAT. 55 GEO. 3, CAP. V. DI. STAT. 55 GEORGII 3, CAP. V. A.D. 1815.

"An Act for enlarging the Powers of an Act of His present Majesty, for repairing or rebuilding the Parish Church of Stockport, in the County Palatine of Chester."

STAT. 55 GEO. 3, CAP. XLIV. DII. STAT. 55 GEORGII 3, CAP. XLIV. A.D. 1815.

"An Act for taking down and rebuilding the Parish Church of Saint Thomas, in the Town of Dudley, in the County of Worcester."

STAT. 55 GEO. 3, c. 48. DIII. STAT. 55 GEORGII 3, c. 48 (3). A.D. 1815.

"An Act for enlarging the Powers of two Acts of His present Majesty, for providing Clergymen to officiate in Gaols and Houses of Correction within England and Wales."

(1) Continued by Stat. 56 Geo. 3, cc. 6 & 123.

(2) *Several Acts*:—Vide Stat. 57 Geo. 3, c. 99.

(3) Amended by Stat. 58 Geo. 3, c. 32; repealed, and other provisions made, by Stat.

4 Geo. 4, c. 64, and Stat. 2 & 3 Vict. c. 56.

DIV. STAT. 55 GEORGII 3, CAP. LVII. A.D. 1815.

STAT. 55 GEO.
3, CAP. LVII.

"An Act for enlarging the Churchyard and providing additional Burying Ground for the Parish of Saint Helen in Abingdon, in the County of Berks."

DV. STAT. 55 GEORGII 3, CAP. LVII. A.D. 1815.

STAT. 55 GEO.
3, CAP. LVII.

"An Act for vesting the Glebe Lands belonging to the Rectory of Burslem, in the County of Stafford, in Trustees for sale; and for applying the Net Monies thence arising, in providing a Parsonage House for the said Rectory, and in the Purchase of other Estates to be settled and annexed thereto."

DVI. STAT. 55 GEORGII 3, CAP. LIX. A.D. 1815.

STAT. 55 GEO.
3, CAP. LIX.

"An Act for uniting the Vicarage and Rectory of Bishopstone, in the County of Wilts, and within the Diocese of Salisbury, into one Rectory, with Cure of Souls."

DVII. STAT. 55 GEORGII 3, C. 60 (1). A.D. 1815.

STAT. 55 GEO.
3, C. 60.

"An Act to repeal several Acts relating to the Execution of Letters of Attorney and Wills of Petty Officers, Seamen, and Marines, in His Majesty's Navy, and to make new Provisions respecting the same."

DVIII. STAT. 55 GEORGII 3, CAP. LX. A.D. 1815.

STAT. 55 GEO.
3, CAP. LX.

"An Act for exonerating certain Tithes in the Manor of Shireoaks, in the Parish of Workop, in the County of Nottingham, from the Payment of four several Annuities, and from the Repairs of the Chapel of Shireoaks; and for charging Freehold Lands and the Tithes thereof within the same Manor with the future Payment of the said Annuities, and with the said Repairs."

DIX. STAT. 55 GEORGII 3, CAP. LXI. A.D. 1815.

STAT. 55 GEO.
3, CAP. LXI.

"An Act to enable the Lord Bishop of Winchester to grant Leases of Lands allotted to him under an Act of the fiftieth year of His present Majesty, for disafforesting the Forest of South, otherwise East, Bere, otherwise Bier, in the County of Southampton; and for inclosing the open Commonable Lands within the said Forest."

DX. STAT. 55 GEORGII 3, CAP. LXVI. A.D. 1815.

STAT. 55 GEO.
3, CAP. LXVI.

"An Act for effectuating an Agreement for Sale of part of the Glebe Lands belonging to the Rector of the Parish Church of Chelsea, in the County of Middlesex, for the use of the Royal Military Asylum."

DXI. STAT. 55 GEORGII 3, CAP. LXVIII. A.D. 1815.

STAT. 55 GEO.
3, CAP. LXVIII.

"An Act for enlarging and repairing the Parish Churches of East and West Teignmouth, in the County of Devon; and for authorizing the Sale of divers Hereditaments in East and West Teignmouth, Islington, and Highweek, in the said County; and for discharging the Expenses to be occasioned thereby."

DXII. STAT. 55 GEORGII 3, CAP. LXIX. A.D. 1815.

STAT. 55 GEO.
3, CAP. LXIX.

"An Act for taking down and rebuilding the Parish Church of Melcombe Regis, in the County of Dorset."

DXIII. STAT. 55 GEORGII 3, CAP. LXX. A.D. 1815.

STAT. 55 GEO.
3, CAP. LXX.

"An Act for establishing a Church or Chapel in Toxteth Park, in the Parish of Walton-on-the-Hill, in the County of Lancaster."

(1) Extended by Stat. 59 Geo. 3, c. 59, and Stat. 1 & 2 Geo. 4, c. 49; repealed, and other provisions made, by Stat. 11 Geo. 4 & 1 Gul. 4, c. 20; Stat. 2 Gul. 4, c. 40; and Stat. 4 & 5 Gul. 4, c. 25. *Vide etiam* Ecclesiastical Commissioners' Report, (Feb. 15, 1832,) p. 31.

STAT. 55 GEO.
3, CAP.
LXXVIII.

DXIV. STAT. 55 GEORGII 3, CAP. LXXVIII. A.D. 1815.

"An Act for establishing and well-governing the Charitable Institution, called The Caledonian Assylum, for supporting and educating Children of Soldiers, Sailors, and Marines, Natives of Scotland, and of indigent Scotch Parents, resident in London, not entitled to Parochial Relief."

STAT. 55 GEO.
3, CAP. LXXIX.

DXV. STAT. 55 GEORGII 3, CAP. LXXIX. A.D. 1815.

"An Act for defraying the Expense incurred in rebuilding the Parish Church of Hanworth, in the County of Middlesex."

STAT. 55 GEO.
3, CAP. LXXX.

DXVI. STAT. 55 GEORGII 3, CAP. LXXX. A.D. 1815.

"An Act for building a Chapel of Ease in the Town of Rochdale, in the County Palatine of Lancaster."

STAT. 55 GEO.
3, CAP. LXXXI.

DXVII. STAT. 55 GEORGII 3, CAP. LXXXI. A.D. 1815.

"An Act to amend several Acts for the Management and Direction of the Meath Hospital, or County of Dublin Infirmary, and for the better regulating the same."

STAT. 55 GEO.
3, C. 84.

DXVIII. STAT. 55 GEORGII 3, C. 84. A.D. 1815.

"An Act to amend so much of an Act . . . of the thirty-ninth and fortieth years of His present Majesty as relates to granting Letters of Administration to the Effects of Persons dying Intestate within the several Presidencies in the East Indies to the Register of the Ecclesiastical Courts. . . ."

STAT. 55 GEO.
3, CAP. XCVI.

DXIX. STAT. 55 GEORGII 3, CAP. XCVI. A.D. 1815.

"An Act for building a new Church, and also a Workhouse, in the Parish of Bathwick, in the County of Somerset."

STAT. 55 GEO.
3, C. 147.

DXX. STAT. 55 GEORGII 3, C. 147 (1). A.D. 1815.

"An Act for enabling Spiritual Persons to exchange the Parsonage or Glebe Houses or Glebe Lands, belonging to their Benefices, for others of greater Value, or more conveniently situated for their Residence and Occupation; and for annexing such Houses and Lands, so taken in Exchange, to such Benefices, as Parsonage or Glebe Houses and Glebe Lands, and for purchasing and annexing Lands to become Glebe in certain cases; and for other Purposes."

"Whereas in divers ecclesiastical benefices, perpetual curacies, and parochial chapelries, the glebe lands, or some part or parts thereof, lie at a distance from and are inconvenient to be occupied with the parsonage or glebe houses; and the parsonage or glebe houses of divers benefices, perpetual curacies, and parochial chapelries, are mean and inconvenient; and it would often tend much to the comfort and accommodation, and thereby also to promote the residence of the incumbents of such benefices, perpetual curacies, and parochial chapelries, if the glebe lands and parsonage or glebe houses thereof could be by law exchanged for other lands of greater value, or more conveniently situated, and for other and more convenient houses; and whereas there are also divers lands and tenements which have been accustomed to be granted or demised by the incumbent for the time being of certain ecclesiastical benefices, perpetual curacies, or parochial chapelries, for one, two, or three lives, or for a term or terms of years absolutely or determinable on a life or lives, as being holden by copy of court roll or otherwise, under some manor or lordship belonging to such benefices, perpetual curacies, or parochial chapelries, and it would therefore be advantageous to the said benefices if the same lands and

(1) Amended by Stat. 56 Geo. 3, c. 52; 23; Stat. 2 & 3 Vict. c. 49; and Stat. 3 & Stat. 1 Geo. 4, c. 6; Stat. 6 Geo. 4, c. 8; 4 Vict. cc. 20 & 60.
Stat. 7 Geo. 4, c. 66; Stat. 1 & 2 Vict. c.

tenements, or some of them, or some part thereof, were annexed as glebe to the living or benefice to which they belong: may it therefore please your majesty that it may be enacted; and be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the passing of this act it shall be lawful for the parson, vicar, or other incumbent for the time being, of any ecclesiastical benefice, perpetual curacy, or parochial chapelry, by deed indented, and to be registered in manner hereinafter mentioned, and with the consent of the patron of such benefice, perpetual curacy, or parochial chapelry, and of the bishop of the diocese wherein the same is locally situate, (to be signified as hereinafter is mentioned,) to grant and convey to any person or persons, and to his, her, or their heirs and assigns, or otherwise, as he or they shall direct or appoint, or to any corporation, sole or aggregate, and his or their successors, the parsonage or glebe house, and the outbuildings, yards, gardens, and appurtenances thereof, and the glebe lands, and any pastures, feedings, or rights of common or way appendant, appurtenant, or in gross, or any or either of such house, outbuildings, yards, gardens, and glebe lands, pastures, feedings, or rights of common or way, or any part or parts thereof, belonging to any such benefice, perpetual curacy, or parochial chapelry, in lieu of and in exchange for any house, outbuildings, yards, gardens, and appurtenances, and any lands, or any or either of them, whether lying within the local limits of such benefice, perpetual curacy, or parochial chapelry or not, but so as that the same be situate conveniently for actual residence or occupation by the incumbent thereof, the same also being of greater value or more conveniently situated than the premises so to be given in exchange, and being of freehold tenure, or being copyhold of inheritance, or for life or lives, holden of any manor belonging to the same benefice, and also for the parson, vicar, or incumbent for the time being of the same benefice, perpetual curacy, or parochial chapelry, by the same or a like deed, and with the like consent, and testified as aforesaid, to accept and take in exchange to him and his successors for ever, from any person or persons, or corporation sole or aggregate, any other house, outbuildings, yards, gardens, easements, and appurtenances, and any other lands, or any or either of such house, outbuildings, yards, gardens, lands, easements, and appurtenances, the same respectively being of freehold tenure, or being copyhold of inheritance, or for life or lives, holden of any manor belonging to the same benefice, and being of greater value or more conveniently situated, in lieu of and in exchange for such parsonage or glebe house, outbuildings, yards, gardens, glebe lands, and appurtenances, and such pastures, feedings, and rights of common or way, or any or either of them, so to be granted and conveyed, and which said house, outbuildings, yards, gardens, lands, and appurtenances so to be accepted and taken in exchange, by any parson, vicar, or other incumbent, shall for ever, from and after such grant and conveyance thereof, be the parsonage and glebe house and glebe lands and premises of the said benefice, perpetual curacy, or parochial chapelry, to all intents and purposes whatsoever, and shall become annexed to the said benefice, perpetual curacy, or parochial chapelry, to all intents and purposes whatsoever, and be holden and enjoyed by such incumbent and his successors accordingly, without any licence or writ of *ad quod damnum*; and that the whole, or any part or parts of the said house, outbuildings, lands, and premises so to be annexed, which before such annexation were of copyhold tenure, shall for ever, from and after such annexation, become and be of freehold tenure, the statute of mortmain, or any other statute or law to the contrary notwithstanding: provided always, that nothing in this act contained shall extend, or be construed to authorize the granting or conveying in exchange by any parson, vicar, or other incumbent, either at one and the same time, and by one and the same incumbent, or at different times, and by several incumbents, and in several portions, any greater quantity in the whole than thirty statute acres of the glebe lands of any benefice, perpetual curacy, or parochial chapelry: provided also, that in all cases when such exchange shall be made by any owner or owners having any less estate or interest than in fee-simple of or in the messuage, buildings, lands, and premises so to be by him,

STAT. 55 GEO.
3, c. 147.

Power to exchange parsonage houses and glebe lands for other houses and lands.

STAT. 55 GEO.
3, c. 147.

her, or them granted or conveyed in exchange, or being any corporation aggregate or sole, or person or persons under any legal disability, the parsonage house, outbuildings, and glebe lands respectively to be so taken in exchange as aforesaid, shall at the time of making such exchange be of equal value with, or not of less value than the said messuage, buildings, lands, and premises respectively so to be granted and conveyed in exchange to such parson, vicar, or other incumbent.

Premises given
in exchange to
be subject to
the same
tithes, &c. as
those taken in
exchange (ex-
cept in certain
cases).

“II. Provided always, that in all cases where the lands, or any part or parts thereof, to be conveyed in exchange to any parson, vicar, or incumbent, and to be annexed as glebe to any benefice, perpetual curacy, or parochial chapelry, under the authority of this act, shall either separately or jointly with other lands or tenements be, at the time of such conveyance by any means whatsoever, exempt or discharged from the render of tithes in kind, or subject to or covered by any modus, composition real, or prescription in lieu of tithes in kind, then the lands or premises to be conveyed in exchange by such parson, vicar, or incumbent, and which before such exchange were glebe of or belonging to the same benefice, perpetual curacy, or parochial chapelry, shall, (unless it be agreed between the parties to such exchange that the same shall become and be subject to the render or payment of tithes in kind,) from and immediately after such conveyance in exchange, (in case such first-mentioned lands are situate in the same parish, vicarage, or parochial chapelry, with the said lands or premises before glebe thereof, or belonging thereto, but not otherwise,) become and be either exempt or discharged from tithes in kind, in like manner with or (as the case may be) subject to or covered by the same modus, composition real, or prescription in lieu of tithes in kind, as the lands so to be conveyed in exchange to the said parson, vicar, or incumbent, were exempt or discharged from, or subject to, or covered by, before such exchange was made.

After the
exchange the
incumbent not
to be evicted.

“III. Provided also, and be it further enacted, that no incumbent of any benefice, perpetual curacy, or parochial chapelry, wherein or in respect whereof any such exchange as is authorized by this act shall have taken place, or his successors, shall at any time thereafter be evicted or ejected from the peaceable and quiet possession and enjoyment of the house, outbuildings, lands and premises, or any of them, which shall have been granted and conveyed in exchange to such incumbent, according to the provisions of this act, by or by reason or in consequence of any person or persons, or corporation sole or aggregate, claiming right thereto, through any title prior to that of or through any defect of title of the person or persons, or corporation sole or aggregate, granting or conveying the same in exchange; but nevertheless that it shall and may be lawful for such person or persons, or corporation, claiming such right, and he, she, or they is and are hereby authorized and empowered to have, use, exercise, and enjoy all such and the same powers and remedies in trying his, her, or their right to and in obtaining and recovering possession of any house, outbuildings, land, and premises, or any of them, which shall have been granted in exchange by any such incumbent, as the person or persons, or corporation sole or aggregate, so claiming would, in case this act had not been made, have been enabled to use, exercise, and enjoy in trying the right to and in recovering and obtaining possession of the house, outbuildings, land, and premises, or any of them, in exchange for which the same shall have been so granted and conveyed by any such incumbent, under the authority of this act.

Power to annex
premises be-
longing to ma-
nors, and here-
tofore grant-
able and de-
misable as
copyhold or
otherwise.

“IV. And be it further enacted, that from and after the passing of this act, it shall and may be lawful to and for the parson, vicar, or other incumbent of any ecclesiastical benefice, perpetual curacy, or parochial chapelry, of or to which benefice, perpetual curacy, or parochial chapelry, any manor or lordship is parcel or appurtenant, and as parcel of or belonging to which manor or lordship any lands or tenements are or have been usually granted or demised, or grantable or demisable by copy of court roll, or otherwise, for any life or lives, or for any term or number of years absolutely or determinable on any life or lives, by deed indented, (and to be registered as hereinafter mentioned,) with the consent of the patron and bishop, (to be testified as hereinafter mentioned,) to annex to the said benefice, perpetual curacy, or parochial chapelry, as and for glebe land, or par-

sonage or glebe house or houses and buildings thereof, all or any part or parts of such lands or tenements, whether lying within the local limits of such benefice, perpetual curacy, or parochial chapelry, or not, and that from and after such annexation the said lands and tenements so annexed shall cease to be thereafter grantable or demisable by any incumbent of the said benefice, perpetual curacy, or parochial chapelry, (otherwise than as glebe lands are or shall be by law grantable or demisable,) but shall from thenceforth be and become, and be deemed and taken to be the glebe lands and parsonage or glebe house or houses of and annexed to such benefice, perpetual curacy, or parochial chapelry, for ever, to all intents and purposes whatsoever, without any licence or writ of *ad quod damnum*, the statute of mortmain, or any other statute or law to the contrary notwithstanding: provided always, that no such annexation shall in anywise annul, determine, or affect any grant or demise then previously made and actually existing of the said lands and tenements so to be annexed as last aforesaid.

“V. And whereas it is expedient to enlarge and amend the laws now in being for providing parsonage houses with suitable outbuildings and other accommodations for the residence of the clergy, by way of benefaction, be it further enacted, that where there shall be no existing parsonage or glebe house on any ecclesiastical benefice, perpetual curacy, or parochial chapelry, or where the existing parsonage or glebe house, or the outbuildings thereof, on any such benefice, perpetual curacy, or parochial chapelry, shall be inconvenient or too small or incommodiously situate, it shall be lawful from and after the passing of this act for any person or persons, being owners in fee-simple, or for any corporation sole or aggregate, with or without confirmation, as the case may require, and by and with such consent, and to be signified as hereinafter mentioned of the incumbent, patron, and bishop, to give, grant, and convey, by deed indented, and to be registered as hereinafter is mentioned to any parson, vicar, or other incumbent of such benefice, curacy, or chapelry, for the time being, who shall also have power to accept the same, any messuage, outbuildings, yard, garden, orchard, and croft, or any of them, with their appurtenances, or any right of way, or other easement, whether lying within the local limits of such benefice, perpetual curacy, or parochial chapelry or not, but so as that the same be conveniently situate for actual residence or occupation by the incumbent thereof: and which messuage, outbuildings, yard, garden, orchard, and croft, with their appurtenances or right of way, or other easement, shall for ever from and after such grant and conveyance thereof be and become annexed to and be deemed and taken to be the parsonage or glebe house, outbuildings, yard, garden, orchard, croft, appurtenances, and right of way, or other easement of the said benefice, curacy, or chapelry, to all intents and purposes whatsoever, and be holden and enjoyed by the said incumbent and his successors accordingly, without any licence or writ of *ad quod damnum*, the statute of mortmain, or any other statute or law to the contrary notwithstanding; and from and after such grant and annexation it shall be lawful for the incumbent for the time being of the said benefice, curacy, or chapelry, to which such grant and annexation shall have been made, (with the consent in writing of such patron and bishop under their hands and seals to be duly registered as hereinafter is mentioned,) to take down and remove any parsonage or glebe house, and outbuildings, or any part thereof, which before such annexation belonged to the said benefice, curacy, or chapelry, (if the same or part thereof cannot be better applied to the permanent advantage of such benefice, curacy, or chapelry,) and with the like consent as aforesaid, to apply the materials, or the produce thereof, if sold, towards some lasting improvement of the said benefice, curacy, or chapelry: provided always, that nothing herein contained shall extend to enable any persons being infants or lunatics, or femmes covert without their husbands, to make any such gift, grant, or conveyance; anything in this act contained to the contrary in anywise notwithstanding.

“VI. (1) And whereas an act was passed in the seventeenth year of the reign of his present majesty, intituled, ‘An Act to promote the Residence of the Paro-

STAT. 55 GEO.
3, c. 147.

Such annexations not to annul existing grants or demises.
Power to annex parsonage houses, &c. by benefaction.

Recital of statute 17 Geo.
3, c. 53.

STAT. 55 GEO.
3, c. 147.

21 Geo. 3,
c. 66.

Power to pur-
chase land,

to be annexed
to benefices as
glebe land
thereof.

Copyhold land
so purchased
to be holden
as freehold;

and by mort-
gage of the
tithes, &c. to
raise a sum
for such pur-
chase,

not exceeding
two years' net
income.

chial Clergy, by making Provision for the more speedy and effectual building, rebuilding, repairing, or purchasing Houses, and other necessary Buildings and Tenements, for the use of their Benefices;' and whereas one other act was passed in the twenty-first year of the reign of his present majesty, intituled, 'An Act to explain and amend an Act made in the seventeenth year of the Reign of His present Majesty, intituled, "An Act to promote the Residence of the Parochial Clergy, by making Provision for the more speedy and effectual building, rebuilding, repairing, or purchasing Houses, and other necessary Buildings and Tenements, for the use of their Benefices;"' and whereas there are many ecclesiastical benefices, perpetual curacies, and parochial chapelries to which no glebe land, or only a small portion of glebe land is belonging; and it is therefore expedient to enable the making provision by purchase, for the annexation of glebe land to such benefices, perpetual curacies, and parochial chapelries; be it therefore further enacted, that from and after the passing of this act it shall be lawful for the parson, vicar, or other incumbent for the time being, of any ecclesiastical benefice, perpetual curacy, or parochial chapelry, the existing glebe whereof shall not exceed five statute acres, with the consent of the patron and bishop, to be signified as hereinafter mentioned, to purchase any lands not exceeding in the whole twenty statute acres, with the necessary outbuildings thereon, whether being within the local limits of the said benefice, perpetual curacy, or parochial chapelry, or not, but so as that the same be situate conveniently for building a parsonage or a glebe house, and outbuildings, and for gardens and glebe thereof, or for any of the said purposes, and for actual residence and occupation by the incumbent thereof, such land being of freehold tenure, or being copyhold of inheritance, or for life or lives, holden of any manor or lordship belonging to the same benefice, perpetual curacy, or parochial chapelry; and which lands so purchased shall for ever, from and after the grant and conveyance thereof, be and become annexed to and glebe of such benefice, perpetual curacy, or parochial chapelry, to all intents and purposes whatsoever, and be holden and enjoyed by such incumbent, and his successors accordingly, without any licence or writ of *ad quod damnum*; and the whole or any part or parts of the said lands, which before such annexation were or was of copyhold tenure, shall for ever, from and after such annexation, become and be of freehold tenure; the statute of mortmain, or any other statute or law to the contrary notwithstanding.

"VII. (1) And, for better effectuating such purchases as aforesaid, be it further enacted, that it shall be lawful for such parson, vicar, or other incumbent for the time being, with the consent of the patron and bishop, (to be signified as hereinafter is mentioned,) to borrow and take up at interest, (over and besides the monies authorized to be borrowed under the authority and for the purposes of the said recited act of the seventeenth year of the reign of his present majesty,) such sum or sums of money as shall be certified by a valuation upon oath of some skilful and experienced surveyor to be the true and just value of the said lands at the time of the purchase thereof, not exceeding two years' clear income and produce of such benefice, perpetual curacy, or parochial chapelry, after deducting all taxes and other outgoings whatever, except the salary to the assistant curate (if any); and as a security for re-payment of the money so to be borrowed, to mortgage the tithes, rents, and other profits and emoluments of or belonging to such benefice, perpetual curacy, or parochial chapelry, to any person or persons who shall advance such money by one or more deed or deeds, (to be registered as hereinafter mentioned,) for the term of twenty-five years, or until the principal money so to be borrowed, with interest for the same, and all costs and charges attending the recovery thereof, shall be fully paid off and satisfied; which mortgage deed or deeds shall bind, as well such parson, vicar, or other incumbent of such benefice, perpetual curacy, or parochial chapelry, executing such mortgage or mortgages, as also his successors, and a counterpart thereof shall be executed by the mortgagee or mortgagees, and be kept by the incumbent; and the parson, vicar, or incumbent for the time being of such benefice, perpetual curacy, or parochial chapelry, shall and he is hereby

required to pay or cause to be paid to the mortgagee or mortgagees yearly and every year, as the same shall become due, or within one month afterwards, as well the interest of the principal money secured by such mortgage or mortgages, as also the further sum of five pounds per centum per annum of the principal money originally advanced on such mortgage or mortgages; and that every incumbent who shall not reside twenty weeks in every year upon such benefice, perpetual curacy, or parochial chapelry, computing each year from the date of the first or only mortgage deed, shall and he is hereby required, instead of the said sum of five pounds per centum per annum, to pay within the period aforesaid the sum of ten pounds per centum per annum of the principal money originally advanced on such mortgage or mortgages, until the whole of such principal money, with the interest, costs, and charges, shall be fully paid off and discharged; and that every such incumbent who shall pay only five pounds per centum per annum of such principal money shall, at the time of payment thereof, produce and deliver to the mortgagee a certificate under the hands of two rectors, vicars, or other officiating ministers of some parishes near adjoining, signifying that he had resided twenty weeks upon the said benefice, perpetual curacy, or parochial chapelry, within the year for which such payment became due; and in default of payment of the principal, interest, costs, and charges in manner aforesaid, the bishop shall have power to sequester the profits of such benefice, perpetual curacy, or parochial chapelry, until such payment shall be made; and if at any time or times the said principal and interest, or any part thereof, shall be in arrear and unpaid for the space of forty days next after the yearly day of payment whereon the same shall have become due, it shall be lawful for the mortgagee or mortgagees, and his, her, or their executors, administrators, or assigns, to recover the same, or such part thereof as shall be so unpaid, and the costs and charges attending such recovery, by distress and sale, in such manner as landlords are or shall be by law authorized to recover rents in arrear; and in order that the payment of the same principal and interest may, in cases of avoidance by death or otherwise, be justly and equitably ascertained and adjusted between the parson, vicar, or incumbent avoiding such benefice, perpetual curacy, or parochial chapelry, or his representatives, and his successor, in such proportions as the profits of such benefice, perpetual curacy, or parochial chapelry, shall have been received by them respectively for the year in which such death or avoidance shall happen, such payment shall, in case any difference shall arise in settling the proportions thereof, be ascertained and determined by two indifferent persons, the one to be named by the person making such avoidance, or his representatives in case of his death, and the other by the said successor; and in case such nominee shall not be appointed within the space of two calendar months next after such death or avoidance, or in case they shall not agree in settling such proportions within the space of one calendar month after they shall have been appointed, the same shall be determined by some neighbouring clergyman to be nominated by the bishop, whose determination shall be final and conclusive between the parties.

“VIII. And be it further enacted, that for promoting the purposes of this act, it shall and may be lawful for the governors of the bounty of Queen Anne for the augmentation of the maintenance of the poor clergy, from and out of the monies which have arisen or shall from time to time arise from that bounty, to advance and lend, in respect of each benefice, perpetual curacy, or parochial chapelry, the clear annual improved value whereof shall not exceed the sum of fifty pounds, any sum not exceeding the sum of one hundred pounds, without interest, but for repayment of the principal whereof such mortgage as is hereinbefore mentioned shall be executed; and also to advance or lend, for or in respect of each benefice, perpetual curacy, or parochial chapelry, the clear annual improved value whereof shall exceed the sum of fifty pounds, any sum not exceeding two years' yearly income of such benefice upon such mortgage as aforesaid, and to receive interest for the same at any rate not exceeding four pounds per centum per annum.

“IX. And be it further enacted, that it shall and may be lawful for any college or hall within the universities of Oxford or Cambridge, or for any other corporate bodies, being owners of the patronage of ecclesiastical livings or benefices, to

STAT. 55 GEO.
3, c. 147.

Governors of
Queen Anne's
bounty em-
powered to
lend money.

Colleges may
lend any sum
with or without
interest.

STAT. 55 GEO.
3, c. 147.

advance and lend any sum or sums of money of which they have the power to dispose, for the convenience of the parson, vicar, or other incumbent for the time being of any benefice, perpetual curacy, or parochial chapelry within the patronage of such college or hall, upon mortgage as hereinbefore directed, either upon interest or without any interest.

Consent of
patron and
bishop to all
deeds of ex-
change, mort-
gage, or pur-
chase.

“X. Provided always, and be it further enacted, that when any parson, vicar, or other incumbent as aforesaid, shall be desirous of effecting any exchange, purchase, or mortgage, under the provisions of this act, the consent of the patron and bishop to every deed of exchange, conveyance, or mortgage shall, before the same shall be signed and sealed by the parson, vicar, or other incumbent, be signified by the said patron and bishop respectively, being made parties to, and signing and sealing the said deed in the presence of two or more credible persons, who shall by indorsement thereon attest such signing and sealing, and in which attestation it shall be expressed that the same deed was so signed and sealed by such patron and bishop before the execution thereof by such parson, vicar, or other incumbent.

Powers to be
executed by the
archbishops
and bishops
having pecu-
liars.

“XI. And whereas there are within divers dioceses certain exempt jurisdictions called peculiars belonging to the archbishops and bishops of other dioceses, and it is expedient that all the powers and authorities given by this act to the bishop of the diocese should as to such peculiars be given to the archbishop or bishop to whom the same respectively belong; be it therefore further enacted, that all and every the powers and authorities given by this act to the bishop of any diocese shall, with respect to the several peculiars locally situated within such diocese, be vested in and exercised by the archbishop or bishop to whom such peculiars shall respectively belong, and not by the bishop within whose diocese such peculiars shall be locally situated, but that within all and every peculiar and peculiars belonging to any other person or corporation than archbishops or bishops, such powers and authorities shall be vested in and exercised by the bishop of the diocese within which such peculiars shall be locally situated.

Power to
owners to
convey on
exchange or
sale.

“XII. And be it further enacted, that from and after the passing of this act it shall and may be lawful to and for any owner or owners of any messuages, buildings, lands, or hereditaments, whether such owner or owners shall be a corporation sole or aggregate, or tenant or tenants in fee simple, or in fee tail general or special, or for life or lives, and for the guardians, trustees, or feoffees for charitable or other uses, husbands or committees of or acting for any such owner or owners as aforesaid, who at the time of making any exchange or purchase authorized by this act shall be respectively infants, feme coverts, or lunatics, or under any other legal disability, or otherwise disabled to act for themselves, himself, or herself, by deed or deeds indented, and to be registered as hereinafter is mentioned; and with such consent, and to be signified as hereinbefore is mentioned, of such incumbent, and of the patron and bishop, to grant and convey to any parson, vicar, or other incumbent for the time being of any ecclesiastical benefice, perpetual curacy, or parochial chapelry, any messuage, outbuildings, yards, gardens, and lands, with their appurtenances, or any messuage or outbuildings only, or any lands, (with or without necessary outbuildings,) only of such owner or owners, in lieu of and in exchange for any parsonage house, outbuildings, yards, gardens, and glebe lands, and pastures, feedings, and rights of common, or any of them, or any part thereof, of or belonging to any such benefice, perpetual curacy, or parochial chapelry, or in (cases of purchase) to sell and convey to such parson, vicar, or other incumbent any lands not exceeding in the whole twenty statute acres, with the necessary outbuildings thereon, for such sum or sums of money as shall be certified to be the true and just value of the same at the time of such sale thereof, by a valuation to be made as hereinafter is directed; and which said parsonage house, outbuildings, and glebe lands so to be granted and conveyed in exchange by any parson, vicar, or other incumbent, (with such consent and in such manner as aforesaid,) shall for ever, from and after such grant or conveyance thereof, be and become vested in and settled upon the same person or persons, and to, for, and under the same uses, estates, trusts, and limitations, and subject to the same powers, conditions, charges, and incumbrances as the said messuage, outbuildings, lands, and premises so to be

Premises ex-
changed to be
settled to the
same uses.

granted and conveyed in exchange were vested in, settled upon, and subject to before such exchange thereof, or would have been vested in, settled upon, and subject to, in case such exchange had not been made; and which said sum or sums of money to be received for the purchase of any lands or hereditaments shall in all cases where the lands or hereditaments so to be purchased belong to any corporation sole or aggregate, infant, feme covert, lunatic, or person or persons under any other disability or incapacity, with all convenient speed be paid into the Bank of England, and in the name and with the privity of the accountant-general of the high court of Chancery, to be placed to his account *ex parte* the person or persons or corporation, who would have been entitled to the rents, issues, and profits of such lands or hereditaments, to the intent that such money shall be applied or laid out under the direction, and with the approbation of the said court, (to be signified by an order made upon a petition to be preferred by or on behalf of the person or persons who would have been entitled to the rents, issues, and profits of such lands or hereditaments,) in the purchase of the land tax, or towards the payment of any debts or incumbrances affecting the same lands or hereditaments, or other lands or hereditaments standing settled to the same or the like uses, or in the purchase of other lands or hereditaments to be conveyed, settled, and made subject to and for and upon such and the like uses, trusts, limitations, and dispositions, and in the same manner as the lands or hereditaments so purchased as aforesaid stood settled or limited, or such of them as at the time of making such purchase and conveyance shall be existing undetermined and capable of taking effect; and in the mean time, and until such purchase shall be made, the said money shall, by order of the said court of Chancery upon application thereto, be invested by the said accountant-general, in his name, in some one of the public funds of this kingdom, and the dividends and annual produce thereof shall from time to time be paid by order of the said court to the person or persons who would have been entitled to the rents, issues, and profits of the said lands or hereditaments, in case no purchase and conveyance thereof had been made under the *provisions of this act* (1).

“XIII. Provided always, and be it further enacted, that nothing herein contained shall extend or be construed to extend to enable any corporation aggregate or sole, or tenant in fee tail, general or special, or for life or lives, or the guardians, trustees, or feoffees, for charitable or other uses, husbands, or committees, or of acting for any such owner or owners as aforesaid, who at the time of making any sale authorized by this act, shall be respectively infants, femes covert, or lunatics, or under any other legal disability, or otherwise disabled to act for themselves, himself, or herself, to sell or convey, (except by way of exchange, as in manner by this act directed,) any lands or grounds whatsoever, for any of the purposes of this act, exceeding the quantity of five statute acres.

“XIV. Provided also, that in all cases where any *exchange or purchase* (2) shall be made under the authority of this act, six calendar months previous notice, describing the particulars, extent, and situation of the premises respectively to be given and taken in exchange or purchased, shall be given of the intention to make such exchange or purchase, by the insertion of the same notice for three successive weeks in some one and the same newspaper of and in general circulation in each county wherein the premises so to be given and taken in exchange or purchased, or any part thereof, are situate; and also by affixing such notice in writing on a conspicuous part of the door of the church or chapel of each parish or chapelry wherein such premises, or any part thereof, are situate, on three Sundays successively whereon divine service shall be performed, and shortly before the commencement of such service on each Sunday in such church or chapel.

“XV. And be it further enacted, that whenever any exchange or purchase is intended to be made under the authority of this act, a map or maps under an actual survey, on oath, (which oath any justice of the peace is hereby authorized to administer,) by some competent surveyor to be approved of by the patron,

STAT. 55 GEO. 3, c. 147.

Application of purchase monies of premises sold.

Persons under legal incapacity not to convey (except in exchange) more than five acres.

Where exchange or purchase shall be made notice to be previously given.

A map and valuation on actual survey to be made of the premises to

(1) *Provisions of this act*:—Amended by Stat. 7 Geo. 4, c. 66. and extended by Stat. 56 Geo. 3, c. 52; Stat. 1 Geo. 4, c. 6; Stat. 6 Geo. 4, c. 8;

(2) *Exchange or purchase*:—Amended and Stat. 7 Geo. 4, c. 66.

STAT. 55 GEO.
3, c. 147.

be given and
taken in ex-
change or pur-
chased.

bishop, and incumbent, shall in cases of exchange be made and taken of the whole of the said glebe lands, or of such part or parts thereof as will sufficiently enable the bishop to judge of the convenience and expediency of the proposed exchange, and also of the glebe or parsonage house, buildings, and premises, any part of which it is proposed to exchange, as well as of the other lands, house, buildings, and premises, proposed to be taken in exchange; and shall in cases of purchase be made and taken of the whole of the lands or hereditaments so to be purchased; and in cases of exchange the same surveyor shall in like manner make a valuation on oath, (to be administered as aforesaid,) of the said glebe lands and glebe or parsonage house, buildings, and premises, and also of the lands, house, buildings, and premises intended to be taken in exchange, and in cases of purchase the same surveyor shall in like manner make a valuation on oath of the lands or hereditaments so intended to be purchased; and every such valuation shall include and distinctly specify the value of all timber and other trees growing thereon, and of the rights of common, and of all mines, minerals, and quarries, (if any,) and of all other rights, profits, and advantages whatsoever, (if any,) to the said premises, or either of them, or any part or parcel of the same, respectively belonging.

Bishop to issue
a commission
of inquiry.

“XVI. (1) Provided also, and be it further enacted, that in all cases, as well of exchange as of purchase under this act, the bishop, on receiving such map or maps and valuation, shall, if he shall in the first instance so far approve of the said exchange or purchase, issue a commission of inquiry under his hand and seal, directed to such persons as he shall think proper, not being fewer than six in number, and of whom three at the least shall be beneficed clergymen actually resident in the neighbourhood of the benefice, perpetual curacy, or parochial chapelry, whereto it shall be proposed to annex any buildings or lands by exchange or purchase under the authority of this act, and of whom one shall be a barrister at law of three years' standing at the least, to be named by the senior judge in the last preceding commission of *nisi prius* for the county in which the said benefice, perpetual curacy, or parochial chapelry, shall be situate, and the return to which commission of inquiry shall be made and signed by a majority of the persons therein named, after an actual inspection by them of all the premises, with such map and valuation before them, and not otherwise, and three at least of the persons making and signing the same shall be either three such beneficed clergymen actually resident as aforesaid, or two at least of such beneficed clergymen resident as aforesaid, together with such barrister as aforesaid; and in no case whatever shall any exchange or purchase be effected under the authority of this act, unless such commission shall have been previously issued and returned, and unless the return to such commission, so made and signed as aforesaid, shall certify that, after an actual inspection and examination of the premises, such exchange or purchase, in the judgment of the persons making the said return, is fit and proper to be made, and will promote the permanent advantage or convenience of the incumbent of such benefice, perpetual curacy, or parochial chapelry, and his successors in the same.

Consent for
patrons in case
of minority,
lunacy, or
marriage.

“XVII. (2) And be it further enacted, that whenever the patron of any benefice, perpetual curacy, or parochial chapelry, to which the provisions of this act extend, shall happen to be a minor, idiot, lunatic, or feme covert, it shall and may be lawful for the guardian, committee, or husband, of every such patron, to transact the several matters, and execute the requisite deeds as aforesaid, for such patron, who shall be bound thereby in such manner as if he or she had been of full age or sound mind, or feme sole, and had done such acts and executed such deeds.

Consent where
livings belong
to the crown,
or to the duchy
of Lancaster.

“XVIII. (2) Provided also, and be it further enacted, that in all cases where the patronage of any benefice, perpetual curacy, or parochial chapelry, to which the provisions of this act extend, shall be in the crown, and such living or benefice shall be above the yearly value of twenty pounds in the king's books, the consent of the crown to the several proceedings hereby authorized respecting such

(1) Amended and extended by Stat. 56 4, c. 66.

Geo. 3, c. 52, s. 2; Stat. 1 Geo. 4, c. 6; (2) *Vide* Stat. 1 & 2 Vict. c. 23.
Stat. 6 Geo. 4, c. 8, s. 1; and Stat. 7 Geo.

benefice, perpetual curacy, or parochial chapelry, shall be signified by the execution of the deeds or instruments hereinbefore directed, by the lord high treasurer or first lord commissioner of the treasury for the time being; but if such benefice, perpetual curacy, or parochial chapelry, shall not exceed the yearly value of twenty pounds in the king's books, such consent shall be signified by such execution by the lord high chancellor, lord keeper, or lords commissioners of the great seal for the time being; and if such benefice, perpetual curacy, or parochial chapelry, shall be within the patronage of the crown, in right of the duchy of Lancaster, then such consent shall be signified by the execution of such deeds or instruments by the chancellor of the said duchy for the time being.

"XIX.(1) And be it further enacted, that one part of all deeds and instruments to be made and executed in pursuance of or for carrying into execution this act, together with the maps and valuations, and the commissions of inquiry and the returns to the same, hereinbefore directed, shall, within twelve calendar months next after the date or dates thereof, be deposited in the office of the registrar of the diocese wherein such benefice, perpetual curacy, or parochial chapelry, shall be locally situate, to be perpetually kept and preserved therein, except as to those benefices which are under the peculiar jurisdiction of any archbishop or bishop, in which case, the several documents before mentioned shall be deposited in the office of the registrar of that peculiar jurisdiction, to which any such benefice, perpetual curacy, or parochial chapelry shall be subject, and such registrars shall respectively so deposit and preserve the same, and shall give and sign a certificate of such deposit thereof to be written on a duplicate, or on any other part or parts of the said deeds, or any or either or them, or on some other separate parchment, paper, or instrument; and every such deed or instrument shall be produced at all proper and usual hours at such registry, to every person applying to inspect the same, and an office copy of each such deed or instrument, certified under the hand of the registrar, (and which office copy so certified the registrar shall in all cases grant to every person who shall apply for the same,) shall in all cases be admitted and allowed as legal evidence thereof in all courts whatsoever; and every such registrar shall be entitled to the sum of ten shillings and no more (over and besides the stamp duty, if any) for such commission and the previous requisites thereof; and the sum of five shillings and no more, for so depositing as aforesaid the deeds, settlements, map, survey, valuation, commission, and instruments, and so aforesaid, certifying such deposit thereof; and the sum of one shilling and no more for each such search; and the sum of sixpence and no more (over and besides the said stamp duty) for each folio of seventy-two words of each such office copy so certified as aforesaid.

"XX.(1) And be it further enacted, that such of the forms contained in the schedules of the said recited acts of the seventeenth and twenty-first years of the reign of his present majesty, as are applicable to the provisions of this act, and with such variations thereof as shall render them so applicable, shall be used and applied to the purposes of this act as fully and effectually as if the same were hereby enacted and made part of this act.

"XXI. Provided always, and it is hereby declared, that nothing in this act contained shall extend or be construed to repeal or abridge any law now in force, enabling any person or corporation sole or aggregate, to augment or improve any ecclesiastical benefice, perpetual curacy, or parochial chapelry."

DXXI. STAT. 55 GEORGII 3, c. 184 (2). A.D. 1815.

"An Act for repealing the Stamp Duties on . . . Legacies and Successions to Personal Estate upon Intestacies, now payable in Great Britain; and for granting other Duties in lieu thereof."

"Most Gracious Sovereign,

"Whereas it is expedient to grant certain additional stamp duties towards raising the necessary supplies to defray your majesty's public expenses, and making such

STAT. 55 GEO.
3, c. 147.

Deeds and
instruments to
be deposited in
the archbi-
shop's or bi-
shop's registry.

Forms in sche-
dule, 17 Geo.
3, c. 53, and
21 Geo. 3, c. 6f,
to be used (so
far as appli-
cable) for the
purposes of
this act.

This act not to
repeal any
former law.

STAT. 55 GEO.
3, c. 184.

(1) Repealed by Stat. 1 Geo. 4, c. 6, s. 2. on Nisi Prius, tit. EXECUTORS AND AD-
(2) For Sched. part 3, which applies to MINISTRATORS, 1844.

the duties of probates on wills, *vide* Stephens

STAT. 55 GEO.
3, c. 184.

Repeal of
duties granted
by 48 Geo. 3,
c. 149;

and of duties
on pawnbro-
kers' licences;

and of duties
on policies of
insurance
against fire in
West Indies,
&c.;
and of the per-
centage duty on
insurances
against fire
granted by
44 Geo. 3,
c. 98;
except all
arrears.

Powers and
provisions of
former acts to
extend to this
act.

permanent addition to the public revenue as shall be equal to the increased annual charge occasioned by the funding of exchequer bills, and by any loan made pursuant to any act or acts passed or to be passed for that purpose in this session of parliament; and it is also expedient to consolidate the additional with the existing duties: we, your majesty's most dutiful and loyal subjects, the commons of Great Britain and Ireland in parliament assembled, have resolved to grant unto your majesty the several duties hereinafter mentioned; and do most humbly beseech your majesty that it may be enacted; and be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that all the duties granted by the act passed in the forty-eighth year of his majesty's reign, intituled, 'An Act for repealing the Stamp Duties on Deeds, Law Proceedings, and other written or printed Instruments, and the Duties on Legacies and Successions to Personal Estate upon Intestacies, now payable in Great Britain, and for granting new Duties in lieu thereof;' and also the duties on licences for using and exercising the trade or business of a pawnbroker, granted by the act passed in the forty-fourth year of his majesty's reign, intituled, 'An Act to repeal the several Duties under the Commissioners for managing the Duties upon stamped Vellum, Parchment, and Paper in Great Britain, and to grant new and additional Duties in lieu thereof;' and also the duties granted by an act passed in the fiftieth year of his majesty's reign on policies of insurance of property in the West Indies, or elsewhere beyond the seas, from loss by fire, shall cease and determine from and after the thirty-first day of August, one thousand eight hundred and fifteen; and that the yearly per centage duty on insurances from loss by fire, granted by the said act passed in the forty-fourth year of his majesty's reign, shall cease and determine from and after the twenty-eighth day of September, one thousand eight hundred and fifteen; save and except such of the said respective duties, or so much and such part or parts thereof respectively, as shall become due or payable before or upon those days, and remain in arrear or unpaid afterwards; and also save and except so much and such part or parts as shall remain to be paid of any duties in respect of legacies given by way of annuity, or so that the value thereof cannot be ascertained at once where part of such duties shall have been paid, or have become payable before or upon the said thirty-first day of August; all which duties or parts of duties so in arrear or remaining to be paid as aforesaid shall be recoverable by the same ways and means, and with such and the same penalties, and in such and the same manner, in all respects, as if this act had not been made.

"VIII. And be it further enacted, that all the powers, provisions, clauses, regulations, and directions, fines, *forfeitures, pains, and penalties* (1), contained in and imposed by the several acts of parliament relating to the duties hereby repealed, and the several acts of parliament relating to any prior duties of the same kind or description, shall be of full force and effect with respect to the duties hereby granted, and to the vellum, parchment, and paper, instruments, matters, and things charged or chargeable therewith, as far as the same are or shall be applicable in all cases not hereby expressly provided for, and shall be observed, applied, enforced, and put in execution for the raising, levying, collecting, and securing of the said duties hereby granted and otherwise relating thereto, so far as the same shall not be superseded by, and shall be consistent with, the express provisions of this act, as fully and effectually to all intents and purposes as if the same had been herein repeated and specially enacted with reference to the said duties hereby granted.

(1) *Forfeitures, pains, and penalties*:—In *Hunt v. Stevens*, (3 Taunt. 113,) it was holden, that if an administrator sue for a greater value than is covered by the *ad valorem* stamp of his letters of administration, he shows his administration to be void, and cannot recover; notwithstanding he may be suing for a doubtful claim: and that it will not suffice to sue out new letters of adminis-

tration on a larger stamp, after he has obtained judgment:—

The court declaring that "the act of 48 Geo. 3, c. 149, s. 8, for the purpose of enforcing the payment of the stamp duties, re-enacts all the provisions of former acts; and one of those regulations, as to the consequences of not obtaining the requisite stamps, is, that no instrument, not properly

“XXXVII. And for better securing the duties on probates of wills and letters of administration, be it further enacted, that from and after the thirty-first day of

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3, c. 184.

stamped, shall be given in evidence. The old statute of 9 & 10 Gul. 3, c. 25, ss. 19 & 59, first contains the clause containing this prohibition, and it has been continued through all succeeding acts. The objection raised to the secondary evidence cannot avail the plaintiff, for unless that evidence is admitted, there is no proof in the cause of any administration granted to him; and on this the foundation of his title rests. The act makes no allowance for loss by debts; administration must be taken out for the full amount. According to the plaintiff's argument, if the plaintiff had taken out administration to the amount of 10*l.* only, he could equally recover in this action, as now that he has taken it for 1000*l.* and the consequence to the revenue would be most pernicious; for if he were to recover property to the amount of 20,000*l.* the administration would still stand good. The especial provision made for the payment of an increased duty by residuary legatees, shows that, without such a provision, the practice contended for cannot prevail.”

In *Carr v. Roberts*, (2 B. & Ad. 905,) it appeared, that an intestate had granted an annuity to A. and afterwards by deed conveyed his property to B., who covenanted to indemnify him against the payment of the annuity. Default having been subsequently made in the payment during the intestate's lifetime, the annuitant sued his administratrix, and recovered judgment for debt and costs exceeding 20*l.* The administratrix paid this, and then sued B. on his covenant for the amount: it was held, that the right to recover this sum was a part of the intestate's estate, and rendered the letters of administration liable to stamp duty; and that the intestate, if he had lived, could not have been considered, in respect of this sum, as a mere trustee for the annuitant, and having no beneficial interest:—Lord *Tenterden* observing, “I am of opinion that, according to the authority of *Hunt v. Stevens*, (3 Taunt. 113,) there was no sufficient stamp upon the letters of administration. And it appears to me that the present is not a case within the exemption contained in Stat. 55 Geo. 3, c. 184, sched. part 3. The words are, ‘Where the estate in respect of which letters of administration shall be granted, or whereof such inventory shall be exhibited and recorded, exclusive of what the deceased shall have been possessed of or entitled, as trustee for any other person, and not beneficially, shall be above the value of 20*l.*’ This provision was made for the exemption of mere trustees, as where property is mortgaged in trust; in which case, if the mortgagee's representative were bound to pay the whole amount of the duty, great injustice would be done. I cannot think that Walker, the intestate, stood in the position of a mere trustee, for he had a beneficial interest in the covenant, since he was liable, in the first instance, to Smith, and had an interest in obtaining payment of her annuity from the defendant, to relieve himself. The rule,

as to increasing the damages, must be discharged, but it may be made absolute for a new trial, on payment of the costs of the former trial, in order to give the plaintiff an opportunity of taking out letters of administration with the proper stamp.”

But the grant is not void, in consequence of an original defect of stamp; thus, in *Rogers v. James*, (7 Taunt. 147,) it was held, that a commission of bankrupt might be supported on a debt due to the petitioning creditor in the character of executor, although he have not obtained a probate on a sufficient stamp at the time when the commission issued, if he afterwards obtain a valid probate, for that has relation back to the testator's death.

In *Thynne v. Protheroe*, (2 M. & S. 553,) which was an action of *assumpsit* by an administrator upon promises laid to the intestate, with a profert of the letters of administration and *non assumpsit* pleaded: it was adjudged, that the defendant could not upon the production of the letters of administration, object, that they were not properly stamped, because the plea admitted, that the plaintiff was administrator. And in *Watson v. King*, (4 Camp. 272; 1 Stark. N. P. C. 121,) it was decided, that the letters of administration need not be produced, where the plea admits the plaintiff's right to sue, in the character he has assumed.

Lord *Tenterden*, in *Moses v. Crafte*, (4 C. & P. 524,) held, that it was not essentially requisite, that desperate and doubtful debts should be included, in the amount for which the probate duty was paid; and that an executor has a right to exercise his judgment fairly and *bonâ fide*, whether a debt is doubtful or bad.

If there be personal estates in the provinces of York and Canterbury, and a probate be taken in the province of York, the duty is paid upon the property in that province only, and it is not paid upon the other property, until a probate be taken in the province of Canterbury. In *re Ewin*, 1 C. & J. 153, 154, 157.

It will be observed, that the schedule of Stat. 55 Geo. 3, c. 184, imposes an *ad valorem* duty where the estate is above 20*l.* in value, exclusive of what the deceased shall have been possessed of, or entitled to, as a trustee and not beneficially.

The law appears to be now settled, that, by the terms of the act of parliament, the amount of the probate duty is to be regulated, not by the value of all the assets which an executor or administrator may ultimately administer by virtue of the will or letters of administration, but by the value of such part as was, at the death of the deceased within the jurisdiction of the spiritual judge, by whom the probate or letters of administration are granted. Williams on Executors, 482.

Whatever may have been the origin of this jurisdiction, it is clear, that it is a limited one, and can be exercised in respect of those

STAT. 55 GEO. August, one thousand eight hundred and fifteen, if any person shall take possession of, and in any manner administer, any part of the personal estate and effects, of any

effects only, which the ordinary would have had himself to administer in case of intestacy, and which must therefore be so situated, as that he could have disposed of them *in pios usus*. Vide *Attorney-General v. Dimond*, 1 C. & J. 356. *In re Ewin*, Ibid. 151. *Attorney-General v. Hope*, 1 C. M. & R. 530. 2 C. & F. 84. *Pearse v. Pearse* 9 Sim. 430. *Attorney-General v. Bouwens*, 4 M. & W. 171. *In Palmer v. Whitmore*, (5 Sim. 178,) it was held, that where a party has a general power, under a settlement, over a trust fund of personalty, which he may exercise either by deed or will, and he elects, to exercise it by a testamentary instrument, probate duty must be paid in respect of the fund. Vide etiam *Attorney-General v. Staff*, 2 C. & M. 124. *Nail v. Punter*, 5 Sim. 563. *Vandiest v. Fynmore*, 6 Sim. 570. *Platt v. Routh*, 6 M. & W. 756. Williams on Executors, 486.

It is the duty of an executor to deduct the amount of legacy duty on payment of the legacy; and if he omit to do so, he will become personally responsible for it. *In re Sammon*, 3 M. & W. 381. *In re Williamson*, 1 C. M. & R. 142.

But in *Foster v. Ley*, (2 Scott, 438; 2 Bing. N. C. 269;) where executors had paid the amount of legacies in full to the legatees, and the duties were subsequently paid by the executors when the accounts were passed through the stamp office: it was held, that they could maintain an action to recover the amount of the duties, against the legatees in respect of whose legacies they were paid.

In re Wilkinson, (1 C. M. & R. 142,) it was held, that executors cannot be called upon to pay legacy duty upon the whole of a residue bequeathed to them in trust to divide the interest among poor pious persons, in ten or fifteen pounds, as they should see fit: that if any of the objects of such a bounty should have received to the amount of 20*l.* or upwards, by having been selected to receive such bounty on more than one occasion, legacy duty would attach on such amount, and the duty would be calculated according to the nearness of blood of such individual, and in that case the executors would be accountable for and bound to return the duty chargeable on such amount;—Mr. Baron Parke delivering the judgment of the court in the following language: "The question which arises in this case is, whether the executors are liable to pay the duty on this legacy, and to what amount? By the 36 Geo. 3, c. 52, s. 6, the duties imposed by that statute are to be accounted for, answered, and paid by the persons taking upon themselves the execution of the will, upon retainer for their own benefit, or the benefit of any other person or persons, of any legacy, or the residue of any personal estate, or any part of such residue; and also upon delivery, payment, or other satisfaction of any legacy, &c. and by the 55 Geo. 3, c. 184, sched. part 3, the duties therein mentioned are imposed upon every legacy or share of residue,

paid, delivered, retained, satisfied, or discharged. But it is obvious that the executors are to be accountable for no duties, except those which are specifically imposed by the act of parliament; and the question is, whether any and what duty is imposed upon such a legacy as this? In order to determine this question, it is necessary to take a short review of the different acts of parliament upon this subject.

"The first statute imposing duties on legacy receipts was the 20 Geo. 3, c. 28, which enacted that a duty should be paid upon every receipt for any legacy, or part of a personal estate, divided by force of the Statute of Distributions, or the custom of any province or place. The 23 Geo. 3, c. 58, and 29 Geo. 3, c. 51, increased the amount of these duties, adopting similar language. The 36 Geo. 3, c. 52, enacted, that these duties should cease, and repealed so much of the before-mentioned statutes as related to them, and proceeded to impose fresh duties, upon the same principle, and in nearly similar terms, except as to amount, as are contained in the 3rd schedule to the act 55 Geo. 3, c. 184, the statute now in force. The 7th section provides, 'That any gift, by any will or testamentary instrument of any person dying after the passing of this act, which shall by virtue of such will or testamentary instrument have effect or be satisfied out of the personal estate of such person so dying, or out of any personal estate which such person shall have power to dispose of as he or she shall think fit, shall be deemed and taken to be a legacy within the intent and meaning of this act, whether the same shall be given by way of annuity, or in any other form.' Then follows, after others, this important clause, section 11, 'If any benefit shall be given by any will or testamentary instrument in such terms that the amount or value of such benefit can only be ascertained from time to time by the actual application for that purpose of the fund allotted for such purpose, or made chargeable therewith, or if the amount or value of any benefit given by any will or testamentary instrument cannot, by reason of the form and manner of the gift, be so ascertained that the duty can be charged thereon under any other of the directions herein contained, then, and in every such case, such duty shall be charged upon the several sums of money or effects which shall be applied from time to time, for the purposes directed by such will or testamentary instrument, as separate and distinct legacies or bequests, and shall be paid out of the fund applicable for such purposes, or charged with answering the same.' The statute 39 Geo. 3, c. 73, exempts certain specific legacies, which shall be given or bequeathed to or in trust for any body corporate, whether aggregate or sole, or to the society of Serjeants' Inn, or any of the inns of court or chancery, or any endowed school, in order to be kept and preserved by such body corporate, so-

person deceased, without obtaining probate of the will or letters of administration of the estate and effects of the deceased within six calendar months after his or her

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3, c. 184.

ciety, or school, and not for the purpose of sale; it also excepts a certain legacy to the trustees of the British Museum. The statute now in force is the 55 Geo. 3, c. 184; and schedule 3, part 2, provides that, for legacy, residue, or share of residue, of the amount or value of 20*l.* and upwards, where any such legacy, residue, or share of residue, shall have been given to or for the benefit of a child, a duty shall be paid of 1*l.* per cent.; an increased duty for more distant relatives; 'and where any legacy, &c. shall have been given to or for the benefit of any person in any other degree of collateral consanguinity than above described, or to or for the benefit of any stranger in blood,' then a duty after the rate of 10*l.* per cent. And the schedule provides, that all gifts of annuities, or by way of annuity, or of any other partial benefit or interest, shall be deemed legacies within the intent of this act; and there is an exception of legacies which were exempted from duty by the 39 Geo. 3, c. 73. Considering the provisions of these statutes together, it seems clear, in the first place, that the legislature intended to subject all legacies above 20*l.* in value, to a duty, whether given to individuals, or to bodies corporate, or societies; for the statutes prior to the 36 Geo. 3, in terms comprise all legacies; and though that statute, after enumerating those to persons in different degrees of consanguinity, mentions only legacies which shall be given, or shall pass to or for the benefit of any person in any other degree of collateral consanguinity, or any stranger in blood, and not all other legacies, yet taken in conjunction with the 39 Geo. 3, it clearly means to comprise not merely legacies to individuals, but to bodies corporate and societies. In the second place, it appears to be equally clear, that the persons, bodies corporate, or societies, who take the beneficial interest in the legacy, that is, those who actually receive the benefit, are ultimately to pay the duty. And in the third place, that any benefit given by will, which shall by virtue of the will be satisfied out of the personal estate, is a legacy within the meaning of this act. Now, in this case, who are the persons who take the beneficial interest in this legacy of the residue? They must be, either, first, the executors themselves; or, secondly, the individuals selected by them; or, thirdly, the whole body of poor and pious persons out of whom the selection is to be made. The gift must enure to the benefit of one of the three descriptions of persons, for no others can be suggested; and there can be no case of a legacy under a will, which is not beneficial to some persons. First, the executors have no beneficial interest in the legacy; their duty is simply to divide the annual interest among such poor and pious persons as they think fit, in sums of 10*l.* and 15*l.* each. They can make no other appropriation or disposition of the money. It appears to us, therefore, that they cannot be

charged as beneficial legatees. It remains, therefore, to consider, whether the individuals actually benefited, or the whole body of persons that may be benefited, are the beneficial legatees. It appears to us, that all poor and pious persons whatsoever cannot be considered as a society, or body of persons, or class, taking the benefit of this legacy. The whole body has no power or control over the fund, nor has any trustee or agent for them such power or control, nor has any individual falling under the description of poor and pious any right whatever to any portion of it. All he has, is the chance of being nominated as a fit person to receive part of the money. We cannot think that these persons are a body, taking as such the beneficial interest in the legacy; and we must therefore hold, that the individuals selected are the persons who take a benefit under the will, and are consequently liable to the duty, in those cases in which duty attaches; and the clause of the 36 Geo. 3, c. 52, s. 11, above referred to, seems to us to be exactly applicable to this case. The result is, that such individuals will be liable to the duty, where the sum received by each exceeds 20*l.*; and then, and not until then, the executors will be accountable, and bound to retain the duty according to the rate applicable to such person who receives the testator's bounty. By our present decision, we do not mean to question the legality of the practice of imposing the highest rate of duty on bequests to corporations or societies established for charitable purposes, or to individuals in trust for such societies. Legacies of this description are contained in this will, and they are cases in which the entire control and power over the legacy is vested in the corporations or societies therein named, or in those who have the governing authority over them. In such cases the corporation or society may not improperly be considered as taking the entire beneficial interest. The *case of ex parte Franklin*, (3 Y. & J. 544), the authority of which has been pressed upon us, is more difficult to distinguish from the present, and I am not sure that it can be satisfactorily distinguished. That was a legacy to the executors in trust for the poor of a particular parish; and it may possibly be contended, that the poor of one parish is in the nature of a corporation or society of persons, and that they took the legacy in that character. It is, however, in our opinion, doubtful whether such a bequest can be properly compared to a legacy to a charitable institution; and the difficulty which occurred to the vice-chancellor in the way of considering this as a legacy to individuals, namely, that it was impossible to ascertain at the time of the gift what precise benefit any individual would have in that legacy, is certainly removed by reference to the clause in 36 Geo. 3, which clearly shows that bequests, on which it was impossible to ascertain what benefit was taken until the

STAT. 55 GEO.
3, c. 184.

Penalty for
not proving
wills, or
taking letters
of administra-
tion, within a
given time,
100*l.* and 10
per cent. on
the duty.

Ecclesiastical
courts not to
grant probates
or letters of ad-
ministration,
without affida-
vit of the value
of effects.

Affidavits to be
free of stamp
duty, and to be
transmitted to
commissioners
of stamps.

decease, or within two calendar months after the termination of any suit or dispute respecting the will or the right to letters of administration, if there shall be any such, which shall not be ended within four calendar months after the death of the deceased, every person so offending shall forfeit the sum of one hundred pounds, and also a further sum at and after the rate of ten pounds per centum on the amount of the stamp duty payable on the probate of the will or letters of administration of the estate and effects of the deceased.

“XXXVIII. And be it further enacted, that from and after the expiration of three calendar months from the passing of this act no ecclesiastical court or person shall grant probate of the will or letters of administration of the estate and effects of any person deceased, without first requiring and receiving from the person or persons applying for the probate or letters of administration, or from some other competent person or persons, an affidavit, or solemn affirmation in the case of quakers, that the estate and effects of the deceased for or in respect of which the probate or letters of administration is or are to be granted, exclusive of what the deceased shall have been possessed of or entitled to as a trustee for any other person or persons, and not beneficially, but including the leasehold estates for years of the deceased, whether absolute or determinable on lives, if any, and without deducting any thing on account of the debts due and owing from the deceased, are under the value of a certain sum to be therein specified, to the best of the deponent's or affirmant's knowledge, information, and belief, in order that the proper and full stamp duty may be paid on such probate or letters of administration; which affidavit or affirmation shall be made before the surrogate or other person who shall administer the usual oath for the due administration of the estate and effects of the deceased.

“XXXIX. And be it further enacted, that every such affidavit or affirmation shall be exempt from stamp duty, and shall be transmitted to the said commissioners of stamps, together with the copy of the will or extract or account of the letters of administration to which it shall relate, by the registrar or other officer of the court whose duty it shall be to transmit copies of wills and extracts or accounts of letters

money was applied, are yet legacies to individuals, and liable, as such, to duty under the act. The result is, in our opinion, formed not without some difficulty, and doubt that the rule must be discharged; and that the executors cannot be called upon to pay the duty on the whole of the residue.”

A public parochial fund must be one contributed to by the inhabitants of the parish; which is applicable to the general purposes of the relief of the poor. *Rex v. Halesworth (Inhabitants of)*, 3 B. & Ad. 717. *Rex v. St. Peter (Inhabitants of)*, *Herefordshire*, 1 *Ibid.* 916. *Rex v. Stoke Damerel (Inhabitants of)*, 7 B. & C. 563. *Shelford on Mortmain*, 782.

A voluntary annual subscription by divers inhabitants of a parish for putting out apprentice boys and girls brought up at a parish charity-school, there being four trustees and a treasurer annually elected to manage the charity, who bound out poor children, is a public charity, although not permanent. *Rex v. St. Matthew's, Bethnal Green*, Burr. S. C. 574.

A bequest by a testatrix to a parish, of 50*l.* to be given as her brother thought fit, some of it to put out children apprentices, has been held to be a public charity; and that a binding with the consent of trustees of funds bequeathed for that purpose, though not executed by the trustees, is exempt from duty. *Rex v. Quainton (Inhabitants of)*, 2 M. & S. 238.

But money given by will for binding out apprentices is not a public parochial fund,

under Stat. 56 Geo. 3, c. 139, s. 11. *Rex v. St. Paul's (Inhabitants of)*, *Exeter*, 10 B. & C. 12. *Rex v. Mattishall (Inhabitants of)*, 8 B. & C. 733.

The assignment of an apprentice, made without the privity or concurrence of the trustees of a charity, is not exempt from the legacy duty, because whatever exemption belonged to the transaction originally, it was taken away, when the master stood by himself, and a transfer took place with which the charity had nothing to do. *Rex v. Fakenham (Inhabitants of)*, 4 N. & M. 553.

It appeared in *Rex v. Aylesbury (Inhabitants of)*, (3 B. & Ad. 569,) that a pauper was bound apprentice by the trustees of a public charity; the master covenanted to find him meat, drink, apparel, washing, &c.; before the execution of the indenture, the father of the pauper, who was not a party to it, agreed with the master to find the pauper clothing and washing during the term, and he did so; but it did not appear, that the trustees were privy to this engagement:—upon such facts, it was held, that the indenture did not require to be stamped, because either the agreement by the father to provide clothes was not a thing secured to be given to or for the benefit of the master, within Stat. 55 Geo. 3, c. 184, Sched. part 1, tit. *Apprenticeship*; or, assuming that it was, then it was void, as being a fraud on the trustees, who had bound out the apprentice on the faith that the master would provide clothes.

of administration to the said commissioners for the better collection of the duties on legacies and successions to personal estate upon intestacy; and if any registrar or other officer whose duty it shall be shall neglect to transmit such affidavit or affirmation to the said commissioners of stamps as hereby directed, every person so offending shall forfeit the sum of fifty pounds.

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3, c. 184.
Penalty for
neglect, 50*l*.

“XL. And be it further enacted, that from and after the passing of this act, where any person on applying for a probate of a will or letters of administration shall have estimated the estate and effects of the deceased to be of greater value than the same shall have afterwards proved to be, and shall in consequence have paid too high a stamp duty thereon, if such person shall produce the probate or letters of administration to the said commissioners of stamps within six calendar months after the true value of the estate and effects shall have been ascertained, and it shall be discovered that too high a duty was first paid on the probate or letters of administration, and shall deliver to them a particular inventory and account, and valuation of the estate and effects of the deceased, verified by an affidavit, or solemn affirmation in the case of quakers; and if it should thereupon satisfactorily appear to the said commissioners that a greater stamp duty was paid on the probate or letters of administration than the law required, it shall be lawful for the said commissioners to cancel and expunge the stamp on the probate or letters of administration, and to substitute another stamp for denoting the duty which ought to have been paid thereon, and to make an allowance for the difference between them, as in the cases of spoiled stamps, or, if the difference be considerable, to repay the same in money, at the discretion of the said commissioners.

Provision for
the case of too
high a stamp
duty being paid
on probates,
&c.

“XLI. And be it further enacted, that from and after the passing of this act, where any person, on applying for the probate of a will or letters of administration, shall have estimated the estate and effects of the deceased to be of less value than the same shall have afterwards proved to be, and shall in consequence have paid too little stamp duty thereon, it shall be lawful for the said commissioners of stamps, on delivery to them of an affidavit or solemn affirmation of the value of the estate and effects of the deceased, to cause the probate or letters of administration to be duly stamped on payment of the full duty which ought to have been originally paid thereon in respect of such value, and of the further sum or penalty payable by law for stamping deeds after the execution thereof, without any deduction or allowance of the stamp duty originally paid on such probate or letters of administration: provided always, that if the application shall be made within six calendar months after the true value of the estate and effects shall be ascertained, and it shall be discovered that too little duty was at first paid on the probate or letters of administration, and if it shall appear by affidavit or solemn affirmation to the satisfaction of the said commissioners that such duty was paid in consequence of any mistake or misapprehension, or of its not being known at the time that some particular part of the estate and effects belonged to the deceased, and without any intention of fraud, or to delay the payment of the full and proper duty, then it shall be lawful for the said commissioners to remit the before-mentioned penalty, and to cause the probate or letters of administration to be duly stamped, on payment only of the sum which shall be wanting to make up the duty which ought to have been at first paid thereon.

Provision for
the case of
too little stamp
duty being
paid on pro-
bates, &c.

“XLII. Provided always, and be it further enacted, that in cases of letters of administration on which too little stamp duty shall have been paid at first, the said commissioners of stamps shall not cause the same to be duly stamped in the manner aforesaid, until the administrator shall have given such security to the ecclesiastical court or ordinary by whom the letters of administration shall have been granted as ought by law to have been given on the granting thereof, in case the full value of the estate and effects of the deceased had been then ascertained, and also that the said commissioners of stamps shall yearly or oftener transmit an account of the probates and letters of administration upon which the stamps shall have been rectified in pursuance of this act, to the several ecclesiastical courts by which the same shall have been granted, together with the value of

Administrator
to give the
proper secu-
rity before
administration
is duly
stamped.

STAT. 55 GEO. 3, c. 184. the estate and effects of the deceased upon which such rectification shall have proceeded.

Penalty on executors, &c. not paying the full duty on probates, &c. in a given time after discovery of too little paid at first, 100*l.* and 10 per cent. on the duty wanting.

“XLIII. And be it further enacted, that where too little duty shall have been paid on any probate or letters of administration, in consequence of any mistake or misapprehension, or of its not being known at the time that some particular part of the estate and effects belonged to the deceased, if any executor or administrator acting under such probate or letters of administration shall not, within six calendar months after the passing of this act, or after the discovery of the mistake or misapprehension, or of any estate or effects not known at the time to have belonged to the deceased, apply to the said commissioners of stamps, and pay what shall be wanting to make up the duty which ought to have been paid at first on such probate or letters of administration, he or she shall forfeit the sum of one hundred pounds, and also a further sum at and after the rate of ten pounds per centum on the amount of the sum wanting to make up the proper duty.

Ecclesiastical courts not to take surrenders of probates, &c. on the ground only of wrong duty paid thereon.

“XLIV. And be it further enacted, that from and after the expiration of three calendar months from the passing of this act, it shall not be lawful for any ecclesiastical court or person to call in and revoke or to accept the surrender of any probate or letters of administration, on the ground only of too high or too low a stamp duty having been paid thereon, as heretofore hath been practised: and if any ecclesiastical court or person shall so do, the commissioners of stamps shall not make any allowance whatever for the stamp duty on the probate or letters of administration which shall be so annulled.

Commissioners of stamps may give credit for the duty on probates and letters of administration in certain cases.

“XLV. And whereas it has happened in the case of letters of administration on which the proper stamp duty hath not been paid at first, that certain debts, chattel real or other effects due or belonging to the deceased have been found to be of such great value that the administrator hath not been possessed of money sufficient, either of his own or of the deceased, to pay the requisite stamp duty, in order to render such letters of administration available for the recovery thereof by law: and whereas the like may occur again, and it may also happen that executors or persons entitled to take out letters of administration may, before obtaining probate of the will or letters of administration of the estate and effects of the deceased, find some considerable part or parts of the estate and effects of the deceased so circumstanced as not to be immediately got possession of, and may not have money sufficient, either of their own or of the deceased, to pay the stamp duty on the probate or letters of administration which it shall be necessary to obtain; be it therefore further enacted, that from and after the passing of this act it shall be lawful for the said commissioners of stamps, on satisfactory proof of the facts by affidavit or solemn affirmation in any such case as aforesaid which may appear to them to require relief, to cause the probate or letters of administration to be duly stamped for denoting the duty payable or which ought originally to have been paid thereon, and to give credit for the duty, either upon payment of the before-mentioned penalty, or without, in cases of probates or letters of administration already obtained, and upon which too little duty shall have been paid, and either with or without allowance of the stamp duty already paid thereon, as the case may require, under the provisions of this act; provided in all such cases of credit that security be first given by the executors or administrators, together with two or more sufficient sureties to be approved of by the said commissioners, by a bond to his majesty, his heirs or successors, in double the amount of the duty, for the due and full payment of the sum for which credit shall be given, within six calendar months, or any less period, and of the interest for the same at the rate of ten pounds per centum per annum from the expiration of such period until payment thereof, in case of any default of payment at the time appointed; and such probate or letters of administration, being duly stamped in the manner aforesaid, shall be as valid and available as if the proper duty had been at first paid thereon, and the same had been stamped accordingly.

Commissioners may extend the credit, if necessary.

“XLVI. Provided always, and be it further enacted, that if at the expiration of the time to be allowed for the payment of the duty on such probate or letters of administration, it shall appear to the satisfaction of the said commissioners that

the executor or administrator to whom such credit shall be given as aforesaid shall not have recovered effects of the deceased to an amount sufficient for the payment of the duty, it shall be lawful for the said commissioners to give such further time for the payment thereof, and upon such terms and conditions, as they shall think expedient.

“XLVII. Provided also, and be it further enacted, that the probate or letters of administration so to be stamped on credit as aforesaid shall be deposited with the said commissioners of stamps, and shall not be delivered up to the executor or administrator until payment of the duty, together with such interest as aforesaid, if any shall become due; but the same shall nevertheless be produced in evidence by some officer of the commissioners of stamps, at the expense of the executor or administrator, as occasion shall require.

“XLVIII. And be it further enacted, that the duty for which credit shall be given as aforesaid shall be a debt to his majesty, his heirs or successors, from the personal estate of the deceased, and shall be paid in preference to and before any other debt whatsoever due from the same estate; and if any executor or administrator of the estate of the deceased shall pay any other debt in preference thereto, he or she shall not only be charged with and be liable to pay the duty out of his or her own estate, but shall also forfeit the sum of five hundred pounds.

“XLIX. And be it further enacted, that if before payment of the duty for which *credit shall be given* (1) in any such case as aforesaid it shall become necessary to take out letters of administration *de bonis non* of the deceased, it shall also be lawful for the said commissioners to cause such letters of administration *de bonis non* to be duly stamped with the particular stamp provided to be used on letters of administration of that kind for denoting the payment of the duty in respect of the effects of the deceased on some prior probate or letters of administration of the same effects, in such and the same manner as if the duty had been actually paid, upon having the letters of administration *de bonis non* deposited with the said commissioners, and upon having such further security for the payment of the duty as they shall think expedient; and such letters of administration shall be as valid and available as if the duty for which credit shall be given had been paid.

“L. And be it further enacted, in regard to probate of wills and letters of administration, that where any part of the personal estate which the deceased was possessed of or entitled to shall be alleged to have been trust property, if the person or persons who shall be required to make any affidavit or affirmation relating thereto, conformably to the provisions of the said act of the forty-eighth year of his majesty's reign, shall reside out of England, such affidavit or affirmation shall and may be made before any person duly commissioned to take affidavits by the court of session or court of exchequer in Scotland, or before one of his majesty's justices of the peace in Scotland, or before a master in chancery, ordinary or extraordinary, in Ireland, or before any judge or civil magistrate of any other country or place where the party or parties shall happen to reside; and every such affidavit or affirmation shall be as effectual as if the same had been made before a master in chancery in England, pursuant to the directions of the said last-mentioned act.

“LI. Provided always, and be it further enacted, that where it shall be proved by oath or proper vouchers to the satisfaction of the said commissioners of stamps that an executor or administrator hath paid debts due and owing from the deceased, and payable by law, out of his or her personal or moveable estate, to such an amount as being deducted from the amount or value of the estate and effects of the deceased for or in respect of which a probate or letters of administration, or a compensation of a testament, testamentary or dative, shall have been granted after the thirty-first day of August, one thousand eight hundred and fifteen, or which shall be included in any inventory exhibited and recorded in a commissary court in Scotland as the law requires, after that day, shall reduce the same to a sum which

STAT. 55 GEO.
3, c. 184.

Probate or letters of administration stamped on credit to be deposited with the commissioners.

Duty for which credit shall be given to be a debt to the crown.

Provision for the case of letters of administration *de bonis non* taken out before payment of the duty for which credit shall be given.

Directions concerning affidavits by executors, &c. residing out of England, relating to trust property.

A return of duty on probates, &c. to be made in respect of debts, if claimed in three years.

(1) *Credit shall be given*.—This section extends to cases as well where the duty has been paid on the original letters of administration, as when such letters of administration have been originally stamped upon credit. *Doe d. Hanley v. Wood*, 2 B. & A. 724.

STAT. 55 GEO. 3, c. 184. if it had been the whole gross amount or value of such estate and effects would have occasioned a less stamp duty to be paid on such probate or letters of administration, or confirmation or inventory, than shall have been actually paid thereon under and by virtue of this act, it shall be lawful for the said commissioners to return the difference, provided the same shall be claimed within three years after the date of such probate or letters of administration or confirmation, or the recording of such confirmation as aforesaid; but where by reason of any proceeding at law or in equity the debts due from the deceased shall not have been ascertained and paid, or the effects of the deceased shall not have been recovered and made available, and in consequence thereof the executor or administrator shall be prevented from claiming such return of duty as aforesaid within the said term of three years, it shall be lawful for the commissioners of the treasury to allow such further time for making the claim as may appear to them to be reasonable under the circumstances of the case.

Affidavits relating to stamp duties, if no express provision, to be made before commissioners, &c.

“LII. And be it further enacted, that all affidavits and solemn affirmations in the case of quakers required by this or any former or future act of parliament, or which shall be required by the said commissioners of stamps, to be made, for the satisfaction of the said commissioners, of and concerning any facts or circumstances upon which they are to execute the powers vested in them by this or any other act, or for the verification of any accounts of or concerning the duties under their management, or for any other purpose relating to such duties, shall, in all cases not otherwise expressly provided for, be made before the said commissioners or any one or more of them, or before a master in chancery, ordinary or extraordinary, in England, or before any person duly commissioned to take affidavits by the court of session or the court of exchequer in Scotland, or before one of his majesty’s justices of the peace in Scotland.

Penalty for perjury.

“LIII. And be it further enacted, that all and every person and persons before whom any affidavit or solemn affirmation is or shall be required or directed to be made by this or any former or future act of parliament relating to any stamp duties shall be, and they are hereby authorized to take the same, and administer the proper oath or affirmation for that purpose; and if any person making any such affidavit or affirmation shall knowingly and wilfully make a false oath or affirmation of or concerning any of the matters to be therein specified and set forth, every person so offending, and being thereof lawfully convicted, shall be subject and liable to such pains and penalties as by any law now in force persons convicted of wilful and corrupt perjury are subject and liable to.”

STAT. 55 GEO. 3, c. 192.

DXXII. STAT. 55 GEORGII 3, c. 192 (1). A.D. 1815.

“An Act to remove certain Difficulties in the Disposition of Copyhold Estates by Will.”

STAT. 56 GEO. 3, c. 6.

DXXIII. STAT. 56 GEORGII 3, c. 6. A.D. 1816.

“An Act to continue, until the fifth day of July, One thousand eight hundred and sixteen, an Act of the fifty-fourth year of His present Majesty, for explaining and amending several Acts relating to Spiritual Persons holding of Farms, and for enforcing the Residence of such Persons on their Benefices in England.”

STAT. 56 GEO. 3, CAP. VII.

DXXIV. STAT. 56 GEORGII 3, CAP. VII. A.D. 1816.

“An Act for taking down the Parish Church of Clifton, in the County of Gloucester, and for building a new Church, and providing an additional Cemetery for the use of the said Parish.”

(1) Repealed by Stat. 7 Gul. 4 & 1 Vict. c. 26.

DXXV. STAT. 56 GEORGII 3, CAP. IX. A.D. 1816.

STAT. 56 GEO.
3, CAP. IX.

"An Act for enlarging, improving, and repairing the Parish Church of Woodford, in the County of Essex, and for enlarging the Churchyard or Burial Ground of the said Parish."

DXXVI. STAT. 56 GEORGII 3, CAP. XXIV. [IRELAND.] A.D. 1816.

STAT. 56 GEO.
3, CAP. XXIV.
[IR.]

"An Act for enlarging the Term and Powers of an Act of His present Majesty, for building a Church in and for the Parish of Newry, in the Counties of Down and Armagh."

DXXVII. STAT. 56 GEORGII 3, CAP. XXVIII. A.D. 1816.

STAT. 56 GEO.
3, CAP. XXVIII.

"An Act for repairing and altering the Parish Church of Saint George the Martyr, in the County of Middlesex, and for making further Provision for the Rector of the said Parish."

DXXVIII. STAT. 56 GEORGII 3, CAP. XXXI. A.D. 1816.

STAT. 56 GEO.
3, CAP. XXXI.

"An Act for uniting the Rectory of Great Birch, in the County of Essex, with the adjoining Rectory of Little Birch, in the same County, after the next Avoidance of either Benefice."

DXXIX. STAT. 56 GEORGII 3, CAP. XXXII. A.D. 1816.

STAT. 56 GEO.
3, CAP. XXXII.

"An Act for effecting an Exchange between the Dean and Chapter of the Cathedral Church of Worcester, and John Knight, Esquire, of certain Lands in the County of Worcester."

DXXX. STAT. 56 GEORGII 3, CAP. XXXIX. A.D. 1816.

STAT. 56 GEO.
3, CAP. XXXIX.

"An Act for building a new Parish Church and a Parochial Chapel in the Parish of Saint Pancras, in the County of Middlesex, and for other Purposes relating thereto."

DXXXI. STAT. 56 GEORGII 3, CAP. XL. A.D. 1816.

STAT. 56 GEO.
3, CAP. XL.

"An Act for building a Church or Chapel of Ease in the Parish of Huddersfield, in the West Riding of the County of York."

DXXXII. STAT. 56 GEORGII 3, C. 52 (1). A.D. 1816.

STAT. 56 GEO.
3, C. 52.

"An Act to amend and render more effectual an Act passed in the last Session of Parliament, for enabling Spiritual Persons to exchange their Parsonage Houses or Glebe Lands, and for other Purposes therein mentioned."

"Whereas an act was passed in the last session of parliament, intituled, 'An Act for enabling Spiritual Persons to exchange the Parsonage or Glebe Houses or Glebe Lands, belonging to their Benefices for others of greater Value or more conveniently situated for their Residence and Occupation, and for annexing such Houses and Lands so taken in Exchange to such Benefices as Parsonage or Glebe Houses and Glebe Lands, and for purchasing and annexing Lands to become Glebe in certain Cases; and for other Purposes:' and whereas it is expedient to authorize the incumbents of benefices, perpetual curacies, and parochial chapelries to apply the monies arising from the sale of any timber cut from the glebe or other lands of their respective benefices, perpetual curacies, or parochial chapelries towards the purposes of the said recited act: may it therefore please your majesty that it may be enacted; and be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and com-

(1) Vide Stat. 1 Geo. 4, c. 6; Stat. 6 & 2 Vict. c. 23; and Stat. 2 & 3 Vict. c. Geo. 4, c. 8; Stat. 7 Geo. 4, c. 66; Stat. 1 49.

STAT. 56 GEO.
3, c. 52.

Power for incumbent of any benefice, with consent of patron and bishop, to apply money arising from sale of timber for or towards exchange or purchase of parsonage house or glebe lands.

mons, in this present parliament assembled, and by the authority of the same, that it shall and may be lawful for the incumbent of any benefice, perpetual curacy, or parochial chapelry, with the consent of the patron of such benefice, perpetual curacy, or parochial chapelry, and of the bishop of the diocese wherein the same is locally situate, or of the archbishop or bishop to whom the peculiars wherein such benefice, perpetual curacy, or parochial chapelry is situate shall belong, (such consent to be signified in manner as in the said recited act is mentioned,) to pay and apply the monies to arise by sale of any timber cut and sold from the glebe lands of such benefice, perpetual curacy, or parochial chapelry, or from any other land, whether copyhold, holden under any manor of such benefice, perpetual curacy, or parochial chapelry, or otherwise, the timber whereof belongs to such benefice, perpetual curacy, or parochial chapelry, either for equality of exchange, or towards and in part of equality of exchange, or for the price or purchase money, or towards and in part of the price or purchase money of any house, outbuildings, yards, gardens, and appurtenances, or any lands, or any or either of them, by the said recited act authorized to be taken in exchange or to be purchased, and from and after such exchange or purchase to be annexed to and to be and become the parsonage and glebe house and glebe lands and premises of such benefice, perpetual curacy, or parochial chapelry, as in the said recited act is mentioned.

“II. And whereas it is by the said recited act enacted, that the bishop shall in cases of exchange and purchase under the said act issue a commission of inquiry for the purposes therein mentioned, to be directed to such persons as are therein described, and of whom one shall be a barrister of three years’ standing at the least, to be named by the senior judge of *nisi prius* for the county in which the benefice, perpetual curacy, or parochial chapelry, whereto it shall be proposed to annex any buildings or land by exchange or purchase under the said act shall be situate; but inasmuch as the nomination of such barrister by a judge of *nisi prius* is not applicable to the county palatine of Chester nor to the principality of Wales; be it therefore enacted, that where any exchange or purchase shall be made or be proposed to be made under the authority of the said act in any benefice, perpetual curacy, or parochial chapelry, situate within the said county palatine of Chester, or within the said principality of Wales, such barrister shall be named by the chief justice for the time being of the said county palatine of Chester or by the justice, or, in case of his absence, the other justice of the great sessions for those counties within the said principality of Wales, within which said county palatine or respective counties of the said principality of Wales the said benefice, perpetual curacy, or parochial chapelry shall be situate.”

Barrister directed by recited act to be named by justices of *nisi prius* to be named in Chester and Wales by the chief justice, &c. there.

STAT. 56 GEO.
3, CAP. LV.

DXXXIII. STAT. 56 GEORGH 3, CAP. LV.(1). A.D. 1816.

“An Act to enlarge the Powers of an Act passed in the twenty-second and twenty-third years of the Reign of His Majesty King Charles the Second, for making the Manor of Paris Garden a Parish, and to enable the Parishioners of Saint Saviour’s, Southwark, to raise a Maintenance for Ministers, and for Repairs of their Church; and for other Purposes relating thereto.”

(1) King James the First, by charter, granted the rectory of St. Saviour’s, Southwark, in trust for the churchwardens of the parish and their successors, enjoining them, out of the revenues, to pay certain yearly salaries to chaplains and a schoolmaster, and to repair the parish church.

Stat. 22 & 23 Car. 2, cap. xxviii. after reciting, that the revenues of the rectory were insufficient for the above purposes, the parishioners were discharged from all tithes belonging to the rectory;—enacted that, in consideration thereof, it should be lawful for the churchwardens for the time being, and overseers, giving notice to, or

calling together six or more of the inhabitants, having certain qualifications, to assemble yearly in vestry, and make a rate not exceeding 350*l.* in a year; and that the churchwardens should pay yearly for ever to the chaplains, schoolmaster, and usher, salaries amounting in the whole to 230*l.* which sums should be in lieu of all monies payable to the chaplain, &c. by virtue of the charter; and all the residue of the monies so to be raised should be applied to repairs of the church, and other church affairs, as the wardens should think meet.

Stat. 56 Geo. 3, cap. lv. (after reciting that the rate before mentioned and the revenue of

DXXXIV. STAT. 56 GEORGII 3, c. 56. [IRELAND.] A.D. 1816.

STAT. 56 GEO.
3, c. 56. [IR.]

"An Act to repeal the several Stamp Duties in Ireland, and also several Acts for the Collection and Management of the said Duties, and to grant new Stamp Duties in lieu thereof, and to make more effectual Regulations for collecting and managing the said Duties."

DXXXV. STAT. 56 GEORGII 3, CAP. LVI. A.D. 1816.

STAT. 56 GEO.
3, CAP. LVI.

"An Act for enlarging the Churchyard of the Parish of Saint George the Martyr, in Southwark, in the County of Surrey; and for other Purposes relating thereto."

DXXXVI. STAT. 56 GEORGII 3, CAP. LXV. A.D. 1816.

STAT. 56 GEO.
3, CAP. LXV.

"An Act for establishing a new Church, called the Church of Saint Mark, situate in the Town and Parish of Liverpool, in the County Palatine of Lancaster."

DXXXVII. STAT. 56 GEORGII 3, cap. lxxiv. A.D. 1816.

STAT. 56 GEO.
3, cap. lxxiv.

"An Act for effectuating an Exchange of the Advowson of the Church of the Parish of Bagendon, in the County of Gloucester, belonging to Joseph Pitt, Esquire, for a Right which the Principal, Fellows, and Scholars of Jesus College, within the City and University of Oxford, of the Foundation of Queen Elizabeth, have in the Nomination of a Curate to the Curacy of the Improprate Rectory of Cheltenham, in the said County, also belonging to the said Joseph Pitt."

DXXXVIII. STAT. 56 GEORGII 3, c. 123. A.D. 1816.

STAT. 56 GEO.
3, c. 123.

"An Act to continue, until the fifth day of April, One thousand eight hundred and seventeen, an Act of the fifty-fourth year of His present Majesty, for explaining and amending several Acts relating to Spiritual Persons holding of Farms, and for enforcing the Residence of such Persons on their Benefices in England."

the rectory under the management of the wardens, were adequate to the above purposes,) repealed the former act, as to the amount to be raised by rate, and enacted that, for the purposes of that act, it should be lawful for the wardens, overseers, and other inhabitants of the parish, in vestry, and they were thereby empowered, to make an annual rate, as there described, which rate should be confirmed by two justices of the peace, and the sum levied should be applied as follows, *viz.* the wardens should pay yearly to the chaplains, schoolmaster, and usher, certain salaries, (which were specified,) and such salaries should be in lieu of all monies payable to them by virtue of the charter, and the residue should be applied as directed by the former act.

The wardens, overseers, and inhabitants met in vestry, and refused to make a rate; the salaries remained unpaid, and the church was dilapidated. On motion for a *mandamus* to compel the making of a rate for the purposes of the above statutes: it was held, that the ordering of such rate was not a matter of ecclesiastical jurisdiction; and that a *mandamus* might issue to the wardens, overseers, and inhabitants.

On the return to the *mandamus*, the court refused to hear the return discussed on motion to quash, (the ground alleged being the

urgency of the circumstances,) but directed that the case should be argued on an early day upon *concilium*.

It was held on such argument that, although a revenue might be still derivable from the rectory, a rate under the statutes was the primary fund from which the salaries were to be paid, and that the alleged existence of such revenue was no answer to the *mandamus*; that such *mandamus*, since Stat. 56 Geo. 3, cap. lv. was properly directed to the wardens, overseers, and other inhabitants generally, and not to the wardens, overseers, and six or more qualified inhabitants, according to Stat. 22 & 23 Car. 2, c. 28.

The return to the *mandamus* was made by the wardens, two overseers, and six inhabitants, and a further return by five inhabitants. On the *concilium*, the former parties did not dispute the making of the rate, but contended only, that the *mandamus* was improperly directed. The latter denied, that a rate could properly be made. After quashing the return, the court ordered, (under Stat. 1 Gul. 4, c. 21, s. 6,) that the wardens, overseers, and inhabitants should pay costs, but that the wardens, overseers, and inhabitants, should not be personally liable as such. *Reg. v. St. Saviour's (Inhabitants of), Southwark*, 7 A. & E. 925.

STAT. 56 GEO.
3, c. 128.

DXXXIX. STAT. 56 GEORGII 3, c. 128. A.D. 1816.

"An Act to amend two Acts made in the fifty-third year of the Reign of His present Majesty, for opening a more convenient Communication from Mary-le-Bone Park to Charing Cross; . . . and to enable His Majesty to grant small portions of Land as Sites for Public Buildings, or to be used as Cemeteries within the Bills of Mortality."

STAT. 56 GEO.
3, c. 141.

DXL. STAT. 56 GEORGII 3, c. 141. A.D. 1816.

"An Act for enabling Ecclesiastical Corporate Bodies, under certain circumstances, to alienate Lands for enlarging Cemeteries or Churchyards."

Bodies corporate may sell portions of land adjoining cemeteries for enlarging thereof;

with certain consents.

Value of the land to be ascertained.

If above 100l. other lands to be conveyed.

Application of the money if under that value.

Limiting the time within which alienations may be questioned. Burial ground to be discharged of adverse titles, &c. after twenty years from the consecration thereof.

"Whereas cemeteries, churchyards, or burying grounds, are in various places found to be too small, and the same cannot be conveniently enlarged, without appropriating for consecration some part of the lands belonging to corporations or spiritual persons, not authorized by law to alienate such land for any purpose whatsoever; be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the passing of this act it shall and may be lawful for any spiritual or ecclesiastical body corporate, or spiritual person, being a corporation sole, possessing any land adjacent to any cemetery, churchyard, or burying ground, to sell, by indenture of bargain and sale, enrolled in the high court of Chancery within six calendar months, for the purpose of consecration, such portion thereof as may be deemed necessary for enlarging any such cemetery, churchyard, or burying ground, not exceeding one acre.

"II. Provided always, that in case of any spiritual person, being a corporation sole, the consent of the lord bishop of the diocese or ordinary, and of the patron of the living held by such corporation sole, shall be testified by their being parties to the alienation of the said land; and that previously thereto the value of such land shall be ascertained, and, together with a description thereof, be committed to writing by some competent person, to be named and appointed by the ordinary; which person so appointed shall verify the same on oath, before some one of his majesty's justices of the peace for the county, town, or district in which such land is situated; which oath the said justice is hereby empowered to administer; and in case the value shall appear to exceed one hundred pounds, that other lands, of at least an equal value, estimated and verified in manner aforesaid, shall be well and legally conveyed to and for the same uses as the lands conveyed by the said spiritual persons or corporations sole, and as the consideration thereof; and in case the value shall appear not to amount to one hundred pounds, but shall exceed twenty pounds, such value shall be paid to the governors of the bounty of Queen Anne, for the augmentation of the maintenance of the poor clergy, to be by them used and applied for the benefit of such spiritual person or corporation sole, in the same manner as they are now empowered by law to use and apply other sums of money coming into their hands; and in case the value shall not amount to twenty pounds, the said value shall be paid in money to such spiritual person or corporation sole, to be by him applied at his own discretion.

"III. Provided always, that no alienation made by virtue of this act shall be questioned after the expiration of twenty years from the time of such alienation, on account of any want of compliance with the forms prescribed by this act.

"IV. And be it further enacted, that all ground which has been or shall be consecrated as burial ground, shall after twenty years from the time of such consecration, be considered as discharged from all adverse titles, claims, and demands whatsoever, and as absolutely vested in the trustee or trustees, if any, thereof; and if there should not be any such trustee or trustees, then in the vicar or perpetual curate, if any, for the time being; and if there should not be any vicar or perpetual curate, then in the rector for the time being of each parish in which such burial grounds is or shall be situate."

DXLI. STAT. 57 GEORGHII 3, CAP. VII. A.D. 1817.

STAT. 57 GEO.
3, CAP. VII.

"An Act for making better Provision for the Support and Maintenance of the Rector of the Parish of Saint Olave, in the Town and Borough of Southwark; and for providing a more convenient Rectory or Parsonage House for the said Rector."

DXLII. STAT. 57 GEORGHII 3, CAP. XIX. A.D. 1817.

STAT. 57 GEO.
3, CAP. XIX.

"An Act to amend an Act of the fifty-fifth year of His present Majesty, for building a new [Saint Mary's] Church and Workhouse in the Parish of Bathwick, in the County of Somerset."

DXLIII. STAT. 57 GEORGHII 3, CAP. XXI. A.D. 1817.

STAT. 57 GEO.
3, CAP. XXI.

"An Act for providing an additional Burial Ground for the Parish of Sculcoates in the East Riding of the County of York."

DXLIV. STAT. 57 GEORGHII 3, CAP. XXII. A.D. 1817.

STAT. 57 GEO.
3, CAP. XXII.

"An Act for amending an Act of His present Majesty, for rebuilding Newton Chapel [All Saints' Chapel], in the County Palatine of Lancaster."

DXLV. STAT. 57 GEORGHII 3, CAP. XXXI. A.D. 1817.

STAT. 57 GEO.
3, CAP. XXXI.

"An Act for effectuating an Exchange between Richard Peter Whish Clerk, Rector of the Rectory and Parish Church of Meesden, otherwise Missenden, in the County of Hertford, and Armytage Gaussen, Esquire, of the Rectory House, and part of the Glebe Lands of the said Rectory, for a House and Lands in the said Parish of Meesden, otherwise Missenden, belonging to the said Armytage Gaussen."

DXLVI. STAT. 57 GEORGHII 3, CAP. XXXIII. A.D. 1817.

STAT. 57 GEO.
3, CAP. XXXIII.

"An Act to enable the Prebendary of the Prebend of The Moor, in the City of London, founded in the Cathedral Church of Saint Paul in London, to grant a Lease of certain Messuages, Buildings, Lands, and Hereditaments, situate in the Parish of Saint Giles without Cripplegate, in the said City, Parcel of the said Prebend, in manner therein mentioned; and to enable the granting of Sub-leases for repairing and otherwise improving the same."

DXLVII. STAT. 57 GEORGHII 3, CAP. XXXIV. A.D. 1817.

STAT. 57 GEO.
3, CAP. XXXIV.

"An Act for making the Hamlet of Poplar and Blackwall, in the County of Middlesex, a separate and distinct Parish; and for erecting a Parish Church therein, and other Purposes relating thereto."

DXLVIII. STAT. 57 GEORGHII 3, CAP. XXXV. A.D. 1817.

STAT. 57 GEO.
3, CAP. XXXV.

"An Act for enlarging the Churchyard of the Parish of Christ Church, in the County of Surrey; and for other Purposes relating thereto."

DXLIX. STAT. 57 GEORGHII 3, CAP. XXXVI. A.D. 1817.

STAT. 57 GEO.
3, CAP. XXXVI.

"An Act for enlarging the Churchyard, and providing an additional Burying Ground, for the Parish of Bradford, in the West Riding of the County of York."

DL. STAT. 57 GEORGHII 3, CAP. XXXVII. A.D. 1817.

STAT. 57 GEO.
3, CAP. XXXVII.

"An Act to enable the Vicar, for the time being, of the Parish of Bolton, in the County Palatine of Lancaster, to sell and convey in fee-simple a certain portion of the Glebe Land belonging to the Vicarage of Bolton."

STAT. 57 GEO.
3, c. 39.

DLI. STAT. 57 GEORGII 3, c. 39. A.D. 1817.

"An Act to extend certain Provisions of the Acts of the thirty-sixth and fifty-second years of the Reign of His present Majesty, to Matters of Charity and Friendly Societies."

STAT. 57 GEO.
3, c. 51.

DLII. STAT. 57 GEORGII 3, c. 51(1). A.D. 1817.

"An Act to regulate the Celebration of Marriages in Newfoundland."

STAT. 57 GEO.
3, CAP. LIII.

DLIII. STAT. 57 GEORGII 3, CAP. LIII. A.D. 1817.

"An Act for settling the Right of Patronage or Presentation of or to a Chapel to be called Stansted Chapel, in the Parish of Stoughton, in the County of Sussex."

STAT. 57 GEO.
3, cap. lv.

DLIV. STAT. 57 GEORGII 3, cap. lv. A.D. 1817.

"An Act to enable the Rector of the Parish and Parish Church of Clapham, in the County of Surrey, to accept a Surrender of the existing Lease, and to grant more extensive Leases of part of the Glebe belonging to the said Rectory."

STAT. 57 GEO.
3, c. 70. [IR.]

DLV. STAT. 57 GEORGII 3, c. 70. [IRELAND.] A.D. 1817.

"An Act to relieve Persons impugning the Doctrine of the Holy Trinity from certain Penalties in Ireland."

19 Geo. 3,
c. 44.

53 Geo. 3,
c. 160.

Irish act,
6 Geo. 1, re-
pealed, and
above recited
acts extended
to Ireland.

"Whereas an act was passed in the nineteenth year of the reign of his present majesty, by the parliament of Great Britain, intituled, 'An Act for the further Relief of Protestant Dissenting Ministers and Schoolmasters,' and the provisions of said act have not been enacted or made law in Ireland; and whereas it has been and may be reasonably doubted, whether the provisions of an act passed in the fifty-third year of the reign of his present majesty by the parliament of the United Kingdom, intituled, 'An Act to relieve Persons who impugn the Doctrine of the Holy Trinity from certain Penalties,' do extend to or were intended to affect Ireland; and it is meet and proper that equal freedom of religious worship should be secured by law to every part of the United Kingdom: may it therefore please your majesty that it may be enacted; and be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that such of the provisions of an act passed by the parliament of Ireland, in the sixth year of his late majesty King George the First, intituled, 'An Act for exempting the Protestant Dissenters of this Kingdom from certain Penalties to which they are now subject,' as purport to affect by penalties or disqualifications any person who by his preaching or writing shall deny the doctrine of the blessed Trinity, be and the same are hereby absolutely annulled, repealed, and made void; and that all and every of the provisions contained in each of the two before-mentioned acts of the nineteenth and fifty-third years of his majesty shall be henceforth deemed and taken to be of full force and effect in that part of the United Kingdom called Ireland, in like manner as if the same and every part of each of the said acts had been hereby and in terms fully set forth and re-enacted."

STAT. 57 GEO.
3, CAP. LXXII.

DLVI. STAT. 57 GEORGII 3, CAP. LXXII. A.D. 1817.

"An Act for rebuilding the Church and improving the Churchyard of the Parish of Saint Paul, Shadwell, in the County of Middlesex."

STAT. 57 GEO.
3, c. 98.

DLVII. STAT. 57 GEORGII 3, c. 98(2). A.D. 1817.

"An Act for ratifying the Purchase of the Improprate Rectory of Saint Mary-le-Bone, in the County of Middlesex."

DLVIII. STAT. 57 GEORGII 3, c. 99 (1). A.D. 1817.

STAT. 57 GEO.
3, c. 99.

"An Act to consolidate and amend the Laws relating to Spiritual Persons holding of Farms, and for enforcing the Residence of Spiritual Persons on their Benefices, and for the Support and Maintenance of Stipendiary Curates in England."

DLIX. STAT. 57 GEORGII 3, c. 100. A.D. 1817.

STAT. 57 GEO.
3, c. 100.

"An Act to renew the Powers of exonerating small Livings and Charitable Institutions from the Land Tax, and for making further Provision for the Redemption of the Land Tax."

"IX. And be it further enacted, that where any tenant or lessee at a rack rent for any term or number of years, or at will, of any lands, tithes, or other hereditaments belonging to any livings or other ecclesiastical benefices or charitable institutions which have been exonerated from the land tax under the provisions of the said acts of the forty-sixth, forty-ninth, fiftieth, and fifty-third years of his present majesty, or any of them, or shall be exonerated from land tax under the provisions of this act, shall have been or shall be bound by agreement to pay the land tax charged thereon during the continuance of any lease or demise, or any agreement for a demise, the amount of the land tax from which such lands, tithes, or other hereditaments have been or shall be so exonerated, shall, from the respective periods of such exonerated, and during the continuance of such leases or demises, be considered as rent reserved or made payable thereon, and the same shall be payable on the same days, and the same powers shall be had, used, and enjoyed for the recovery thereof, and all arrears thereof, from the respective periods of such exonerated, as for the recovery of such rent when in arrear.

Where tenants at rack rent are bound to pay the land tax on lands belonging to livings, &c. exonerated from land tax, the amount of land tax exonerated to be considered as rent reserved.

"XII. And be it further enacted, that it shall be lawful for any ecclesiastical or lay corporations, and feoffees and trustees for charitable or other public purposes, and all other persons entitled to the patronage of any living or livings, to contract and agree for the redemption of the land tax charged on the glebe lands, tithes, or other hereditaments belonging to any such living or livings, in consideration only of so much capital stock in the three pounds per centum consolidated bank annuities and the three pounds per centum reduced bank annuities, or one of them, as will yield an annuity or dividend equal in amount to the land tax so to be redeemed; any thing in the acts now in force, relating to the redemption of the land tax, or any of them, to the contrary notwithstanding.

Corporations and others may redeem land tax on livings in their patronage, on transfer of stock producing a dividend equal in amount to the land tax.

"XIII. And be it further enacted, that in order to provide for any such redemption by any ecclesiastical or lay corporation, or by any feoffees or trustees for charitable or other public purposes, it shall be lawful for them respectively, by and under the direction and authority of the commissioners under the great seal, to sell any hereditaments belonging to such ecclesiastical or lay corporations, or feoffees or trustees respectively, in the same manner and under the same regulations and restrictions as they respectively could or might have done under the powers and provisions of the land-tax redemption acts now in force, or any of them, for the redemption of any land tax charged on the lands belonging to them respectively, or to apply for the like purpose any personal property invested in the public stocks or funds, or any legacies or voluntary donations, or any other trust money which such ecclesiastical or lay corporations, or feoffees or trustees, are authorized by the said acts or any of them to lay out in the redemption of land tax, or any surplus stock or money arisen or to arise by any sale, mortgage, or grant made or to be made by any such ecclesiastical or lay corporation, or feoffees or trustees, for redeeming their land tax under the powers and provisions of the said acts, or any of them.

Corporations, &c. may sell hereditaments for redemption of land tax, or apply for that purpose trust money.

"XIV. And be it further enacted, that it shall be lawful for any such ecclesiastical or lay corporations, or feoffees or trustees for charitable or other public purposes, who shall be so desirous of redeeming any land tax charged on any living or livings in their patronage, to declare in the redemption contracts respectively

Redemption contracts to declare the lands redeemed from land tax

(1) Repealed by Stat. 1 & 2 Vict. c. 106. *Vide* Ecclesiastical Commissioners' Rep. (Feb. 15, 1832,) pp. 24, 53.

STAT. 57 GEO.
3, c. 100.
not subject to
an annual rent
charge, &c.

that they are desirous that the lands or other hereditaments, the land tax on which shall be proposed to be redeemed, shall not be subject to any annual rent charge, or to any other charge in favour of such ecclesiastical or lay corporations or feoffees or trustees, in respect of such redemption, in which case such livings respectively shall not be liable to the payment of any such annual rent charge, or to any other charge in respect of such redemption, under the provisions of any of the acts now in force relating to the redemption of the land tax; but nevertheless, if no such declaration shall be contained in such redemption contracts, the ecclesiastical or lay corporations, or feoffees or trustees redeeming such land tax, shall be entitled to an annual rent charge issuing out of the living the land tax on which shall be so redeemed, equivalent to the amount of the land tax redeemed, in the same manner as is provided in similar cases by the acts now in force relating to the redemption and sale of the land tax, and to the like powers, on presenting or nominating any clerk or clerks to such living or livings, of suspending payment of such rent charges respectively during the incumbency or incumbencies of such clerk or clerks respectively, as are by the said acts or any of them given in like cases.

Memorials to
be presented
by corpora-
tions to the
commissioners
under the
great seal,
previous to
making any
sale for re-
deeming such
land tax.

“XV. Provided always, and be it further enacted, that when any lands or other hereditaments shall be proposed to be sold by any ecclesiastical or lay corporation, or feoffees or trustees for charitable or other public purposes, for the purpose of redeeming any land tax under the power lastly herein contained, the ecclesiastical or lay corporation, feoffees or trustees for charitable or other public purposes, desirous of making such sales, shall present a memorial to the commissioners appointed or to be appointed under the great seal, stating their intention of making such sale and the object thereof, for the approbation of such commissioners: and such commissioners or any two of them are hereby required, if they shall approve of such sale, to certify their approbation thereof under their hands.

Surplus stock
arising by
sales, &c.
made by arch-
bishops, &c.
may be applied
in purchasing
assignments of
land tax
redeemed.

“XVII. And be it further enacted, that where the land tax charged upon any lands, tithes, or other hereditaments belonging to any archiepiscopal or episcopal see, or to any rectory or vicarage, shall have been redeemed by any archbishop, bishop, rector, or vicar for the time being, by and out of the private monies belonging to such archbishop, bishop, or rector or vicar, and it shall happen that any stock shall be standing in the names of the commissioners for the reduction of the national debt, or in the name of the accountant-general of the court of Chancery, or in the names or name of any trustee or trustees, on account or for the use of any such archiepiscopal or episcopal see, or rectory or vicarage, which shall have arisen from any sale, mortgage, or grant, and which shall not have been applied for the purposes for which such sale, mortgage, or grant shall have been made, it shall be lawful for the archbishop or bishop, or rector or vicar for the time being, by and under the direction and authority of the commissioners appointed or to be appointed by letters patent under the great seal, to treat and agree with the archbishop, bishop, rector, or vicar who shall have so redeemed such land tax, or with the executors, administrators, or assigns of such archbishop, bishop, rector, or vicar, for the purchase of an assignment from them respectively of the land tax so redeemed; and for the purpose of completing the purchase of such assignment, it shall be lawful for the said last-mentioned commissioners or any two or more of them, to order and direct the consideration for such purchase shall be paid or transferred by sale or transfer of a sufficient part of such stock; and the governor and company of the Bank of England, and the said commissioners for reduction of the national debt, and the said accountant-general, and also such trustees or trustee as aforesaid, are hereby respectively authorized and required, upon the production of such order, signed by any two or more of the said commissioners under the great seal, by sale or transfer of a sufficient part of such stock, to pay or transfer to the person or persons assigning such land tax the money or stock specified in such certificate; and the receipt or receipts of such person or persons shall be sufficient discharges for the money or stock so to be paid or transferred; and upon any such payment or transfer being made as hereby is directed, and upon an assignment being made of such land tax to the archbishop, bishop, rector, or vicar for the time being, (and which assignment shall not be liable to any stamp duty,) such land tax shall forth-

with become merged and extinguished for the benefit of the see or living the hereditaments belonging to which respectively or any of them shall have been charged with the said land tax." STAT. 57 GEO. 3, c. 100.

DLX. STAT. 57 GEORGII 3, c. 118. A.D. 1817.

"An Act for authorizing the Executors or Administrators of deceased Licensed Navy Agents to receive Prize Money, Bounty Money, and other Allowances of Money upon Orders given to such deceased Agents." STAT. 57 GEO. 3, c. 118.

DLXI. STAT. 58 GEORGII 3, cap. ii. A.D. 1818.

"An Act for enabling the Trustees acting under Letters Patent granted by King Charles the Second, to dispose of certain old Almshouses and other Premises, held in Trust for the Parish of Saint Martin-in-the-Fields, in the County of Middlesex; and for vesting part of the new Burial Ground belonging to the said Parish, at or near Camden Town, in the said Trustees, as a Site for erecting new Almshouses thereon; and for other Purposes." STAT. 58 GEO. 3, cap. ii.

DLXII. STAT. 58 GEORGII 3, CAP. XXII. A.D. 1818.

"An Act for enlarging the Churchyard of the Parish of Chipping Barnet, in the County of Hertford, and for other Purposes relating thereto." STAT. 58 GEO. 3, CAP. XXII.

DLXIII. STAT. 58 GEORGII 3, cap. xxii. A.D. 1818.

"An Act to enable the Trustees of Saint Paul's School, in the City of London, to purchase Buildings and Land adjoining or near to the said School, for the better Accommodation of the Scholars, and for other Purposes." STAT. 58 GEO. 3, cap. xxii.

DLXIV. STAT. 58 GEORGII 3, cap. xxiii. A.D. 1818.

"An Act to enable the Governors of the Free Grammar School of King Charles the Second, at Bradford, in the County of York, to sell the old School House, and to sell certain Lands belonging to the said Foundation. . . ." STAT. 58 GEO. 3, cap. xxiii.

DLXV. STAT. 58 GEORGII 3, c. 32 (1). A.D. 1818.

"An Act to amend so much of an Act of the fifty fifth year of His present Majesty, as relates to the Salaries of Clergymen officiating as Chaplains in Houses of Correction." STAT. 58 GEO. 3, c. 32.

DLXVI. STAT. 58 GEORGII 3, cap. xxxiv. A.D. 1818.

"An Act for effecting and establishing an Exchange between the Reverend Robert Philip Goodenough, Rector of Carlton in Lindrick, in the County of Nottingham, and Henry Gally Knight, Esquire, of Glebe and other Lands in Carlton aforesaid." STAT. 58 GEO. 3, cap. xxxiv.

DLXVII. STAT. 58 GEORGII 3, c. 45 (2). A.D. 1818.

"An Act for building and promoting the building of additional Churches in Populous Parishes." STAT. 58 GEO. 3, c. 45.

"Whereas the population of Great Britain, and more particularly in the metropolis and its vicinity, and in other cities and great towns, has greatly increased, and the churches and chapels now existing in the metropolis and its vicinity, and in many great and populous parishes and extra-parochial places, are inadequate to the accommodation of the inhabitants thereof: and whereas it is therefore necessary that such evil should be remedied, and that additional churches and chapels for

(1) Repealed, and other provisions made, 103; Stat. 7 & 8 Geo. 4, c. 72; Stat. 1 by Stat. 4 Geo. 4, c. 64, and Stat. 2 & 3 Vict. & 2 Gul. 4, c. 38; Stat. 2 & 3 Gul. 4, c. 61; Stat. 1 & 2 Vict. c. 107; Stat. 2 & 3

(2) Amended by Stat. 59 Geo. 3, c. 134; Vict. c. 49; and Stat. 3 & 4 Vict. cc. 20 & Stat. 3 Geo. 4, c. 72; Stat. 5 Geo. 4, c. 60.

STAT. 58 GEO.
3, c. 45.

the celebration of divine service according to the rites of the united church of England and Ireland as by law established, should be erected and maintained in such parishes and places, and that a certain number of free seats should be made therein: and whereas his royal highness the prince regent, acting in the name and on the behalf of his majesty, is desirous of aiding his subjects in the establishing additional churches in such parishes and places as may require the same: may it therefore please your majesty that it may be enacted; and be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that it shall be lawful for the king's most excellent majesty, by warrant or warrants under his royal sign manual, to authorize and empower the commissioners of his majesty's treasury of the United Kingdom of Great Britain and Ireland now or for the time being, or any three or more of them, or the lord high treasurer of the United Kingdom of Great Britain and Ireland for the time being, to cause or direct any number of exchequer bills to be made out at his majesty's Exchequer at Westminster, not exceeding in the whole the sum of one million, in the same or like manner, form, and order, and according to the same or like rules and directions, (except where other directions for making out the same are contained and particularly expressed in this act,) as in and by an act made in the forty-eighth year of the reign of his present majesty, intituled, 'An Act for regulating the issuing and paying off of Exchequer Bills,' are enacted and prescribed.

His majesty
may authorize
commissioners
of treasury to
issue exche-
quer bills not
exceeding one
million.

48 Geo. 3, c. 1.

Powers of
recited act to
extend to ex-
chequer bills
made out
under this act.

"II. And be it further enacted, that all and every the clauses, provisoes, powers, privileges, advantages, penalties, forfeitures, and disabilities contained in the said recited act of the forty-eighth year of his present majesty's reign, shall be applied and extended to the exchequer bills to be made out in pursuance of this act, as fully and effectually to all intents and purposes as if the said several clauses or provisoes had been particularly repeated and re-enacted in the body of this act.

Bills to bear
an interest of
twopence per
cent. per diem.

"III. And be it further enacted, that the said exchequer bills to be made out in pursuance of this act shall and may bear an interest not exceeding the rate of twopence per centum per diem upon or in respect of the whole of the monies respectively contained therein, and the principal and interest thereof respectively shall be made payable at such periods as shall be fixed by the said commissioners of his majesty's treasury, or any three or more of them, or the said lord high treasurer for the time being, but nevertheless so as that all such bills as shall be advanced for the carrying the purposes of this act into execution shall be made payable within three years from the issuing thereof; and the principal sum contained in every such bill, and with such interest as aforesaid, shall be paid off and discharged upon the days and times respectively appointed for the payment thereof.

Times when

Such bills not
to be received
in payment of
any tax before
the day ap-
pointed for
their payment,
&c.

"IV. Provided always, and be it further enacted, that all and every the exchequer bills to be made forth by virtue of this act, or so many of them as shall from time to time remain undischarged and uncanceled after the respective days on which they shall become due and payable, shall and may after that time pass and be current to all and every the receivers and collectors in Great Britain of the customs, excise, or any revenue, supply, aid, or tax whatsoever due or payable to his majesty, his heirs or successors, and also at the receipt of exchequer at Westminster, from the said receivers or collectors; but no such receiver or collector shall exchange at any time before the said day of payment thereof, for any money of such revenues, aids, taxes, or supplies in his hands, any exchequer bill which shall have been issued as aforesaid by virtue of this act, nor shall any action be maintained against such receiver or collector for neglecting or refusing to exchange any such exchequer bill for ready money before the said day of payment thereof, anything in this act to the contrary contained in anywise notwithstanding; and that such of the same bills as shall be received at the said receipt of exchequer shall and may be locked up and secured as cash, according to the course of the said exchequer settled and established by law for locking up and securing monies received in specie there.

“V. And be it further enacted, that from time to time as the commissioners for the execution of this act, to be appointed as is hereinafter provided, shall find it necessary to apply to the purposes thereof any amount of such bills to be advanced under the provisions of this act, the said commissioners shall forthwith represent the same to the said lord high treasurer or lords commissioners of the treasury of Great Britain and Ireland, and the said lord high treasurer or lords commissioners, or any three or more of them for the time being, shall thereupon, if satisfied of such necessity, direct that such portion of such exchequer bills shall be issued by the auditor of the receipt of the exchequer at Westminster for the time being to the said commissioners for the execution of this act; and the said auditor shall, immediately on the receipt of such direction, cause and direct to be delivered to the secretary of the said commissioners, exchequer bills payable at such periods and to such amount as shall in such direction be specified, provided that the total amount to be so issued by virtue of such certificates shall not at any one time exceed the amount of exchequer bills directed to be issued under this act; and every such exchequer bill shall bear date on the day on which the said direction shall be so received by such auditor, or such other day as shall in such direction be specified; and all such exchequer bills shall and may be signed by the auditor of the receipt of his majesty's exchequer, or in his name by any person duly authorized by the said auditor to sign exchequer bills.

“VI. And be it further enacted, that the officer or officers of the exchequer by whom such exchequer bills shall be delivered, shall from time to time, upon requisition of the said commissioners for the execution of this act, deliver or cause to be delivered to them at their office complete lists of all the exchequer bills so made out and delivered, specifying therein the respective dates and sums expressed therein, and the periods appointed for the payment of the same, and distinguish the persons to whom and the numbers of the certificates by virtue whereof the same respectively were made out and delivered.

“VII. And be it further enacted, that it shall be lawful for the governor and company of the bank of England to advance or lend to his majesty at the receipt of the exchequer of Great Britain, upon the credit of the exchequer bills issued under this act, any sum or sums of money not exceeding in the whole the sum of one million; anything in an act made in the fifth and sixth years of the reign of King William and Queen Mary, intituled, ‘An Act for granting to their Majesties several Rates and Duties upon Tonnage of Ships and Vessels, and upon Beer, Ale, and other Liquors; and for securing certain Recompenses and Advantages in the said Act mentioned to such Persons as shall voluntarily advance the Sum of One million five hundred thousand Pounds towards carrying on the War against France,’ to the contrary thereof in anywise notwithstanding.

“VIII. And be it further enacted, that it shall be lawful for his majesty, by letters patent under the great seal of the United Kingdom, to nominate, constitute, and appoint such persons as his majesty shall deem fit to be his commissioners for carrying into execution the purposes of this act, and to order and direct in such appointment that any five or more of such commissioners may act in the execution of the powers of this act; and such commission shall continue in force for the term of ten years from the date of such letters patent, unless his majesty shall think fit sooner to alter or revoke the same.

“IX. And be it further enacted, that the said commissioners shall examine into the present state of the parishes and extra-parochial places in the metropolis and its vicinity, and in all other parts of England and Wales, so far as conveniently may be, for the purpose of ascertaining the parishes and places in which additional churches or chapels for the performance of divine service according to the rites of the united church of England and Ireland as by law established are most required, and the most effectual and proper means of affording such accommodation.

“X. And be it further enacted, that it shall be lawful for the said commissioners to appoint a secretary and clerk, and to employ such surveyors and other fit persons to make plans and estimates, and (if the commissioners shall deem the same necessary) surveys and reports, for the purpose of affording to the commis-

STAT. 58 GEO.
3, c. 45.

Treasury to direct the exchequer to issue bills in Great Britain, agreeably to certificates of the commissioners.

Lists of exchequer bills, made out, to be delivered to the commissioners.

Bank may advance money on the credit of this act.

5 & 6 G. & M.
c. 20.

His majesty empowered to appoint commissioners.

Commissioners to examine the state of parishes.

Commissioners may appoint secretary and clerk, and order surveys,

STAT. 58 GEO.
3, c. 45.

reports, &c.
and assign
salaries.

Treasury to
issue money
for defraying
charges in-
curred in the
execution of
this act, of
which an
account shall
be laid before
parliament.

Commissioners
to draw up
rules for their
proceedings,
and fix the
sums to be
allowed.

Rules to be
laid before his
majesty in
council.

Commissioners
may grant
money for the
building of
churches in
parishes of
certain popu-
lation, in
which there is
a want of ac-
commodation.

sioners all such information as they may require for the purpose of ascertaining the best mode of providing fit and proper accommodation for the largest number of persons at the least expense, and may assign and pay to all such persons reasonable salaries or rewards for their services therein.

“XI. And be it further enacted, that it shall be lawful for the said commissioners of his majesty’s treasury, or any three or more of them, or the lord high treasurer for the time being, and they are hereby respectively authorized, to issue and advance, or cause to be issued and advanced, all such sums of money as shall appear to them to be necessary, to such person or persons, in such manner and in such proportions, as the commissioners for the execution of this act, or any five or more of them respectively, shall by writing under their hands from time to time desire, and as shall be approved by the said lord high treasurer or lords commissioners of the treasury, or any three or more of them, for the time being; and such sums respectively shall and may be issued out of any part of the public monies remaining in his majesty’s exchequer at Westminster; which sums so to be issued and advanced shall be applied to the payment of allowances and rewards as aforesaid, and in defraying all other necessary charges and expenses in or about the execution of this act, without other account than before the said commissioners of his majesty’s treasury; and which money so to be issued shall not be subject to any tax, duty, rate, or assessment whatsoever, imposed by authority of parliament; but that an account of the said charges and expenses, so long as the said commission shall remain in force, shall be laid before both houses of parliament on or before the twenty-fifth day of March in each year, if parliament shall be then sitting, but if parliament shall not be then sitting, then within fourteen days after the commencement of the then next session of parliament.

“XII. And be it further enacted, that the said commissioners shall, as soon after their appointment as the obtaining necessary information will allow, draw up certain rules for their general proceedings, and shall fix and specify therein the largest amount of allowances to be granted for building any church, and make such other regulations as the said commissioners shall deem expedient and necessary to be fixed and known for the furtherance of the purposes of the act, and from time to time, as occasion may require, shall have power to alter or vary any such regulations, and to make any such further or additional regulations as they may deem expedient; and all such rules and regulations shall be laid before his majesty in council, who shall have power to approve or disallow the same.

“XIII. And be it further enacted, that it shall be lawful for the said commissioners to make in his majesty’s name, out of the sum so appropriated by this act, grants for building or to cause to be built churches or chapels in such parishes or extra-parochial places only in which there is a population of not less than four thousand persons, and in which there is not accommodation in the churches or chapels therein for more than one fourth part of such population to attend divine service according to the rites of the united church of England and Ireland, or in which there shall appear to the said commissioners to be one thousand persons resident more than four miles from any such church or chapel, and in which the commissioners shall be satisfied from the circumstances of such parish or extra-parochial place of the inability of the parishioners and inhabitants thereof to bear any part of the charge of such building in addition to the charge hereinafter mentioned; and also to *make grants or loans* (1) to assist in building such churches and

(1) *Make grants or loans*.—In *Rex v. St. Mary’s, Lambeth* (*Churchwardens of*), (3 B. & Ad. 651,) where the inhabitants of a parish made an application to the commissioners for building new churches, conformably to Stat. 58 Geo. 3, c. 45, ss. 14 & 60, and Stat. 59 Geo. 3, c. 134, s. 24, and in consequence thereof, obtained a loan for the purpose of building churches within the parish: it was held, that the churchwardens might make a rate for repaying the interest and principal as directed by Stat. 58 Geo. 3,

c. 45, s. 61, without any further consent of the parishioners to such rate; and that the making of such rate, was not a matter of ecclesiastical cognizance:—Lord *Tenterden* observing, “There is no doubt, upon the sixty-first, compared with the other sections, that the churchwardens have authority to make the rate. They cannot borrow money of the commissioners under these acts, unless an application to them shall have been agreed to by the vestry, and not dissented from by one third in value of the proprietors within

chapels in such other parishes or places as may contain a like population, and may equally require further accommodation for divine service, but in which the said commissioners may deem the parishioners and inhabitants thereof capable of bearing a part of the expense of erecting such churches and chapels, or of repaying the same by instalments if advanced by way of loan.

“XIV. And whereas the sum granted by this act is inadequate to the affording grants to all the parishes and extra-parochial places in want of sufficient accommodation for attendance upon such divine service as aforesaid: and whereas many of such parishes and extra-parochial places may be disposed to raise by rates, within limited periods, certain proportions of the sums required to build such churches or chapels respectively, or well-disposed persons within the same or elsewhere may be willing to raise by subscription such proportions or such a part thereof as, together with the money to be raised by rate, will amount to such proportion; be it therefore enacted, that it shall be lawful for the said commissioners, upon any parish or extra-parochial place so offering to contribute or raise by rates or subscription, or by rates aided by subscription, such proportion of the expense of building any church or chapel or churches or chapels which may be required in any such parish or extra-parochial place as shall have been fixed as a proper proportion by the said commissioners according to any such rules and regulations as aforesaid, or shall be deemed by the said commissioners a proper proportion, and they are hereby empowered to grant to any such parish or extra-parochial place the remaining sum necessary to build any such church or churches or chapel or chapels, and to advance and lend to such parish or extra-parochial place any part of the proportion so proposed to be raised by rates as aforesaid.

“XV. Provided always, and be it further enacted, that the said commissioners, in the selections of parishes and extra-parochial places for making their distribution of the sums granted by this act, shall have regard to the amount of population in such parishes and extra-parochial places, and also to the disproportion between the number of inhabitants and the present accommodation for attendance upon divine service according to the rites of the united church of England and Ireland as by law established, and in giving preference among such parishes and extra-parochial places shall have regard to the proportion of the expense of affording the accommodation required which shall be offered to be contributed or raised in aid of the purposes of this act towards the building churches or chapels in such respective parishes or extra-parochial places, and to the pecuniary ability of the inhabitants of such parishes or places; and the said commissioners, in giving preference as between parishes and extra-parochial places not offering to contribute any proportion of such expense as aforesaid, shall have regard to the order of priority in which parishes and extra-parochial places under similar circumstances as to population, and disproportion between such population and the accommodation afforded by the churches and chapels therein, shall have provided, and given notice to the commissioners of having provided, sites for the churches intended to be built in such respective parishes or extra-parochial places.

“XVI. And be it further enacted, that in every case in which the said commissioners shall be of opinion that it will be expedient to divide any parish into two or more distinct and separate parishes for all ecclesiastical purposes whatever, it shall be lawful for the said commissioners, with the consent of the bishop of the diocese in which such parish is locally situated, signified under his hand and seal, to apply to the patron or patrons of the church of such parish for his consent to make such division, and for such patron or patrons to signify his or their consent thereto under his hand and seal; and the said commissioners shall, upon the consent of the said patron or patrons so signified, represent the whole matter to his majesty in council, and shall state in such representation the bounds by which it is proposed, with such consent as aforesaid, to divide such parish, together with

STAT. 58 GEO.
3, c. 45.

Commissioners may make grants and advance money to build churches in parishes, &c. where a certain proportion of the expense is raised by rate or subscription.

Commissioners, in selecting parishes for grants, shall have regard to their relative proportions of population and want of accommodation, and in giving preference shall have regard to the proportion of expense offered to be contributed, and to the order of providing sites.

Upon representation of the commissioners in manner stated, parishes may be divided into separate parishes for all ecclesiastical purposes.

the parish. But unless the churchwardens had authority to make a rate, the vestry and proprietors might consent to the application, and afterwards declare, that they would never

pay the money borrowed. As to the first objection, making a rate to pay a debt, under these circumstances, is not a matter of ecclesiastical cognizance.”

STAT. 58 GEO.
3, c. 45.

the relative and respective proportions of glebe land, tithes, moduses, or other endowments which will by such division arise and accrue and remain and be within each of such respective divisions, and also the relative proportions of the estimated amount of the value or produce of fees, oblations, offerings, or other ecclesiastical dues or profits which may arise and accrue within each of such respective divisions; and if thereupon *his majesty in council shall think fit to direct such division to be made* (1), such order of his majesty in council shall be valid and good in law for the purpose of effecting such division; provided always, that no such division of any parish into distinct parishes shall completely take effect until after the death, resignation, or other avoidance of the existing incumbent of the parish to be divided.

Tithes, &c. to belong to the incumbent of the division.

“XVII. Provided always, and be it further enacted, that all tithes, moduses, endowments, or other ecclesiastical dues or profits belonging to the incumbent of any such parish, whether by endowment, prescription, usage, or otherwise, shall, when so divided as aforesaid, belong to and be recoverable by the incumbents of the churches of each of the divisions respectively of the parish to which they shall be assigned, in like manner in every respect as they were before recoverable by the incumbent of the original parish.

New churches of divided parishes to remain chapels of ease during the existing incumbency.

“XVIII. Provided always, and be it further enacted, that during the incumbency of the existing incumbent of any such parish every new church therein built, purchased, assigned, or provided as the intended parish church of any division intended to become and be a distinct parish shall remain a chapel of ease, and shall be served, during the incumbency of such incumbent of the original parish, by a curate to be nominated by such incumbent, and licensed by the bishop of the diocese, and paid in manner hereinafter directed.

New churches, when division complete, to be rectories,

“XIX. And be it further enacted, that every such distinct and separate parish as aforesaid shall, when such division as aforesaid shall become complete by the death, resignation, or other avoidance of the existing incumbent of the original parish, be deemed either a rectory, vicarage, donative, or perpetual curacy, and the

(1) *His majesty in council shall think fit to direct such division to be made*.—In *Greenwood, q. t. v. Woodham*, (2 M. & Rob. 363,) the declaration stated the defendant's seisin in fee of the advowson of Walcot, an order of the king in council, (under Stat. 58 Geo. 3, c. 45,) to divide the parish into three distinct parishes, to take effect on the next vacancy of Walcot,—and a simoniacal and corrupt agreement between the defendant and J. S., with the knowledge and consent of the incumbent, T. F. W., that if the incumbent would vacate the living, and the defendant would thereupon present J. S. to one of the newly-formed livings, then J. S. would buy of the defendant, all the three advowsons of the three newly-divided parishes; that T. F. W. did, in pursuance of the corrupt agreement, accept another living, and thereby vacate Walcot, so that the division took effect; and that thereupon the defendant, in pursuance of the corrupt agreement, did present J. S. to one of the newly-formed parishes, and that J. S. afterwards bought the three advowsons of the defendant.

Not guilty (by statute) was pleaded.

The counsel for the plaintiff, offered the Gazette in evidence, to prove the Order in Council, contending, that it was an act of state, and that the Gazette had been always allowed to be evidence of proclamations. *Rex v. Holt*, 5 T. R. 436. The reception of such evidence was objected to, by the counsel for the defendant, because, although the Gazette was proof of a proclamation, it being one of the modes of making a proclamation,

and was in fact the proclamation itself; there was nothing to make the Gazette evidence of an act done by the crown in pursuance of Stat. 58 Geo. 3, which did not contain a provision requiring it to be published in the Gazette.

Mr. Justice *Wightman* rejected the evidence.

The fact was then proved by the admission of the defendant.

In proof of the alleged presentation of J. S. by the defendant, the plaintiff showed, that the defendant had made out a presentation in the regular form, and had left it with the bishop's secretary. On a subsequent day, the defendant and J. S. met the secretary by appointment, who examined the title of the parties, and advised the defendant to withdraw the presentation, because J. S. had become, by contract, the equitable owner of the advowson, and ought therefore, as true patron, to petition to be admitted. The presentation was accordingly returned to the defendant, and the petition drawn up in the usual form; upon which the secretary went with J. S. to the bishop, by whom he was admitted on such petition. The presentation by the defendant was never produced to the bishop, or used by the clerk.

Mr. Justice *Wightman*: “The allegation of a presentation of J. S. by the defendant, is not satisfied by this proof. The defendant, indeed, intended to present, and prepared the proper form; but his presentation was never in fact used or acted on. As this allegation is not supported, the whole action must fail.”

spiritual person serving the same, the rector, vicar, or perpetual curate thereof, or person having cure of souls therein, according to the nature of the original church of the parish so divided, and shall be for ever thereafter subject to the laws, provisions, and regulations, as to presentation and appointment, and as to institution, collation, induction, or licence, and to all such jurisdiction of the bishop, or other jurisdiction, and to holding benefices, as are by law applicable to the original parish.

“XX. Provided always, and be it enacted, that all such donatives and perpetual curacies shall be subject to lapse as benefices, if no appointment of a spiritual person thereto shall be made within six months after any death, resignation, removal, or other avoidance of the incumbents thereof respectively; provided also, that no spiritual person appointed to any such donative or perpetual curacy shall be removable at the pleasure of any person, or body corporate or politic, having the power of appointment thereto.

“XXI. And be it further enacted, that in any case in which the said commissioners shall be of opinion that it is not expedient to divide any populous parish or extra-parochial place into such complete, separate, and distinct parishes as aforesaid, but that it is expedient to divide the same into such ecclesiastical districts as they, with the consent of the bishop, signified under his hand and seal, may deem necessary for the purpose of affording accommodation for the attending divine service according to the rites of the united church of England and Ireland, to persons residing therein, in the churches and parochial chapels already built, or in additional churches or chapels to be built therein, and as may appear to such commissioners to be convenient for the enabling the spiritual person or persons who may serve such churches or chapels to perform all ecclesiastical duties within the districts attached to such respective churches and chapels. and for the due ecclesiastical superintendence of such district, and the preservation and improvement of the religious and moral habits of the persons residing therein, the said commissioners shall represent such opinion to his majesty in council, and shall state in such representation the bounds by which such districts are proposed to be described; and if thereupon his majesty in council shall think fit to direct such division to be made, such order of his majesty in council shall be valid and good in law for the purpose of effecting such division; or in any case in which the said commissioners shall be of opinion that it is not expedient to make any such division into such ecclesiastical districts as aforesaid, the said commissioners may build or aid the building of any additional chapels in any such parishes or extra-parochial places, to be served by curates to be respectively nominated and appointed by the respective incumbents of the churches of the respective parishes or extra-parochial places, and licensed by the bishop of the diocese, such curates to be paid such salaries as shall be assigned by the said commissioners under the provisions of this act in manner hereinafter directed.

“XXII. And be it further enacted, that the several new parishes created by any such complete division as aforesaid, and also the several districts of any parish or extra-parochial place, where any such division thereof shall have been so made as aforesaid, shall be ascertained and marked out by described bounds, and the description of such bounds shall be enrolled in the high court of Chancery, and be registered in the office of registry of the diocese, and notice thereof given in such manner as the commissioners shall deem necessary and direct for that purpose.

“XXIII. And be it further enacted, that if his majesty in council, upon the representation of the said commissioners, made with the consent of the bishop of the diocese, signified under his hand and seal, shall think fit to alter such boundaries at any time within five years after such enrolment, such order in council shall be valid, and good in law for the purpose of effecting such alteration, and the same shall be enrolled and registered in like manner as is above mentioned.

“XXIV. And be it further enacted, that such boundaries shall continue and be the boundaries to such parishes or districts respectively, unless so altered, and such districts shall thereupon become and be called district parishes, by such names as shall be given to them respectively in the instrument so enrolled as aforesaid, and shall become and be separate and distinct district parishes; and the

STAT. 53 GEO. 3, c. 45.

vicarages, or perpetual curacies, like original parish.

Donatives to lapse, if no appointment made in six months.

Commissioners may divide parishes into ecclesiastical districts, or build or aid the building chapels, to be served by curates to be appointed by the incumbent of the parish.

Districts when made to be described, and description of boundaries enrolled in Chancery.

Commissioners may alter such boundaries.

Districts to be separate parishes for ecclesiastical but for no other purposes.

STAT. 58 GEO.
3, c. 45.

churches and chapels respectively assigned to such districts shall, when duly consecrated for that purpose, become and be the district parish churches of such district parishes for all purposes of ecclesiastical worship and performance of ecclesiastical duties, and as to all marriages, christenings, churchings, and burials, and the registry thereof respectively within the same, and in relation to all fees, oblations, and offerings, and the demanding, suing, and prosecuting for and recovering the same, and as to all other purposes whatsoever, save and except as in this act particularly excepted.

Churches and chapels of such districts to be deemed benefices.

“XXV. And be it further enacted, that every church and chapel built or acquired under the provisions of this act, and appropriated to any such district parish so made under the provisions of this act, shall be deemed a perpetual curacy, and shall be considered in law as a benefice presentative, so far only as that the licence thereto shall operate in the same manner as institution to any such benefice, and shall render voidable other livings in like manner as institution to any such benefice; and the spiritual person serving the same shall be deemed the incumbent thereof; and such incumbents shall have perpetual succession, and shall be and are hereby declared to be bodies politic and corporate, and may receive and take such endowments in lands or tithes or both, or any such augmentation, as shall be granted to them or their successors; and all such incumbents, and all persons presenting or appointing any such incumbents, shall respectively be subject to all jurisdictions and laws, ecclesiastical or common, and to all provisions, regulations, penalties, and forfeitures contained in any acts of parliament in force relating thereto respectively; and in case of any failure or neglect in not presenting or nominating any such incumbent for the space of six months, such presentation or appointment shall thereupon lapse as in cases of actual benefices.

No such district church or chapel to be held with the original church.

“XXVI. Provided also, and be it further enacted, that no such church or chapel of any such parish or district parish, created according to the provisions of this act, shall be tenable or holden with the original church of the parish or extra-parochial place out of which such parish or district parish shall have been taken, or with the church or chapel of any other such parish or district parish.

All acts of parliament, &c. relating to the publishing banns of marriage, marriages, &c. to apply to such churches and chapels.

“XXVII.(1) And be it further enacted, that all acts of parliament, laws, and customs relating to publishing banns of marriage, marriages, christenings, churchings, and burials, and the registering thereof, and to all ecclesiastical fees, oblations, or offerings, shall apply to such separate and distinct parishes and district parishes so made as aforesaid, when they shall so become complete, separate, and distinct parishes or district parishes, under the provisions of this act, after the death, resignation, or other avoidance of the existing incumbents respectively in each such parish or extra-parochial place, and to the churches and chapels thereof, and to the ecclesiastical persons having cure of souls, or serving the same, in like manner in every respect as if the same respectively had been ancient, separate, and distinct parishes and parish churches by law, to all intents and purposes.

Banns not to be published, or marriages, &c. had, in any such district church or chapel until after the death, resignation, or avoidance of the incumbent at the time of consecration of the church or chapel.

“XXVIII. Provided always, and be it further enacted, that no banns of matrimony shall be published, or marriages celebrated or solemnized, or baptisms or churchings had, by any person whatever, within any church or chapel of any such separate and distinct parish so made by any such division as aforesaid, or in any private house therein, or within any such district church or chapel, or in any private house within such district, nor shall any burials be performed within any cemetery appertaining or belonging to any such church or chapel, by any person whatever, except by the incumbent of the church of the parish or extra-parochial place from which such parish shall have been separated, or some curate of such incumbent duly licensed in that behalf, until after the death, resignation, or other avoidance of the spiritual person who shall be the incumbent of the church of the parish or the extra-parochial place at the time of the consecration of any such church or chapel of any such separated parish or district parish; and from and after the death, resignation, or other avoidance of the then incumbent, to be certified under and according to the provisions of this act, banns of matrimony may be

published, and marriages celebrated and solemnized, and baptisms, burials, and churchings had, within the church or chapel of any such separated parish or district parish, provided the same be respectively published, celebrated, solemnized, and had according to the laws and canons in force within the realm in that behalf; and all such banns as shall be published, and also all and every such marriage and marriages as shall be celebrated and solemnized, in any such church or chapel, after the entries, under and according to the provisions of this act, of the notification, under the hand and seal of the bishop of the diocese, of the death, resignation, or other avoidance of the incumbent of the church of the parish or extra-parochial place, shall be as good, valid, and effectual to all intents and purposes as if the same were published, celebrated, and solemnized in the church of the parish or extra-parochial place in which the same shall be situate.

“XXIX. And be it further enacted, that the death, resignation, or other avoidance of the spiritual person who was the incumbent of the church of any parish and extra-parochial place in which any such separated parish or district church or chapel shall be so consecrated as aforesaid, at the time of such consecration, shall be notified by the bishop of the diocese, under his hand and seal, to the spiritual person then serving the church or chapel, and to the churchwardens of the parish or place in which the church or chapel shall be situate; and such notification shall be preserved with and copies thereof shall be entered in the books of register of marriages, births, and burials of the church of the parish or extra-parochial place, and copies of such notifications shall be also entered in the books of registers to be provided for entering the publications of banns and solemnization of marriages, and the baptisms and burials in such chapels; and such entries shall be authenticated by the churchwardens of such churches and chapels respectively, and shall be sufficient evidence of the period of commencement, under the provisions of this act, of the publication of banns, and solemnization of marriages and baptisms, and performance of burials, in any such chapel or cemetery thereof.

“XXX. And be it further enacted, that such division of any parish into district parishes only, and not into complete, separate, and distinct parishes, shall not in any manner affect any land, glebes, tithes, moduses, or endowment of or belonging to the original church of the parish or extra-parochial place, all which shall continue to belong to the incumbent thereof, and to be holden, demanded, taken, and received by him in like manner to all intents and purposes as if no such division had taken place; and the original parish shall remain and continue a parish, as to all such glebe lands, tithes, moduses, and endowment, and all dues, rights, and remedies in relation thereto, as if this act had not passed.

“XXXI. And be it further enacted, that no division of any parish or extra-parochial place, whether it be divided into separate parishes with the consent of the patron and bishop of the diocese, or into district parishes, nor anything in this act contained in relation thereto, shall affect or in any manner be construed to affect any parish or extra-parochial place so divided, or the persons residing therein, in any other respect than in this act particularly provided, or in any manner to apply to any poor or other parochial rates which may be raised in the parish or extra-parochial place so divided, or in any such separated parish or district parish, or to the maintenance or relief of poor persons, or to any title or claim to such relief, or to any powers relating to any such rates, or holding vestries, or appointment or powers of parish officers, or any such relief or claim thereto, or to any act or acts of parliament, or law or custom relating thereto, save and except as to church rates, in so far as the same are regulated by the provisions of this act, but the original parish shall to all such purposes remain and continue in law a parish to all intents as if no such division thereof into separate parishes or district parishes had been made.

“XXXII. And be it further enacted, that the said commissioners may ascertain the average amount, in any parish or extra-parochial place, of all fees, oblations, and offerings, whether voluntary or otherwise, for the three years preceding the making any such division into district parishes, and also for each year subsequent to such division during the incumbency of the existing incum-

STAT. 58 GEO.
3, c. 45.

Death, &c. of incumbent of church to be notified by bishop, and entered in the register books of the parish church and of the chapel, and such entries to be good evidence of the commencement of publication of banns, &c. in the chapel.

Division not to affect glebe, tithe, moduses, &c., but original parish to remain as to all such rights, &c.

Not to affect poor or other parochial rates.

Commissioners may ascertain and make compensation for losses from oblations, offerings, &c.

STAT. 58 GEO.
3, c. 45.

bent, and may for that purpose summon and examine upon oath the incumbent or any other person or persons, and require the production of and examine any books or papers necessary for that purpose, and shall thereupon cause compensation to be made out of the monies granted by this act to the incumbent of any such parish, during his incumbency, for any loss which he may sustain by reason of the diminution thereof in consequence of any such division into district parishes, and of such fees, oblations, and offerings being transferred thereby to the spiritual persons serving the churches or chapels of district parishes under the provisions of this act; provided always, that no such ascertainment or compensation made thereupon, or inquiry made, or matter or thing done, or evidence given or produced in relation thereto, shall in any manner affect or prejudice any question as to any right or claim in relation to any such fees, oblations, or offerings.

Commissioners
may accept
sites for
churches to be
devoted to
ecclesiastical
purposes.

“XXXIII. And be it further enacted, that it shall be lawful for the said commissioners to accept and take any building or buildings fit to be used for or to be converted into such additional churches or chapels, and also any lands, tenements, and hereditaments proper for sites of additional churches or chapels, not exceeding in quantity in any one place what may be sufficient for building of a church or chapel, providing a churchyard, and making a proper and sufficient access or approach thereto, from any persons willing to give the same; and every such site, when conveyed to the said commissioners, and the church erected thereupon, and notice thereof given to the bishop of the diocese, shall become for ever thereafter devoted to ecclesiastical purposes only, in order that the same may be consecrated by the bishop to public worship according to the rites of the united church of England and Ireland as by law established; and it shall also be lawful for the said commissioners to accept and take from any person willing to give the same any house, garden, and appurtenances, not exceeding ten acres in the whole, for the residence of the spiritual person serving such church or chapel, or any land not exceeding the said ten acres in quantity, for erecting such house and appurtenances and making such garden, and the same shall (immediately upon or after the consecration of such church or chapel) become and be the house and glebe belonging to such church or chapel, and vest in the incumbent for the time being as such.

Commissioners
of woods, with
consent of
treasury and
duchy of Lan-
caster and
Cornwall, may
grant sites for
building such
churches or
chapels.

“XXXIV. And be it further enacted, that it shall be lawful for the commissioners of his majesty's woods, forests, and land revenues, by and with the consent of the lord high treasurer of the United Kingdom of Great Britain and Ireland, or the commissioners of his majesty's treasury of the United Kingdom of Great Britain and Ireland, or any three or more of them, in writing, or for his majesty by any grant signed by the chancellor of the duchy of Lancaster for the time being, or for the duke of Cornwall by any grant signed by the chancellor of the duchy of Cornwall for the time being, or for any body politic, corporate, or collegiate, or corporation aggregate or sole, to grant any such building or buildings, or any site or sites for the building of any such churches or chapels, with or without cemeteries thereto, and any house or appurtenances and garden for the residence of the spiritual person who may serve the church or chapel.

Parishes and
extra-parochial
places to fur-
nish sites when
required by
commissioners.

“XXXV. And be it further enacted, that all such parishes and extra-parochial places as shall be required by the commissioners, shall furnish sites for such additional churches or chapels as the commissioners may deem necessary to be built under the provisions of this act; and that as soon as the commissioners shall have fixed upon any parish or extra-parochial place as being one in which it is necessary that a church or chapel should be built under the provisions of this act, they shall give notice to the churchwardens thereof, by causing such notice to be left at their respective places of abode, of their intention to build or cause to be built such church or chapel, and of the extent of ground which will be required for the site thereof, and making a proper access and approach thereto, and of the part of the parish or extra-parochial place within which the same are required to be provided; and the said churchwardens shall within the space of fourteen days call a meeting of the vestry or select vestry of the parish or extra-parochial place, or the persons possessing under any act or acts of parliament the powers of vestry of the parish or extra-parochial place, for the purpose of taking all such measures as may be neces-

sary for providing such site and approach thereto as aforesaid; and in case such parish or extra-parochial place shall not be able to provide the same without purchase, then the vestry or select vestry, or the persons possessing as aforesaid the powers of vestry, shall and are hereby required forthwith to proceed to treat for a site and approach thereto according to such notice, but shall not conclude any bargain for the same without the approbation of the commissioners.

STAT. 58 GEO.
3, c. 45.

“XXXVI. And be it further enacted, that it shall be lawful for all bodies politic, corporate, or collegiate, corporations aggregate or sole, tenants for life or in tail, husbands, guardians, trustees, and feoffees in trust, committees, executors, and administrators, and all other persons and trustees whomsoever, not only for or on behalf of themselves, their heirs and successors, but also for and on behalf of cestuique trusts, whether infants, issue unborn, lunatics, idiots, femmes covert, or other person or persons, and to and for all femmes covert who are or shall be seised, possessed of, or interested in their own right, and for every other person or persons whomsoever who shall be seised, possessed of, or interested in any lands, grounds, and hereditaments which shall be set out and ascertained for any such site, to contract for, sell, and convey, or, if copyhold, to enfranchise the same and every part thereof, unto the said commissioners, under the provisions of this act ; and all such contracts, agreements, sales, conveyances, and assurances shall be valid and effectual in the law to all intents and purposes whatsoever ; any law, statute, usage, or custom to the contrary thereof in anywise notwithstanding ; and all bodies politic, corporate, or collegiate, and all persons whomsoever, so conveying as aforesaid, are hereby indemnified for or in respect of any such sale which he, she, or they, or any of them, shall respectively make by virtue or in pursuance of this act.

Bodies politic
empowered to
sell and convey
sites.

“XXXVII. And be it further enacted, that all conveyances and assurances which shall be made of any lands or hereditaments to the said commissioners, or any other person or persons, for the purposes of this act, shall be made according to the form following, or as near thereto as the circumstances of the case will admit (except in cases of purchases of lands belonging to his majesty, his heirs or successors, or to the duchy of Cornwall, for which provision is hereinafter made); *videlicet*,

“ ‘[or We] of in consideration of the sum of
to me [or us] paid, do hereby grant and release to all [describ-
ing the premises to be conveyed] and all my right, title, and interest to and in the
same and every part thereof, to hold to the said and their successors,
and to be devoted, when consecrated, to ecclesiastical purposes for ever, by virtue
and according to the true intent and meaning of an act passed in the fifty-eighth
year of the reign of his majesty King George the Third, intituled [here set forth
the title of this act]. In witness whereof I have hereunto set my hand and seal,
this day of in the year of our Lord ’

“And all such conveyances and assurances shall be valid and effectual in the law to all intents and purposes, and shall be a complete bar to all estates tail and other estates, rights, titles, trusts, and interests and incumbrances whatsoever.

“XXXVIII. And be it further enacted, that in all cases where there shall be occasion to take part of any common or waste grounds for the purposes of this act, the conveyance thereof by the lord and lady of the manor wherein the same shall be situate shall be a good and sufficient conveyance for the purpose of vesting the fee simple and inheritance thereof under this act, as fully and effectually as if every person having right of common upon such commons or waste grounds had joined in and executed such conveyance; and that the compensation to be paid for any right of common upon any such commons or waste grounds as aforesaid shall be paid to the churchwardens of the respective parishes wherein such commons or waste grounds shall lie, and shall be by such churchwardens received and applied for such general or public purposes within such parishes respectively as a vestry of every such parish, to be convened by such churchwardens for that purpose, shall direct, except as in this act otherwise provided.

Conveyance by lords of manors of lands taken from commons to be sufficient.

“XXXIX. Provided always, and be it further enacted, that all and every body and bodies politic, corporate, or collegiate, trustees, or other persons hereinbefore

Satisfaction to
be made.

STAT. 58 GEO.
3, c. 45.

capacitated to sell and convey any lands, tenements, and other hereditaments, or enfranchise any copyholds, or any owner or owners and the occupier or occupiers of any lands, tenements, or other hereditaments required to be taken for the purposes of this act, may accept and receive satisfaction for the value of such lands, tenements, and hereditaments, or of any such interests as aforesaid; and from and immediately after the time of making and executing such sale and conveyance, or any contract or contracts for the same, the said commissioners, or any person or persons purchasing the same, under the provisions and for the purposes of this act, may and shall be at liberty to enter upon, and from thenceforth for ever to have, take, and use, the said lands, tenements, and other hereditaments for the purposes of this act; and in case the parties interested in such lands, tenements, or hereditaments cannot or do not agree as to the amount or value of such satisfaction, the same shall be ascertained and settled by the verdict of a jury, as is hereinafter directed.

If parties
cannot agree,
price to be
settled by a
jury.

If parties are
dissatisfied, or
refuse or are
unable to treat,
&c. a jury to
be impaneled
to decide the
matter.

“XL. And for settling all differences which may arise between the said commissioners and the several owners of or persons interested in any lands, tenements, or other hereditaments which shall or may be taken or used for the purposes of this act, be it further enacted, that if any body politic, corporate, or collegiate, or any other person or persons so interested, for and on his, her, or their part or parts, or for or on the part of his, her, or their cestuique trusts, or of any other incapacitated person or persons as aforesaid, shall refuse to accept such purchase money or other compensation as shall be offered by them the said commissioners, or their agent by or on their behalf, and shall give notice thereof in writing to the secretary for the time being to the said commissioners within seven days next after such offer shall have been made, and the party or parties giving such notice as aforesaid shall therein request that the matter or matters in dispute may be submitted to the determination of a jury; or if any body politic, corporate, or collegiate, or any other person or persons seised or possessed of or interested in any such lands, tenements, or hereditaments as aforesaid, shall refuse to treat or agree, or shall not agree, or by reason of absence or disability cannot agree, with the said commissioners, or with any person or persons authorized by them, for the sale and conveyance of their respective estates and interest therein, or cannot be found or known, or shall not produce and evince a clear title to the premises they may be in possession of, or to the interest they shall claim therein, to the satisfaction of the said commissioners, or of the person or persons authorized by them; then and in every such case the said commissioners shall and they are hereby empowered and required from time to time to issue a warrant under their common seal to the sheriff of the county in which such lands, tenements, or hereditaments shall lie, or the matter in question or dispute shall arise; or in case such sheriff or his under sheriff shall happen to be one of the said commissioners, or shall enjoy any office of trust or profit under them, or shall be otherwise interested in the matter or matters in question, then to the senior coroner of the said county; and in case he shall be so interested, then to the next coroner of such county in point of seniority who shall not be so interested as aforesaid; commanding such sheriff or coroner or other person, (and the sheriff or coroner or such other person is hereby empowered and required,) to impanel, summon, and return not less than twenty-four nor more than forty-eight substantial and indifferent persons, qualified to serve on special juries; and the persons so to be impaneled, summoned, and returned as aforesaid, are hereby required to come and appear before the justices of the peace for the county wherein the premises shall lie at some court of general or quarter sessions of the peace to be holden in and for the same county, or at some adjournment thereof, as in such warrant shall be directed and appointed, and to attend such court of general or quarter sessions from day to day, until discharged by the said court; and out of such persons so to be impaneled, summoned, and returned, a jury of twelve men shall be drawn by the clerk of the peace for the county wherein such jury shall be returned, or his deputy, in such manner as juries for trials of issues joined in his majesty's courts at Westminster are by law directed to be drawn; and in case a sufficient number of jurymen shall not appear at the time

and place appointed as aforesaid, the said clerk of the peace as before mentioned, STAT. 58 GEO. 3, c. 45. or his deputy, shall return other substantial, honest, and indifferent men of the bystanders, or of others who can be speedily procured to attend that service, to make up the said jury to the number of twelve; and all parties concerned may have their lawful challenges against any of the said jurymen, but shall not challenge the array; and the said clerk of the peace or his deputy is hereby empowered and required to summon and call before the said justices any witnesses touching the matters in question, and may order and authorize the said jury or any three or more of them to view the place or places or matters or things in controversy; and such jury shall upon their oaths, (which oaths, as well as the oaths to such witnesses, the said justices are hereby empowered and required to administer,) inquire of, assess, and ascertain and give a verdict for the sum or sums of money which shall be paid for the purchase of such lands, tenements, or hereditaments, or compensation for any interest therein as aforesaid; and the said justices shall give judgment for such purchase money or compensation so assessed by such jury; which said verdict, and the judgment thereupon, shall be binding and conclusive to all intents and purposes upon all bodies politic, corporate, or collegiate, and upon all persons whomsoever; provided that fourteen days' notice in writing at the least of the hour and place at which such jury are so required to be returned be given to the bodies politic, corporate, or collegiate, or to the person or persons interested, or claiming so to be, before the time of the meeting of the said justices and jury as aforesaid, by leaving such notice at the dwelling house of such person or persons, or of the head officer of such body or bodies politic, corporate, or collegiate, and upon some tenant or occupier of the premises respectively intended to be valued; and in each and every case where a verdict shall be given for more money as a recompence or satisfaction for the absolute sale of any lands, tenements, or hereditaments, or as a compensation for any interest therein as aforesaid, than shall have been previously offered by or on behalf of the said commissioners before the summoning such jury, and where no compensation shall have been previously offered in respect thereof by or on behalf of the said commissioners, or where, by reason of absence or other impediment or disability, there shall not be found any person or persons at hand who may be legally capacitated to contract with and make conveyances to or receive compensation from the said commissioners as hereinbefore mentioned, then and in all such cases all the reasonable expenses of causing such value or compensation to be assessed and awarded as aforesaid shall be settled by the said justices, and be defrayed by the said commissioners; but if any verdict shall be given for the same sum that shall have been previously offered by or on behalf of the said commissioners, or for a less sum than shall have been so previously offered, or in case of such refusal to treat with or make conveyances to the said commissioners by any bodies politic, corporate, or collegiate, or by any person or persons whomsoever who is or are by the provisions of this act or otherwise legally empowered to treat and convey, or receive such compensation as aforesaid, then and in all such cases, (except where, by reason of absence or otherwise, any person shall have been prevented from treating and agreeing as aforesaid, in which case all such costs and expenses shall be borne and paid by the said commissioners,) the reasonable costs and expenses of causing such value or compensation to be assessed and awarded as aforesaid shall be settled in like manner by the said justices, and be borne and paid by the body or bodies politic, corporate, or collegiate, or by the person or persons with whom the said commissioners shall have such controversies or disputes; which said costs and expenses shall and may be deducted out of the money so assessed and awarded; and the payment or tender of the remainder of such sum or sums of money shall be deemed and taken to all intents and purposes to be payment or tender of the whole sum or sums so assessed or awarded as aforesaid.

“XLI. And be it further enacted, that if the sheriff or other person so directed to summon and return a jury as aforesaid, or his deputy or agent, shall make default in the premises, he shall for every such offence forfeit and pay any sum not exceeding twenty pounds; and if any person so summoned and returned as aforesaid upon such jury shall not appear, or appearing shall refuse to be sworn or

Penalty on sheriff refusing to summon jury, and on witnesses refusing to attend.

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to give his verdict, or shall in any other manner wilfully neglect his duty, contrary to the true intent and meaning of this act; or if any person so summoned to give evidence shall not appear, or appearing shall refuse to be examined or give evidence, every person so offending, (having no reasonable excuse, to be allowed by the said justices,) shall for every such offence forfeit and pay any sum not exceeding ten pounds; which several and respective penalties shall and may be levied, by virtue of any warrant under the hand and seal of any one of the said justices, by distress and sale of the goods and chattels of the person so offending, rendering to him the overplus, after such penalty and the charges of such distress and sale shall be deducted; and every such penalty so recovered from any person who shall have been so summoned on such jury, or to give evidence as aforesaid, shall go and be paid to the party who shall appear to the said justice to be injured by the default of such person.

Verdicts to be
recorded.

“XLII. And be it further enacted, that all the said judgments and verdicts, (being first signed by the clerk of the peace or his deputy present at the taking of such verdicts and pronouncing of such judgments respectively,) shall be kept by the respective clerks of the peace amongst the records of the quarter sessions of the county, as the case shall require, and shall be deemed to be records of the said quarter sessions to all intents and purposes whatsoever; and the same or true copies thereof shall be allowed to be good evidence, and all persons shall have liberty to inspect the same, paying for such inspection the sum of one shilling, and to take copies thereof, paying for every copy the sum of sixpence for every one hundred words, and so in proportion for any less number of words.

Power to enter
upon and take
possession of
lands, &c. on
payment or
tender of pur-
chase monies.

“XLIII. And be it further enacted, that upon payment or legal tender of such sum or sums of money as shall have been contracted or agreed for between the parties, or determined and adjusted by any jury or juries in manner aforesaid, for the purchase of any such lands, tenements, or hereditaments, to the proprietor or proprietors of such lands and other hereditaments and premises, or such other person or persons as shall be interested therein or entitled to receive such money or compensation respectively, at any time after the same shall have been so agreed for, determined, or awarded, if the person or persons so entitled or interested, or any of them, cannot be found, or shall refuse to receive the same, or shall not be able to make a good title to the premises to the satisfaction of the said commissioners, or shall refuse to execute a conveyance or conveyances of the premises which shall be required for the purposes of this act, then, upon payment of the said sum or sums of money into the Bank of England, as hereafter directed and required, (in case the same shall be requisite,) for the use of such person or persons so interested or entitled as aforesaid, it shall be lawful for the said commissioners, and their agents, servants, and workmen, or any other persons authorized by them in their behalf, immediately to enter upon such lands, grounds, and other hereditaments respectively; and the fee simple and inheritance thereof, together with the yearly profits thereof, and all the estate, use, trust, and interest of any person or persons therein, shall from thenceforth be vested in such person or persons in such manner as directed in and by this act, or as may be declared in any sentence of consecration under the provisions of this act, to and for the purposes of this act for ever; and such tender, payment, or investiture shall not only bar all right, title, claim, interest, and demand of the person or persons to whom the same shall or ought to have been made, but also shall extend to and shall be deemed and construed to bar the dower of the wife and of every such person, and all estates tail and other estates in reversion and remainder of his, her, or their issue, and of every other person and all incumbrancers whomsoever therein: provided nevertheless, that before such payment it shall not be lawful for the said commissioners, or any person acting under their authority, to dig into such lands or grounds for the purpose of making any foundation, or building any church or chapel, without leave of the respective owners or occupiers thereof in writing under their respective hands.

Application of
compensation

“XLIV. And be it further enacted, that if any money shall be agreed or awarded to be paid for any lands, tenements or hereditaments, or for any other

matter, right, or interest, of what nature or kind soever, purchased, taken, or used by virtue of the powers of this act, for the purposes thereof, which shall belong to any corporation, feme covert, infant, lunatic, person or persons under any disability or incapacity as hereinbefore mentioned, such money shall, in case the same shall amount to or exceed the sum of two hundred pounds, with all convenient speed be paid into the bank of England in the name and with the privity of the accountant general of the high court of Chancery, to be placed to his account *ex parte* the commissioners for building churches, together with the name or names of such person or persons as any three of the commissioners shall by writing signed by them direct and appoint; to the intent that such money shall be applied, under the direction and with the approbation of the said court, to be signified by an order made upon a petition to be preferred in a summary way by the person or persons who would have been entitled to the rents and profits of the said lands, tenements, or hereditaments, in the purchase of the land tax, or towards the discharge of any debt or debts, or such other incumbrance, or part thereof, as the said court shall authorize to be paid, affecting the same lands, tenements, or hereditaments, or affecting other lands, tenements, or hereditaments standing settled therewith to the same or the like uses, intents, or purposes; or, where such money shall not be so applied, then the same shall be laid out and invested, under the like direction and approbation of the said court, in the purchase of other lands, tenements, or hereditaments, which shall be conveyed to, for, and upon such and the like uses, trusts, intents, and purposes, and in the same manner, as the lands, tenements, or hereditaments which shall be so purchased, taken, or used as aforesaid stood settled or limited, or such of them as at the time of making such conveyance and settlement shall be existing undetermined and capable of taking effect; and in the meantime and until such purchase shall be made the said money shall, by order of the court of Chancery, upon application thereto, be invested by the said accountant general in his name in the purchase of three pounds per centum consolidated or three pounds per centum reduced bank annuities; and in the meantime and until the said bank annuities shall be ordered by the said court to be sold for the purposes aforesaid, the dividends and annual produce of the said consolidated or reduced bank annuities shall from time to time be paid, by order of the said court, to the person or persons who would for the time being have been entitled to the rents and profits of the said lands, tenements, and hereditaments so hereby directed to be purchased, in case such purchase or settlement were made.

“XLV. Provided always, and be it further enacted, that if any money so agreed or awarded to be paid for any lands, tenements, or hereditaments purchased, taken, or used for the purposes aforesaid, and belonging to any corporation, or to any person or persons under disability or incapacity as aforesaid, shall be less than the sum of two hundred pounds, and shall exceed the sum of twenty pounds, then and in all such cases the same shall, at the option of the person or persons for the time being entitled to the rents and profits of the lands, tenements, or hereditaments so purchased, taken, or used, or of his, her, or their guardian or guardians, committee or committees, in case of infancy or lunacy, to be signified in writing under their respective hands, be paid into the bank of England in the name and with the privity of the said accountant-general of the court of Chancery, and be placed to his account as aforesaid, in order to be applied in manner hereinbefore directed; or otherwise the same shall be paid, at the like option, to three trustees, to be nominated by the person or persons making such option, and approved of by three or more of the said commissioners, such nomination and approbation to be signified in writing under the hands of the nominating and approving parties, in order that such principal money, and the dividends arising thereon, may be applied in manner hereinbefore directed, so far as the case be applicable, without obtaining or being required to obtain the direction or approbation of the court of Chancery.

“XLVI. Provided always, and be it further enacted, that where such money so agreed or awarded to be paid as next before mentioned shall be less than twenty pounds, then and in all such cases the same shall be applied to the use of the person or persons who would for the time being have been entitled to the rents and

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when it shall
amount to or
exceed 200*l*.

When less
than 200*l*. and
exceeding 20*l*.

When less
than 20*l*.

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In case of not making out title, or if persons cannot be found, purchase money to be paid into bank, subject to the order of the court of Chancery by motion or petition.

Cashier of the bank to give a receipt for such money.

Where any question shall arise touching the title to money to be paid, the person who shall be in possession of the lands, &c. at the time of such purchase, shall be deemed entitled thereto according to such possession.

The court may order reasonable expenses of purchases to be paid by the commissioners.

profits of the lands, tenements, or hereditaments so purchased, taken, or used for the purposes of this act, as the said commissioners, or any three or more of them, shall think fit; or in case of infancy or lunacy, then to his, her, or their guardian or guardians, committee or committees, and to and for the use and benefit of such person or persons so entitled respectively.

“XLVII. And be it further enacted, that in case the person or persons to whom such sum or sums of money shall be so ordered to be paid as aforesaid shall not be able to make a good title to the premises to the satisfaction of the said commissioners or any five of them, or shall refuse to execute such conveyance or conveyances, or in case such person or persons to whom such sum or sums of money shall be so ordered to be paid as aforesaid cannot be found, or if the person or persons entitled to such lands, tenements, or hereditaments be not known or discovered, then and in every such case it shall be lawful for the said commissioners or any five or more of them to order the said sum or sums so awarded to be paid into the Bank of England in the name and with the privy of the accountant-general of the court of Chancery, to be placed to his account to the credit of the parties interested in the said lands, tenements, or hereditaments, [describing them,] subject to the order, control, and disposition of the said court; which said court, on the application of any person or persons making claim to such sum or sums of money, or any part thereof, by motion or petition, shall be and is hereby empowered, in a summary way of proceeding, or otherwise, as to the said court shall seem meet, to order the same to be laid out and invested in the public funds, or to order distribution thereof, or payment of the dividends thereof, according to the respective estate or estates, title or interest of the person or persons making claim thereunto, and to make such other order in the premises as to the said court shall seem just and reasonable; and the cashier or cashiers of the Bank of England who shall receive such sum or sums of money is and are hereby required to give a receipt or receipts for such sum or sums, mentioning and specifying for what and for whose use the same is or are received, to such person or persons as shall pay any such sum or sums of money into the bank as aforesaid.

“XLVIII. Provided always, and be it further enacted, that where any question shall arise touching the title of any person to any money to be paid into the bank of England in the name and with the privy of the accountant-general of the court of Chancery, in pursuance of this act, for the purchase of any lands, tenements, or hereditaments, or of any estate, right, or interest in any lands, tenements, or hereditaments to be purchased in pursuance thereof, or to any bank annuities to be purchased with any such money, or to the dividends or interest of any such bank annuities, the person or persons who shall have been in possession of such lands, tenements, or hereditaments at the time of such purchase, and all persons claiming under such person or persons, or under the possession of such person or persons, shall be deemed and taken to have been lawfully entitled to such lands, tenements, or hereditaments, according to such possession, until the contrary shall be shown to the satisfaction of the said court of Chancery; and the dividends or interest of the bank annuities to be purchased with such money, and also the capital of such bank annuities, shall be paid and applied and disposed of accordingly, unless it shall be made appear to the said court that such possession was a wrongful possession, and that some other person or persons was or were lawfully entitled to such lands, tenements, or hereditaments, or to some estate or interest therein.

“XLIX. Provided also, and be it further enacted, that where, by reason of any disability or incapacity of the person or persons or corporation entitled to any lands, tenements, or hereditaments to be purchased under the authority of this act, the purchase money for the same shall be required to be paid into the said court, and to be applied in the purchase of other lands, tenements, or hereditaments, to be settled to the like uses, in pursuance thereof respectively, it shall be lawful for the said court to order the expenses of all purchases from time to time to be made in pursuance of this act, or so much of such expenses as the court shall deem reasonable, together with the necessary costs and charges of obtaining such

order, to be paid by the said commissioners, who shall from time to time pay such sums of money for such purposes as the said court shall direct.

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“L. And be it further enacted, that all and every person and persons who shall have any mortgage or mortgages on any lands, tenements, and hereditaments to be taken or used for the purposes of this act, not being in possession thereof by virtue of such mortgage or mortgages, shall, on the tender of the principal money and interest due thereon, together with the amount of three calendar months’ interest on the said principal money, by the said commissioners, or by such person or persons as they shall appoint, immediately convey, assign, and transfer such mortgage or mortgages to the said commissioners, or to such person or persons as they shall appoint; or in case such mortgagee or mortgagees shall have notice in writing from the said commissioners, or from such person or persons as they shall appoint, that they will pay off and discharge the principal money and interest which shall be due on the said mortgage or mortgages at the end or expiration of two calendar months, (to be computed from the day of giving such notice,) that then at the end of the said two calendar months, on payment of the principal and interest so due, such mortgagee or mortgagees shall convey, assign, and transfer his, her, or their interest in the premises to the said commissioners, or to such person or persons as shall be appointed in trust for them; and in case such mortgagee or mortgagees shall refuse to convey and assign as aforesaid on such tender or payment, that then all interest on every such mortgage shall from thenceforth cease and determine: provided always, that in case the sum due upon any such mortgage or mortgages, with all interest due thereon, shall amount to more than the real value of the premises, to be ascertained as directed by this act, then the said commissioners shall not be liable to pay the mortgagee or mortgagees more than the real value of such premises so ascertained as aforesaid: provided also, that in case any such mortgagee shall neglect or refuse to convey or assign as aforesaid, then, upon payment of the principal money and interest due on any mortgage as aforesaid into the bank of England, at the end of two calendar months from the day of giving such notice as aforesaid, for the use of the mortgagee or mortgagees, the cashier or cashiers of the bank shall give a receipt or receipts for the said money in like manner as is herein-before directed in cases of other payments into the bank; and thereupon all the estate, right, title, interest, use, trust, property, claim, and demand of the said mortgagee or mortgagees, and of all and every person and persons in trust for him, her, or them, shall vest in the said commissioners, and they shall be deemed to be in the actual possession of the premises comprised in such mortgage or mortgages, for the purposes of this act, to all intents and purposes whatsoever: provided also, that if such mortgage or mortgages comprise any other lands, tenements, or hereditaments than those which shall be so purchased or taken by the said commissioners, such mortgagee or mortgagees shall, upon payment or tender of the sum so ascertained as the value of the said lands, tenements, or hereditaments, as aforesaid, forthwith convey, assign, and transfer his, her, or their interest in such lands, tenements, or hereditaments to the said commissioners hereby incorporated, or to such person or persons as shall be appointed in trust for them; and in default of their doing so, and on payment of such money into the bank of England, for the use of the mortgagee or mortgagees, the cashier or cashiers of the bank shall give such receipt or receipts as above mentioned, and thereupon all the estate, right, title, interest, use, trust, property, claim, and demand of the said mortgagee or mortgagees, and of all and every person and persons in trust for them, in the said lands, tenements, or hereditaments, the value whereof shall have been so ascertained and paid into the bank as aforesaid, shall vest in the said commissioners, and they shall be deemed to be in the actual possession of the said premises to all intents and purposes whatsoever, and such sums of money shall be deducted from the amount of the principal and interest due to such mortgagee or mortgagees by virtue of such mortgage or mortgages.

Mortgagees to convey.

“LI. And whereas the said commissioners may purchase lands to be made use of for the purposes of this act, and it may happen that no church or chapel shall be built thereon, and by reason thereof the same shall not be consecrated and

Commissioners empowered to resell lands not wanted.

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devoted for ever to ecclesiastical purposes under this act, and it may in such case become necessary to resell the same; be it therefore further enacted, that it shall be lawful for the said commissioners, by indenture under the hands and seals of any five or more of them, to grant and convey, by way of absolute sale, for a consideration in money, such lands, tenements, or hereditaments, or any such part or parts thereof as shall not be wanted for the purposes of this act; and all such conveyances from the said commissioners shall be valid and effectual, any thing in this act contained, or any other law, statute, or custom to the contrary thereof in any wise notwithstanding; and upon payment of the money which shall arise by sale or sales of such lands, tenements, and hereditaments, it shall and may be lawful for the secretary for the time being to the said commissioners to sign and give receipts for the money for which the same shall be sold, which receipts shall be sufficient discharges to any person or persons for the purchase money for which such lands or buildings shall be so sold, or for so much thereof as in such receipts shall be acknowledged or expressed to be received, and such person or persons shall not afterwards be answerable or accountable for any loss, misapplication, or nonapplication of such purchase money or any part thereof; provided always, that the said commissioners, before they shall sell and dispose of such lands, tenements, or hereditaments, shall first offer to resell the same to the person or persons from whom they shall have purchased the same, or would have been then entitled thereto in case the same had not been purchased by the said commissioners, the price at which the same shall be resold being adjusted and settled by a jury, in like manner as the price for any land to be taken in pursuance of this act is hereinbefore directed to be settled, in case of difference or dispute as to the value thereof; and if such person or persons shall not agree, or shall refuse to repurchase the same, it shall and may be lawful to and for any person or persons, not interested in the premises, to make an affidavit, to be sworn before a master extraordinary of the high court of Chancery, or before one of his majesty's justices of the peace for the county where such lands shall be situate, stating that such offer was made by or on behalf of the said commissioners, and that such person or persons did not agree or refuse to purchase such lands or buildings, as the case may be; and such affidavit shall in all courts be sufficient evidence and proof that such offer was made, and not agreed to or refused.

Allowing commissioners to procure sites for churches.

"LII. And be it further enacted, that in every case in which any parish or extra-parochial place is or shall be empowered by any act or acts of parliament to build any church or chapel, or enlarge any existing church or chapel, and also in every case in which any parish or extra-parochial place shall be desirous of building any church or chapel, or enlarging any existing church or chapel, and defraying the expense thereof without any aid from the commissioners in that behalf, and are not able to procure a fit and proper site for such new church or chapel, or for the enlarging such existing church or chapel, by reason of the inability of any person or persons, body or bodies, interested in such site or any part thereof, to convey or make a good title to the same, freed and discharged from all incumbrances, or shall be unwilling to treat for the sale thereof, or cannot agree for such sale and purchase, then and in every such case it shall be lawful for the said commissioners, and they are hereby authorized and empowered, if upon application made for that purpose, and upon a statement of all the circumstances of the case, they shall think it proper and expedient, to proceed under the provisions of this act to procure such site; and the expense of procuring such site shall be chargeable and charged upon the parish or extra-parochial place making such application, in like manner as in cases of money advanced for sites under this act; and all the powers, authorities, provisions, and regulations and clauses in this act contained, in relation to procuring sites for churches to be built under the provisions thereof, shall extend and apply to the procuring and taking of such sites as fully in any respect as if such churches or chapels were built under the provisions of this act.

Not to take certain premises without leave of the owners, &c.

"LIII. Provided always, and be it further enacted, that nothing in this act contained shall empower the said commissioners to take any private dwelling house

or offices, or garden, orchard, yard, park, pleasure ground, paddock, or planted walk, or avenue appurtenant thereto, without the consent of the owners and occupiers thereof.

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“LIV. And be it further enacted, that it shall be lawful for the said commissioners to advance money to any parish or extra-parochial place to purchase any site or sites, in case from the amount of the sum or the state of the parish or extra-parochial place as to its population, parochial rates, and other circumstances, it may appear to the commissioners to be proper to make such advance; and the commissioners shall in every such case assign periods for repayment of all monies so advanced, by instalment, within ten years.

Commissioners may advance money to parishes to purchase sites.

“LV. And be it further enacted, that if no site shall be provided in any parish or extra-parochial place, and duly notified to the said commissioners, within six months after notice shall have been given by the said commissioners that a site would be required in such parish or extra-parochial place, it shall be lawful for the said commissioners, and they are hereby empowered to purchase a site, and charge the expense of such purchase upon the rates raised or to be raised under the provisions of this act in such parish or extra-parochial place, giving notice of the amount, and of the periods within which the repayment by instalments will be required.

If parish does not procure a site, commissioners may, and charge the expense upon the parish.

“LVI. And be it further enacted, that the church rates of the parish shall in all cases be and be deemed in law to be the security for the repayment of all money expended by the parish in providing any site or sites, or advanced by the commissioners to any parish under the provisions of this act, or paid by the commissioners in cases of neglect in providing sites; and all such sums of money so expended or advanced under the provisions of this act, in carrying into execution the purposes thereof in any parish, shall be and are hereby made chargeable and charged upon such rates; and the churchwardens shall in every such case make, and they are hereby required and empowered to make, proper and sufficient rates for repaying such expenses and advances within the periods or at the times which shall be specified by the commissioners under the authority of this act in that behalf.

Sum expended in purchasing sites or advanced to parishes by commissioners to be charged upon and paid out of the church rates.

“LVII. And be it further enacted, that in every case in which any sum or sums of money shall have been expended in purchasing any site or sites for any church or churches, or chapel or chapels, or advanced by the commissioners under the provisions of this act for any extra-parochial place in which no church rates shall be made, raised, or collected, it shall be lawful for the said commissioners to require any justice or justices acting in or for the division of the county in which such extra-parochial place shall be, and every such justice or justices shall from time to time as the case may require, appoint two or more proper persons to make, raise, collect, and levy rates for making all such payments and repayments as may be required under the provisions of this act; and all such persons so appointed shall have all such and the like powers and authorities for making, raising, levying, and collecting and enforcing payment of any such rates as any churchwardens have by law in that behalf, and are hereby required and empowered to make, raise, levy, and collect, sufficient rates for making such payments and repayments as aforesaid; and all sums so expended or advanced shall be charged upon such rates, and paid thereout at such times and in like manner and under the like provisions as if such place had been and was a parish in which church rates were made, levied, and collected by law; and all such rates shall be deemed in law church rates for the purposes of this act, and made, raised, levied, collected, and accounted for as such; and all acts of parliament, and clauses, provisions, regulations, penalties, and forfeitures contained in any act or acts of parliament, and all powers, authorities, and laws, ecclesiastical or others, for the making, raising, levying, collecting, and accounting for church rates, shall apply and be enforced for the making, raising, levying, and collecting such rates in any such extra-parochial place, from time to time, when and so often as it shall be or become necessary to make or raise any such rates for the purposes of this act.

Rates may be raised in extra-parochial places for the purposes of this act.

“LVIII. And be it further enacted, that it shall be lawful for the churchwardens of any parish, or persons appointed in any extra-parochial place, with the

Power of churchwar-

STAT. 58 GEO. 3, c. 45. consent in any parish of the vestry or select vestry, or persons possessing, under any act or acts of parliament, the powers of vestry, and with the consent in any extra-parochial place of the majority of the persons who would be entitled to vote in vestry if the same had been a parish, assembled at any meeting called for that purpose; with notice given in the church or chapel of the extra-parochial place, or in the church or chapel nearest adjoining thereto, to borrow any money upon the credit of the rates of the parish or extra-parochial place so to be made as aforesaid; and they are hereby empowered and required, in any case in which such money shall have been borrowed, to raise by rate a sum sufficient from time to time to pay the interest of the money so borrowed, and one twentieth part of the principal sum borrowed out of the produce of such rates, until the whole of the money so borrowed shall be repaid.

Clause to authorize the raising of money for the

“LIX. And be it further enacted, that it shall and may be lawful for the churchwardens of any parish, with the consent of the vestry or select vestry, or persons possessing the powers of vestry, and with the consent of the bishop and incumbent, and they are hereby authorized and empowered to borrow and raise (1),

(1) *Empowered to borrow and raise*:—It was held in *Blunt v. Harwood*, (1 Curt. 648,) that in a suit for subtraction of a church rate made in virtue of Stat. 58 Geo. 3, c. 45, and Stat. 59 Geo. 3, c. 134, the libel ought to show upon its face, that the conditions required by the acts have been complied with:—Sir Herbert Jenner observing, “I am unwilling to throw out anything that might prejudice a particular case, but I must say, with reference to this case, that it lies with the party claiming payment of the rate to show, that the court can enforce it. The libel states, that the money was borrowed ‘under the authority and in pursuance of the acts,’ so that it is not a common law right; and before the party can ask the court to enforce payment of the rate, he must show that the requisites of the acts of parliament have been complied with. What are those requisites? The money is stated to have been borrowed for three objects—the enlargement, repair, and alteration of the church; taking enlargement to include alteration, the 58 Geo. 3, c. 45, s. 59, requires the consent, not only of the vestry, but of the bishop and incumbent, to the borrowing, upon the credit of the rates, such sums of money as shall be necessary for defraying the expense of ‘enlarging or otherwise extending accommodation.’ And it empowers churchwardens ‘to make rates for the payment of the interest of such sums of money so to be borrowed and raised, and for providing a fund of not less than the amount of the interest upon the sum advanced, for the repayment of the principal thereof, or for repaying such principal in such manner, and at such times, and in such proportions, as shall be agreed upon with the persons advancing any such money, provided always, that one half of the additional accommodation which shall be obtained by any such expenditure, shall be allotted to uninclosed or free seats.’ Is it not incumbent upon the churchwardens to show that they have complied with these conditions? It is quite impossible, unless they put themselves in such a position, that the court can enforce the rate.

“Again, with respect to repairs. The 58 Geo. 3, contains no provision for borrowing

money for repairs; but under the 14th section of the 59 Geo. 3, c. 134, churchwardens are empowered to borrow money upon the credit of the rates, for defraying the expense of repairs, with the consent of the vestry, the bishop, and the incumbent; and they are empowered and required in such cases ‘to raise by rate, a sum sufficient, from time to time, to pay the interest of the money so borrowed, and not less than ten per cent. of the principal sum borrowed out of the produce of such rates, until the whole of the money so borrowed shall be repaid.’ They are required to raise a fund for the repayment of the principal sum, for this reason, that the repairs of the church lie on the present inhabitants; whereas the expense of enlargement falls likewise on future inhabitants. Unless the churchwardens bring themselves within these provisions they are not able to sue for the rate, and I cannot see how the court could enforce payment of this demand, unless it be satisfied by legal proof that the money was borrowed in compliance with the conditions of these two sections of the acts of parliament. The churchwardens have the power of proving the affirmative, if it can be proved; whereas the other party is to prove a negative, that the churchwardens had not obtained the consent of the bishop and the incumbent, and that they have not allotted the required number of free seats. How is the party who has not access to the books to prove a negative? and is it not for the churchwardens to show, that they have complied with the acts of parliament?

“I am of opinion that the libel must be reformed.”

The libel, as reformed, with additional articles, subsequently came on for admission, pleading,

“That the population of Streatham having increased, and the church being insufficient to accommodate the parishioners, at a vestry, held on the 17th of March, 1830, in pursuance of notice published on Sunday, the 7th of that month, a committee was appointed to consider a plan then produced to the vestry, and to report whether it would be expedient to adopt that or any other plan for affording additional accommodation to the

upon the credit of the rates of any such parish, such sum or sums of money as shall be necessary for defraying the expense or any part of the expense of enlarging

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parishioners desirous of attending divine worship in the said church. That at another vestry, held on the 2nd of August, 1830, in pursuance of notice published, &c., on the 25th July, the committee presented their report, recommending an enlargement of the church, agreeable to certain plans submitted by Joseph Parkinson, at an expense not exceeding £3,300; and that it was resolved, that such report should be adopted, and the plans carried into execution, provided proper persons could be found to give security to carry the same into effect, at a sum not exceeding £3,300; that the churchwardens and rector be authorized to carry the plans into execution, and the churchwardens be authorized to borrow the sum of £3,300, at a rate not exceeding £4 per cent. per annum, on the security of the church rates.' It went on to plead, that the conditions of the Stat. 58 Geo. 3, c. 45, had been complied with, setting forth the particulars, and that the money had been borrowed, &c.

"It further pleaded, that the notice published on the 7th March, declared that a meeting was to be held in the vestry room of the said parish, on the 17th of that month, at nine o'clock in the morning, for the purpose of considering a plan which would then be produced by the churchwardens of the said parish, for affording additional accommodation to the parishioners desirous of attending divine worship in the said church, or to that effect; and that the notice published on the 25th of July, declared, 'that a vestry was to be held in the vestry room of the said parish, on the second day of August then next, at nine o'clock in the forenoon, to receive the report of the committee appointed to consider the plan produced to the vestry meeting, held on the said 17th day of March, for affording additional accommodation to the parishioners desirous of attending divine worship in the said parish church, or to that effect;' and that such notices had been lost or so mislaid, that they could not be found, though diligent searches had been made for them."

Sir Herbert Jenner: "The only question now before the court appears to be this: whether the notice given for the vestry of the 2nd of August, 1830, was such as authorized the churchwardens to borrow money on the credit of the church rates, to be applied to the enlargement of the parish church, for the accommodation of the parishioners.

"It is true that, before the church-building acts, there was no power in a vestry of a parish to borrow money on the security of the rates by the common law, and where money was so borrowed, it was done without any legal security. But the church-building acts empower churchwardens to raise money in this way, with the consent of the bishop and incumbent, as well as of the vestry; but there must be due notice of the object for which the vestry is held. The Vestry Act, 58 Geo. 3, c. 69, requires that no vestry shall be held, unless notice shall have been

given, three days before, of the place, hour, and special purposes, for which the vestry is called; the intention of which was to prevent any surprise on the parish, by doing, under cover of a notice, what was not within the terms of the notice. The question here, is, whether what was done at the vestry, on the second of August, was not a necessary consequence of the special business for which that vestry was called? The libel pleads, that the population of Streatham having increased, and the church being insufficient, a vestry was held on the 17th of March, when a committee was appointed for the purpose of considering a plan for affording additional accommodation; that another vestry was held on the second of August, when the committee presented their report, recommending a certain plan, which was adopted by the vestry, and the money borrowed by the churchwardens. Now, the notice pleaded of this last vestry meeting is this: 'to receive the report of the committee appointed to consider the plan produced to the vestry meeting, held on the 17th of March, for affording additional accommodation to the parishioners desirous of attending divine worship in the parish church.' The plan was considered, and adopted, and the churchwardens were authorized to borrow money under the act of parliament, to carry it into execution. How much of the business done at this vestry is supposed to come within the meaning of this notice?"

"It appears to me, that, taking the two notices together, the vestry could confirm and adopt the report of the committee, and as a necessary consequence, direct the plan to be carried into execution, and also resolve to borrow money, in order to carry it into execution. I think that the one was the consequence of the other, and that it was not necessary to call another meeting to carry the plan into execution. Undoubtedly the borrowing of money is a very important part of the functions which a vestry is authorized to exercise; but it is one, without the exercise of which, the church could not have been enlarged. It is impossible, that the vestry could have taken any undue advantage of the act, or that any person in the parish could have been misled, or that the money could have been raised in any other way."

"Unless cases can be pointed out in which it has been held that there must be a special notice for borrowing money, I shall consider the notice in this case sufficient to cover the business done at this vestry. It was of no use to appoint a committee to prepare and propose a plan for another vestry, unless the second vestry had the means of carrying the plan into execution; and the second vestry having met for that purpose, and having approved of the plan, resolved that the report of the committee should be confirmed, and that the plan should be carried into execution. It appears to me, that the second vestry did not go further than the first empowered them to do; that they did not exceed the authority

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enlargement of
existing
churches or
chapels.

or otherwise extending the accommodation in the then existing churches or chapels of such parish, and to make rates for the payment of the interest of such sum or sums of money so to be borrowed and raised, and for providing a fund of not less than the amount of the interest upon the sum advanced, for the repayment of the principal thereof, or for repaying such principal in such manner and at such times and in such proportions as shall be agreed upon with the persons advancing any such money: provided always, that one half of the additional accommodation which shall be obtained by any such expenditure shall be allotted to uninclosed or free seats.

Application to
be made, with
consent of ma-
jority of inha-
bitants paying
poor rates, or
where there is

“LX. Provided always, and be it further enacted, that no application and offer to build or to enlarge any church or chapel, either wholly or in part, by means of any rates upon any parish, shall be made, unless the major part of the inhabitants and occupiers assessed to the relief of the poor in vestry assembled shall consent thereto, or where any parish shall be under the care and management of any select vestry or other select body, then with the consent (1) of not less than four fifths of

they had by directing the churchwardens to borrow money on the security of the church rates. It would be straining the acts of parliament, to say that no money could be borrowed, unless a special notice were given that the money was to be raised.

“If the notice is proved to the extent stated in the libel, I shall be of opinion that the money was fairly borrowed, and that the rate made for the payment of the interest, and part of the principal sum, is a legal rate; I therefore admit the libel as reformed.”

The question as to the sufficiency of the notice in this case, was brought before the court of Queen’s Bench; a rule having been granted by that court on the 21st of April, 1838, to show cause why prohibition should not issue to the Arches court, on the ground of the notice being insufficient; under the Stat. 58 Geo. 3, c. 69, s. 1. The point came on for argument on the 12th of June, 1838, but in the mean time the original notice itself had been found, which was as follows:

“*Streatham, 24th July, 1830.*

“Notice is hereby given, that a vestry will be held in the vestry room of this parish on Monday, the 2nd day of August, at nine o’clock precisely, to receive a report from the church committee, and to adopt such measures as may appear necessary for carrying that report into execution; and further, that it is intended, that such vestry do adjourn to the workhouse of this parish, there to transact the business of the day.”

And the court being of opinion that this was a sufficient notice, discharged the rule *nisi* for a prohibition, upon the understanding, that the libel should be reformed, by pleading the real notice.

Additional articles were afterwards brought in and admitted in the Arches court, pleading the notice above set forth, upon which the party proceeded against no longer opposed the rate, whereupon the judge pronounced for the rate, without costs.

But it seems, that, unless the notice itself had been discovered, a prohibition would have issued. Vide *Blunt v. Harwood*, 8 A. & E. 610.

(1) *Consent*: — The commissioners for building and enlarging churches having, pursuant to Stat. 58 Geo. 3, c. 45, and Stat. 59

Geo. 3, c. 30, appointed twenty-six persons to be a select vestry, for the care and management of a church, and all matters relating thereto, it was held in *Blacket v. Blizard*, (9 B. & C. 851,) that in order to constitute a good assembly of the select vestry so appointed, there must be present a majority of the number, (viz. fourteen,) named in the appointment; and, therefore, that a rate for the repair of the church, made at a meeting, where there was not such a majority, was illegal, and that payment of such a rate, could not be enforced in the ecclesiastical court: — Mr. Justice *Bayley* observing, “I take it to be a general rule of law, that where a public trust is to be executed by a definite number of persons, it must be executed at a meeting, where a majority of that number is present, unless there be a usage or custom to the contrary. It is different from a trust or power of a private nature, for that must be executed by all the persons to whom it is given. There are several cases, which bear upon this subject, and which fully warrant the position which I have stated. In *Cook v. Loveland*, (2 B. & P. 31,) the crown, by letters patent, granted to the master and wardens of the corporation of bakers, (there being four wardens,) by themselves or their deputy or deputies, full power to overlook and correct the trade of baking; and it was held, that the master and one warden could not justify entering the house of a baker to overlook bread; for if they acted as principals, they did not amount to a majority of the persons to whom the power was given, and if they acted as deputies, it should have appeared, that they were appointed by the majority. In *Rex v. Beeston*, (3 T. R. 592,) the statute 9 Geo. 1, c. 7, s. 4, having enabled the churchwardens and overseers, with the consent of the major part of the parishioners, to contract for the providing for the poor, it was held not to be necessary, that all the churchwardens and overseers should contract, but it was considered to be clear, that the concurrence of a majority was essential. In *Withnell (Clerk) v. Gartham (Clerk)*, (6 T. R. 388,) a power granted by deed to appoint a schoolmaster to an ancient foundation, given to the vicar and churchwardens, (of whom there were eleven,) and in case of their neglect in

such select vestry, by whatever name the same may be called, such consent to be certified to some justice of the peace acting for the division in which such parish or extra-parochial place shall be situated, by one or more of the overseers of the poor of the parish or place in respect of which the application shall be made, nor unless two third parts in value of the proprietors of messuages, lands, and tenements within such parish, (whether for estates of freehold or copyhold, or by virtue of leases for terms of not less than fifteen years absolute, or determinable upon a life or lives,) shall have consented thereto; such consents to be given by writing under the hands of all persons and corporations sole, and the consent of every corporation aggregate under the hand of the president, head, or chief member thereof for the time being, and the consents of femes covert, minors, insane persons, and persons out of the kingdom, by and under the hands of their respective husbands, guardians, committees, trustees, attorneys, or agents, who are respectively authorized to give such consents; and the consent of the major part of the trustees for any charitable or other purpose shall be sufficient in respect of the trust estate.

“LXI. Provided also, and be it further enacted, that it shall be lawful for the churchwardens of the parish or extra-parochial place in which any such church or chapel shall be built, upon any such application of the parishioners or inhabitants of an extra-parochial place as aforesaid, and they are hereby authorized and required, to make rates for the raising the portion stated in any such application to be provided by means of rates, if the church or chapel is proposed to be built partly by subscription and partly by such rates, or for raising the sum necessary for the building any such church or chapel, if the whole expense is proposed to be defrayed by rates, or to borrow any such sums upon the credit of any such rates, and in every such case to make rates for the payment of the interest of any monies advanced for the building any such church or chapel upon the credit of the rate,

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a select vestry, then with consent of not less than four fifths of such vestry, and also with consent of two thirds in value of the proprietors of lands, &c.

Churchwardens may raise rates for the purpose.

appointing, then to devolve to two corporate bodies in succession; and to result, in the dernier resort, to the same vicar and churchwardens, to whom also the general power of managing the trust was committed, was held to be well executed by the vicar and a majority of the churchwardens. It seems to have been considered, that an appointment by less than the majority would be bad. Mr. Justice Lawrence says, “In general it would be the understanding of a plain man, that where a body of persons is to do an act, a majority of that body would bind the rest.” It is clearly established, that where in a corporation there is a definite body, a majority of that definite body must not only exist at the time when any act is to be done, but a majority of that body must attend the assembly where such an act is to be done. *Rex v. Bellringer*, 4 T. R. 810. *Rex v. Miller*, 6 Ibid. 268. *Rex v. Bower*, 1 B. & C. 492. In *The Queen v. Ipswich (The Bailiffs of)*, (2 Ld. Raym. 1232,) Chief Justice Holt lays it down, that unless a commission of the peace nominates a *quorum*, all the justices appointed by it must attend at a sessions. In *Grindley v. Barker*, (1 B. & P. 229,) the point decided was, that if a power of a public nature be committed to several, who all meet for the purpose of executing it, the act of the majority will bind the minority. But it is impossible to read that case without seeing, that the judges were of opinion, there must be a majority of the body present. No case has been cited to show, that any number less than a majority of a definite body, is capable of doing any act which that body is authorized to do. Here the select vestrymen were called upon to

do an act requiring judgment and discretion, and calculated to affect the property of others. Unless it be essential to constitute a good select vestry, that there should be a majority in number of those constituting the body, it would be impossible to predicate what number would be necessary. In the case of an ancient select vestry, the number might possibly be ascertained by custom or usage; but even that custom or usage must be presumed to have been founded on some *quorum* clause contained in the instrument by which the select vestry derived its authority from the parishioners. But in the case of a modern select vestry, where the number cannot be ascertained by usage or custom, the public would have no security that there should at all times be a number of vestrymen sufficient to discharge the duties committed to the vestry, unless the rule of law, which requires that a public trust committed to a definite number of persons should be executed at a meeting, where the majority of that number is present, prevails. If the legislature thought, that a greater number than the majority of those constituting the vestrymen should in any particular case attend, they might have so provided in express terms, as they have in one instance, by Stat. 58 Geo. 3, c. 45, s. 60. But I think, that in all cases where the legislature has not expressly so provided, the general rule of law ought to prevail. That being so, the rate which was imposed at a meeting of the select vestry, where there was not such a majority present, is bad. The judgment of the court must, therefore, be for the plaintiff. I have mentioned the point to Lord Tenterden, and he concurs in the judgment.”

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Commissioners
may build
churches upon
such plans as
they shall
think most
convenient.

Commissioners
may settle
amount of
rents of pews;
application of
produce.

Commissioners
to assign sti-
pends to the
clergymen out
of pew rents.

Differences as
to stipends.

Bishops may
direct the per-
formance of a
third service,
with a sermon,
under certain
circumstances.

and for providing a fund of not less than the amount of the interest upon the sum advanced for the repayment of the principal thereof, or for repaying such principal in such manner and at such times and in such proportions as shall be agreed upon with the persons advancing any such money.

“LXII. And be it further enacted, that it shall be lawful for the said commissioners, and they are hereby empowered to build or cause to be built, churches or chapels, under the provisions of this act, upon such plans as they shall deem most expedient for the affording fit and proper accommodation for the largest number of persons at the least expense; and such part of every such church or chapel as the commissioners, with the consent of the bishop of the diocese, signified under his hand and seal, shall direct, arranged in pews, to be disposed of and let under the provisions of this act; and the part not so arranged shall remain and be assigned for free seats, to be used by the parishioners or inhabitants of the parish, district, or extra-parochial place in which such church or chapel shall be built or acquired, without any payment whatever.

“LXIII. And be it further enacted, that it shall be lawful for the said commissioners to make such orders as they shall deem expedient as to the amount of rent to be reserved for each pew or seat in any such church or chapel; and the produce of such rents shall form a fund, out of which provision shall be made for the spiritual person appointed to serve the church or chapel, and for a clerk.

“LXIV. And be it further enacted, that it shall be lawful for the said commissioners to assign out of pew rents a proper stipend to the spiritual person serving any such church or chapel, with the consent of the bishop of the diocese, regard being had to the extent and population of the district assigned to the church or chapel, and the sum which may probably be necessary to enable such spiritual person to procure a residence in the district, and to all other circumstances; and the said commissioners may also assign salaries to the clerks of such churches or chapels; and if the commissioners and bishops do not agree as to the amount of any such stipend, such amount shall be settled by the archbishop of the province.

“LXV. And be it further enacted, that in any parish or extra-parochial place in which it shall appear to the bishop of the diocese that the churches or chapels now existing, or which may be built or provided under any of the provisions of this act, do not or will not afford sufficient accommodation for the parishioners or inhabitants thereof to attend divine service according to the rites of the united church of England and Ireland, and in which such bishop shall be of opinion that it is expedient that additional accommodation should be provided for such purpose, and that such purpose would be answered by the celebration on Sundays and on the great festivals of a third or additional divine service, being either the morning or evening service of the united church of England and Ireland, as shall be directed by the bishop of the diocese, with a sermon, in the churches or chapels existing at the time of passing this act, or by the celebration of a third or additional service as aforesaid, with a third sermon, in any church or chapel which may be built or provided under any of the provisions of this act, it shall be lawful for such bishop to require the incumbent of every such parish, district parish, or extra-parochial place, to nominate to him a proper person to be licensed to serve as a curate in the existing church or chapels for the performance of such additional or third service with a sermon, or, in any church or chapel which may be built or provided as aforesaid, for the performance of such additional or third service with a third sermon; and such incumbent shall, within six months after such requisition, nominate such curate to the bishop to be licensed; and in default of such nomination, such bishop is hereby empowered to nominate and license a proper curate for the purpose aforesaid; and the said bishop is hereby empowered to require the churchwardens of every such church or chapel to let for the said additional service such proportion of the pews of such church or chapel, not being a pew held by faculty or prescription, and at such rates, as in the opinion of such bishop shall be sufficient to afford a competent salary to such curate; and such churchwardens are hereby empowered and required so to let the same, and to raise and levy, in the manner directed by this act, the rents from the

persons who may take the pews, reserving such number of sittings as free seats as to such bishop shall appear expedient, not being less than one fourth: provided always, that if in any parish, district parish, or place as aforesaid, any number of persons shall represent to such bishop that they are willing to provide by subscription such an annual sum as may be sufficient to afford a competent salary to a curate for the performance of such additional service with a sermon, or for the performance of such additional service with a third sermon, and if the bishop shall be of opinion that such mode of providing a salary for such curate is more expedient than the raising of such salary by pew rents, it shall be lawful for such bishop, and he is hereby empowered to require the incumbent of such church or chapel to nominate a curate to him as aforesaid, and in default to appoint a curate himself: provided always, that such curate so nominated and licensed for the performance of such third service as aforesaid shall be subject to all jurisdiction, laws, statutes, and provisions to which stipendiary curates are subject, except so far as relates to the amount of salary, and the mode of raising and paying the same, which shall be regulated according to the provisions of this act.

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“LXVI. And be it further enacted, that in case of such provision for the performance of an additional or third service being made by subscription, that every person so subscribing, being a parishioner, shall have the option of any pew in such church or chapel, not being a pew held by faculty or prescription, for the time of such additional service and sermon, according to the amount of his or their respective subscriptions, or, in case of equality of the sums subscribed, according to the date of his or their subscriptions, and shall continue to hold such pew so long as he or they shall pay such subscription, and no longer: provided also, that if at any future time the whole amount of such subscription shall fail to produce such a sum as shall be deemed by such bishop a competent salary for such curate, such bishop shall and may in such case authorize and require the churchwardens to raise, by letting a proportion of the pews as aforesaid, such sum or further sums as may be sufficient for making up the said salary: provided always, that the salary to be given to such curate for the performance of the said additional service with sermon, shall in no case, except when raised entirely by subscription, exceed the sum of eighty pounds per annum.

Provision for the clergymen who may perform additional service.

“LXVII. And be it further enacted, that the nomination or appointment of the spiritual person to serve all such district churches and chapels shall belong to the patron of the church of the parish or extra-parochial place out of which such district shall be taken, and the spiritual person so presented, and instituted or licensed (as the case may be) by the bishop of the diocese, shall be subject to the same jurisdiction and visitation as the incumbent of the parish now is.

Patronage of district churches to be in patron of parish church.

“LXVIII. Provided always, that in any case in which any chapel shall be built either wholly or in part, by means of any rates to be raised in any parish, the first and subsequent nominations of the minister of the chapel shall be in the incumbent of the church of the parish or extra-parochial place in which such chapel shall be built.

Nomination of minister where the chapel is built by rates.

“LXIX. Provided always, that nothing in this act contained shall extend to or affect the right of the principal and scholars of the King’s Hall and College of Brazen Nose in the University of Oxford, and their successors, to nominate and present from time to time fit clerks to officiate in all churches or chapels built or to be built within the parish of Stebbunheath, otherwise called Stepney, in the county of Middlesex, which right was and is secured and confirmed to the said principal and scholars, and their successors, by several acts of parliament made in the ninth and twelfth years of the reign of her late majesty Queen Anne, but that the said right shall continue and remain to them in respect of all churches or chapels that may by virtue of this act be built or constituted within the said parish, or within any portion, division, or district thereof, or which by virtue of this act may be separated therefrom; anything in this act contained to the contrary notwithstanding.

Rights of Brazen Nose college to present clerks to churches within the parish of Stepney, not to be affected.

“LXX. And be it further enacted, that the repairs of all such district churches or chapels shall be made by the districts to which they respectively belong, by

Repairs to be made by rates

STAT. 58 GEO.
3, c. 45.
upon the dis-
trict.

District to
remain liable
for repairs of
parish church
for twenty
years.

Deeds for
clergymen's
salaries to be
enrolled.

Appointment
of church-
wardens.

Churchwar-
dens to act in
parishes where
additional
chapels shall
be built.

Pews to be
provided for
minister, &c
and free seat

rates to be raised within the district, in like manner as in case of repairs of churches by parishes; and every such district shall be deemed in law a separate and distinct parish for that purpose; and the repairs of all chapels not made district churches shall be made by the parish in or for which the chapels shall be built.

“LXXI. Provided always, and be it further enacted, that every such district shall remain nevertheless subject for *twenty years* (1), to be accounted from the day upon which the district church or chapel shall be consecrated, to the repair of the original parish church, and be deemed part of the original parish for all purposes of such repairs, and the making and levying of rates for that purpose; and from and after the expiration of such twenty years, the parish church shall be repaired by the district of the parish left as belonging to it after the other divisions of districts are made; and each district shall for ever thereafter make, raise, levy, collect, and apply separate and distinct rates for repairs of the church or churches or chapel or chapels of the district, as if a separate parish.

“LXXII. And be it further enacted, that every deed, grant, or endowment for securing a provision or salary to the spiritual person serving any church or chapel under this act, shall be enrolled in the court of Chancery and registered in the registry of the diocese.

“LXXIII. And be it further enacted, that two fit and proper persons shall be appointed to act as churchwardens for every church or chapel built or appropriated under the provisions of this act, at the usual period of appointing parish officers in every year, and shall be chosen, one by the incumbent of the church or chapel for the time being, and the other by the inhabitant householders entitled to vote in the election of churchwardens residing in the district to which the church or chapel shall belong, and of any extra-parochial place by such inhabitant householders as would be entitled to vote in the election of churchwardens if such extra-parochial place had been a parish; and the two persons, when so elected churchwardens, shall appear and be admitted and sworn according to law, and shall collect and receive the rents of the seats and pews, and pay the stipends or salaries appointed by the commissioners to be paid to the minister and clerk of and belonging to the church or chapel for the time being, and also shall do, perform, and execute all lawful acts, matters, and things necessary and requisite for and concerning the repairs, management, good order, and decency of behaviour to be kept and observed in the church or chapel by the congregation thereof; and the persons so to be appointed or chosen churchwardens shall continue in their said office until others shall be chosen in like manner in their stead; and all the persons so chosen churchwardens are hereby authorized and empowered, in case of nonpayment of the rents of the seats and pews of the church or chapel for which they shall be appointed, to enter upon and sell the same, or else to sue for and recover the same by action or actions, for such rents, in the names of ‘the churchwardens of the church or chapel of [describing the same],’ as the case shall or may require, without specifying the Christian or surnames of such churchwardens; and no such action shall abate by reason of the death or removal or going out of office of any such churchwardens.

“LXXIV. And be it further enacted, that the churchwardens of every parish in which any additional chapel shall be built or provided under any of the provisions of this act, without making any division thereof into separate parishes or district parishes, shall be and are hereby authorized and required to execute and do all such things as the churchwardens to be appointed under the provisions of this act are authorized and required to do.

“LXXV. And be it further enacted, that before the consecration of any church or chapel under the provisions of this act, a seat or pew sufficient to hold six persons at least, shall be set apart in the body or ground floor of the church or

(1) *Twenty years*:—Under Stat. 58 Geo. 3, c. 45, s. 71, the inhabitants of the district are liable to be assessed to the incidental expenses for twenty years, precisely in the same manner as to the repairs of the

mother church; if it were otherwise, the necessary consequence would be great inconvenience and confusion. *Chesterton v. Farlar*, 1 Curt. 356.

chapel, and contiguous or near to the pulpit, for the use of the minister of the church or chapel for the time being and his family; and other seats in some other convenient part of the church or chapel, not among the free seats, capable of containing not less than four persons, shall also in like manner be set apart for the use of the minister's servants; and that pews, sittings, or benches in every such church or chapel, to be marked with the words 'free seats,' amounting in the whole to not less than one fifth part of the whole of the sittings in every such church or chapel which shall be built, either wholly or in part, out of any rates, or with any money raised upon the credit of any rates of the parish or extra-parochial place, shall also be appropriated and set apart for the use of poor persons resorting thereto for ever; upon which pews so to be set apart for the minister, his family and servants, and the pews, sittings, or benches so appropriated for the use of the poor, no rent or assessment whatever shall at any time be charged or imposed.

"LXXVI. And be it further enacted, that all subscribers, being parishioners to any church or chapel built under the authority of this act, shall have choice of pews at the rates fixed by the commissioners under the provisions of this act, in the order of their amount of subscription; and as to subscribers of the same amount, in the order of their subscription.

"LXXVII. And be it further enacted, that all the pews or seats in every such church or chapel (save and except the pews or seats particularly set down as free seats) shall for ever be charged and chargeable with the several and respective yearly rents or sums set opposite to the figures or numbers marked upon each of the said pews or seats, as they shall be particularly numbered and set down in a list or schedule to be made and signed by the commissioners, and annexed to the deed of consecration of every such church or chapel; and which said respective yearly rents or sums shall be paid by the possessors and occupiers of the pews or seats to the persons who shall from time to time be appointed the churchwardens of the said church or chapel, by two equal half-yearly payments in each year, namely, on the Monday next after the Nativity of our Saviour Christ, and the Nativity of Saint John the Baptist, in the vestry room of the church or chapel, between the hours of nine in the forenoon and four in the afternoon.

"LXXVIII. Provided always, and be it further enacted, that it shall be lawful for the churchwardens of any such church or chapel, at any time thereafter, with the consent in writing of the incumbent and of the patron of the church or chapel respectively for the time being, and of the bishop of the diocese, to alter any such yearly rent or sums; and in any such case a new list or schedule of rents or sums, and the pews or seats upon which the same are respectively charged, shall be signed by the churchwardens, incumbent, patron, and bishop respectively, and shall be deposited with the deed of consecration of the church or chapel.

"LXXIX. And be it further enacted, that every person or persons possessed of a seat or pew in every such church or chapel, shall pay the rents charged thereon as aforesaid at two equal half-yearly payments, to wit, on the Monday next after the Nativity of our Saviour Christ, and the Nativity of Saint John the Baptist, in every year; and in case the rent of any such pew or seat, or any part thereof, shall happen to be behind and unpaid by the space of three months next after the same shall become due, and notice in writing demanding payment thereof shall have been given to the owner or occupier of such seat or pew, then the said churchwardens for the time being of the church or chapel, shall and may either enter upon and hold such seat or pew, or let the same to any other person or persons, in such manner as such churchwardens shall think proper, until the rent so in arrear, and all costs and charges which shall have been occasioned by the nonpayment or in the recovery thereof, shall be duly paid and satisfied; or otherwise to sell the same pews or seats respectively by public auction to the best bidder, and out of the money thence arising pay and satisfy the said rent in arrear, rendering the overplus (if any), after deducting all reasonable costs and charges occasioned by or in consequence of such rent being in arrear and in the recovery thereof, to the owner or occupier of such pews or seats respectively (as the case

STAT. 58 GEO.
3, c. 45.

for poor persons.

Choice of pews
by subscribers.

Pews to be let
to raise the
sum required
for ministers'
salaries, &c.

Churchwardens may, with
consent of incumbent,
patron, and
bishop, alter
pew rents.

For the recovery of
pew rents half-yearly.

STAT. 58 GEO.
3, c. 45.

may be); or the said churchwardens, at their discretion, may sue for and recover the said rent so in arrear by action of debt or upon the case, for the use and occupation of such pew or seat, to be brought against the owner or owners, or any occupier or occupiers thereof, in the name of 'the churchwardens of the church or chapel, of [describing the church or chapel]'; and no such action or suit shall abate by reason of the death, removal, or going out of office of any churchwarden.

No opening to be made in any church or chapel for the purposes of burial; or grave made in any churchyard at a less distance than twenty feet from the walls of the church. Not to prevent burials in vaults.

"LXXX. And be it further enacted, that it shall not be lawful to break up the pavement, or to open the soil beneath the same, within any church or chapel to be erected under the provisions of this act, for the purposes of burial, or to make any grave in any cemetery or churchyard thereunto adjacent or belonging, at any less distance than twenty feet from the external walls of such church or chapel respectively: provided always, that nothing herein contained shall extend or be construed to extend to prevent the burial of dead bodies in any vault wholly arched with brick or stone, which may have been constructed for such purposes under any church or chapel, and to which the only access shall be by steps on the outside of the external walls thereof; and if any burial shall take place, or any grave be made, otherwise than is herein provided, the person or persons ordering or causing the same to be made, shall for every such offence, on conviction thereof before any two of his majesty's justices of the peace for the county or place, forfeit and pay the sum of fifty pounds; and in default of payment thereof the same shall and may be levied and recovered, by warrant under the hand and seal of such justices, by distress and sale of the goods and chattels of such offender or offenders, rendering the overplus (if any) to the owner thereof; of which penalty one moiety shall be given to the informer, and the other moiety to the use of the poor of the parish.

Accounts to be annually laid before parliament.

"LXXXI. And be it further enacted, that accounts shall annually be laid before both houses of parliament of the progress made by the said commissioners in execution of the purposes of this act, stating the number of churches or chapels built or building, the stipends assigned to the incumbents or curates thereof, the money expended, and for what purposes, and all such other particulars as shall be necessary for explaining the progress made in carrying the purposes of this act into execution.

Commissioners may receive and send letters free of postage.

"LXXXII. And be it further enacted, that the commissioners for the execution of this act shall and may receive and send all letters and packets relating to the execution of the powers of this act free from the duty of postage, provided that such letters and packets shall be directed to 'his majesty's commissioners appointed under the act for the building and promoting the building of additional churches;' and that all such letters and packets as shall be sent by the said commissioners shall be dated from their said office, and shall be signed on the outside of such letters and packets by such person as the said commissioners for the execution of this act shall appoint, with the consent of the said commissioners of his majesty's treasury, or any three or more of them, under such restrictions and regulations as the said commissioners of his majesty's treasury shall think proper and direct.

Limitation of actions.

"LXXXIII. And be it further enacted, that no action or suit shall be commenced against any person or persons for any thing done by virtue of or in pursuance of this act until fourteen days' notice thereof in writing shall have been given to the secretary for the time being of the said commissioners, nor after a sufficient satisfaction or a tender thereof hath been made to the party or parties aggrieved, nor after six calendar months next after the fact committed; and such action shall be brought in the said court of Exchequer in England, and shall be laid in the county of Middlesex, and not elsewhere; and the defendant or defendants in

General issue.

such action or suit shall and may plead the general issue, and give this act and the special matter in evidence at any trial to be had thereupon, and that the same was done in pursuance and by the authority of this act; and if the same shall appear to be so done, or if such action or suit shall be brought after the time hereinbefore limited for bringing the same, or shall be brought without fourteen days' notice thereof, or shall be brought in any other county or place, or after a sufficient satis-

faction made or tendered as aforesaid, that then the jury shall find for the defendant or defendants; or if the plaintiff or plaintiffs shall become nonsuited, or suffer a discontinuance of his, her, or their action or actions, or if a verdict shall pass against the plaintiff or plaintiffs, the defendant or defendants shall have treble costs, and shall have such remedy for recovering the same as any defendant or defendants hath or have for costs of suit in any other cases by law.

STAT. 58 GEO.
3, c. 45.

Treble costs.

“LXXXIV. Provided always, and be it further enacted and declared, that neither this act, nor any thing herein contained, shall extend to invalidate or avoid any ecclesiastical law or constitution of the church of England, or to destroy any of the rights or powers belonging to any bishop of any diocese, or any archdeacon, chancellor, or official.

Powers of
bishop, &c.
not to be in-
validated;

“LXXXV. And be it further enacted and declared, that he and they respectively may at all times hereafter visit, institute, and exercise ecclesiastical jurisdiction in all the parishes to be erected or divided by virtue or in pursuance of this act, or in any part or place within the same, as amply as they or any of them may do now therein, and in such manner as in any other parishes or places within his or their diocese or jurisdiction respectively.

but may exer-
cise ecclesias-
tical jurisdic-
tion.

“LXXXVI. And be it further enacted, that this act or any of the provisions thereof, may be amended, altered, or repealed by any act or acts to be passed in this present session of parliament.”

Act may be
altered or
repealed in
this session.

DLXVIII. STAT. 58 GEORGII 3, CAP. XLVI. A.D. 1818.

“An Act for amending two Acts of His present Majesty, so far as the same relate to the Establishment of Chapels in the East, West, and Wildmore Fens, in the County of Lincoln.”

STAT. 58 GEO.
3, CAP. XLVI.

DLXIX. STAT. 58 GEORGII 3, c. 47 (1). [IRELAND.] A.D. 1818.

“An Act to establish Fever Hospitals, and to make other Regulations for Relief of the Suffering Poor, and for preventing the Increase of Infectious Fevers in Ireland.”

STAT. 58 GEO.
3, c. 47. [IR.]

“Whereas fevers of an infectious nature have for some time past greatly prevailed among the poor in several parts of Ireland, whereby the health and prosperity of the whole country have been considerably endangered; and it is expedient that hospitals should be established for the relief of sufferers in such cases, and that regulations should be made to prevent, as effectually as possible, the increase of infection, as well at present as on future occasions; and such good purposes are most likely to be promoted by creating corporations in every county at large, and every county of a city or county of a town in Ireland, who may execute the powers and trusts hereinafter particularly expressed: be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the passing of this act there shall be, and one body politic and corporate is hereby created and erected in every county, and in every county of a city, and in every county of a town in Ireland; which shall consist, in every such county, of the archbishop or bishop whose diocese or any part of whose diocese shall extend into such county, of the representatives in parliament for such county, of all the justices of the peace commissioned and acting as such in such county; and in every county of a city or county of a town, such corporation shall consist also of the chief magistrate, sheriffs, and recorder of such county of a city or town, likewise of the representative or representatives in parliament (if any), and of the justices of the peace for such county of a city or town, all for the time being, and also of such persons as are hereinafter mentioned; which corporation shall be called by the name of ‘The President and Assistants of the Fever Hospital for [,]’ applying to every of them the name of its proper county, city, or town; and all the said corporations

A corporation
created in every
county, or
county of a
city or town,
for the estab-
lishment of
fever hospitals.

STAT. 58 GEO.
3, c. 47. [IR.]

Chairman
appointed.

Meetings, how
to be assem-
bled.

Contributors
to be members
of the corpora-
tion, who may
make reason-
able bye-laws;
appoint com-
mittees;

may take by
purchase or
devise lands
not above
500*l.* yearly;

shall have perpetual duration and succession, and may sue and be sued in all courts of justice by those names respectively, and shall have a common seal, and shall meet at and adjourn to such times and places within their counties, cities, or towns respectively, as they shall think fit; save only that the said corporations shall meet, and they are hereby required respectively to meet, for the first time, for the county of the city of Dublin, on the first day of July next after the passing of this act, at the sessions house of the said city, and for the several other counties, cities, and towns in Ireland, on the day (or, at their election, on the day next after the day) when the judges who shall hold the summer assizes next after the passing of this act, in and for the several counties, or either of such judges, shall depart from the town or place where the assizes shall be held, at the hall or session house respectively where the judges shall have sat for the business of the assizes; and at the first and every future meeting of the said corporations respectively, the archbishop or bishop, if present when the said corporations or quorums of them respectively shall assemble, shall take the chair, shall put every question, declare the majority of votes, and do all the duties of president or head of the corporation for that meeting; but if the archbishop or bishop shall not be present when the said corporations respectively shall first assemble, the representative in parliament for that county, county of a city, or county of a town, who shall first come on that day to the place of meeting, if both shall attend, and if not, the representative in parliament for that county, county of a city, or county of a town, who shall be present when the said corporations or quorums of them respectively shall assemble; and if the archbishop or bishop, or the representatives for such counties, cities, or towns respectively, or either of them, shall not attend in every county of a city and county of a town, the chief magistrate, or in his default, and in every county at large, the oldest justice of the peace who shall be present when the said corporations respectively or quorums of them shall first assemble, shall take the chair, and do all the duties of president or head of the corporation for that meeting; and the said corporations respectively shall be considered as assembled for the purpose of determining who shall be the president of that day, whenever five shall have come to the place of meeting at the time appointed for the first meeting of the said corporations respectively; and at all subsequent times after, whenever five of the said corporations shall have come to the place of the meeting at the respective times to be appointed for such meetings; and every person qualified, or capable as aforesaid of presiding at the meetings of the said corporations, may, at all times after the aforesaid first time appointed for the meeting of the said corporations, by notice in writing signed by him, to be posted at the proper assizes town, or at the sessions house in the city of Dublin, six days at the least before the time of meeting, exclusive of the day of posting such notice and the day of meeting, convene the said corporations respectively to do all corporate acts, but no second notice signed by a different person shall supersede a former; of which corporations respectively five shall always be a competent number to do all corporate acts; and the said corporations are hereby respectively authorized and empowered to elect, during good behaviour, such other persons, residing within their counties, cities, or towns respectively, as they shall think fit; and those also who shall contribute any sum not less than twenty pounds, or who shall subscribe and pay any annual sum not less than one guinea, to be applied to the charitable purposes of this act, to be members of the said corporations respectively; and it shall be lawful for the said corporations respectively, and they are hereby authorized, to make bye-laws reasonable and consonant to the laws of the land, and to appoint standing committees for the purposes of this act, to meet and act at certain place or places to be appointed in each county, city, or town; and it shall and may be lawful for the said corporations, and each of them respectively, and they are hereby authorized, empowered, and qualified, to accept or take by purchase, or by voluntary grant, or by devise, any lands, tenements, or hereditaments of inheritance, or for lives, not exceeding to any one of the said corporations the clear yearly value of five hundred pounds, any law to the contrary in anywise notwithstanding; but the corporation of any of the said counties, cities, or towns, shall at no time have a

capacity to take lands of inheritance, or for lives, of a greater value than as aforesaid, except in the case of eviction or determination of interest, in which case the said corporations respectively may make such new acquisition as aforesaid, not exceeding the clear annual value aforesaid; and it shall be lawful for the said corporations, and they are respectively hereby authorized, empowered, and qualified, to take all such donations in personal property as shall be made to them, and to accept of all leases for years of houses or lands, so as no such lease shall exceed twenty-one years; but every lease for years of lands or of a house to be made to any of the said corporations, exceeding that term, shall be void, except as hereinafter excepted.

“II. And be it further enacted, that it shall and may be lawful for the said corporations respectively, to take, over and above the five hundred pounds a year, and leases for years, which they are authorized to acquire as aforesaid, and such corporations respectively are hereby declared to be capable and qualified to take, by grant or by devise, any quantity of ground or land within their counties, cities, and towns respectively, not exceeding four roods, plantation measure, for the sites of houses to be built, and accommodations to be provided, for the reception of the helpless poor intended to be relieved under the provisions of this act; and also, that it shall and may be lawful for every archbishop and bishop in Ireland, and they are hereby respectively authorized and empowered, to grant any such portions of ground or land as aforesaid, out of the estates of their sees respectively, to the said corporations respectively, for the sites of such houses as aforesaid, for such estate or estates, either in fee, for lives renewable or not renewable, or for years, as they shall think fit, at such rents and fines as such archbishop or bishop shall think fit, or without any rent or fine if such archbishop or bishop shall think fit; and that every such grant and lease shall be good and valid against such archbishop and bishop, and their successors respectively, without the concurrence of any other person or body of men; anything in an act made in the parliament of Ireland in the tenth and eleventh years of the reign of the late King Charles the First, intituled, ‘An Act for the Preservation of the Inheritance, Rights, and Profits of Lands belonging to the Church and Persons Ecclesiastical,’ or any other law or usage in force in Ireland, to the contrary in anywise notwithstanding.”

STAT. 58 GEO. 3, c. 47. [I.R.]

and all personal property and leases for years, not above twenty-one, of lands or houses.

Corporation empowered to take four roods of land in a city or town for sites of houses.

Bishops may grant such land out of their sees.

notwithstanding 10 & 11 Car. 1, c. 3, or other law.

DLXX. STAT. 58 GEORGHII 3, CAP. LIII. A.D. 1818.

“An Act for enlarging the Parish Church and Churchyard of Southminster, in the County of Essex.”

STAT. 58 GEO. 3, CAP. LIII.

DLXXI. STAT. 58 GEORGHII 3, CAP. LVIII. A.D. 1818.

“An Act for providing an additional Burial Ground for the Parish of Saint Giles, Reading, in the County of Berks, and a Room for the use of the Minister in performing the Burial Service; and for stopping up one of the Footpaths over the present Churchyard of the said Parish.”

STAT. 58 GEO. 3, CAP. LVIII.

DLXXII. STAT. 58 GEORGHII 3, c. 69(1). A.D. 1818.

“An Act for the Regulation of Parish Vestries.”

STAT. 58 GEO. 3, c. 69.

“Whereas it is expedient to regulate the manner of holding parish vestries (2), and the right of voting therein: may it please your majesty that it may be enacted; and be it enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this pre-

(1) Amended by Stat. 59 Geo. 3, c. 85; Stat. 1 & 2 Gul. 4, c. 60; and Stat. 7 Gul. 4 & 1 Vict. c. 45. *Vide etiam* Stat. 4 & 5 Gul. 4, c. 76; and Ecclesiastical Commissioners’ Rep. (Feb. 15, 1832,) p. 72.

(2) *Manner of holding parish vestries*:—In *Dawe v. Williams*, (2 Add. 139,) Sir John Nicholl observed, “Vestries, for church matters, regularly are to be called ‘by the churchwardens with the consent of the mini-

ster.’ The late act of parliament, (Stat. 58 Geo. 3, c. 69,) neither altered the general authority under which, nor the persons by whom, vestries are to be called; it only added some further formalities in the mode of calling; such as, directing the notice to be put up on the church door, and that it shall be given a certain number of days before the vestry is to meet.”

STAT. 58 GEO.
3, c. 69.

Three days' notice to be given of vestries, by publication in the church, and affixing on the church door.

Chairman of vestries appointed.

Chairman to have the casting vote. Minutes to be entered and signed.

Manner of voting in vestries.

sent parliament assembled, and by the authority of the same, that from and after the first day of July one thousand eight hundred and eighteen, no vestry or meeting of the inhabitants in vestry of or for any parish shall be holden until public notice shall have been given of such vestry, and of the place and hour of holding the same, and the special purpose thereof, three days at the least before the day to be appointed for holding such vestry, by the publication of such notice in the parish church or chapel on some Sunday during or immediately after divine service, and by affixing the same, fairly written or printed, on the principal door of such church or chapel.

“II. And for the more orderly conduct of vestries, be it further enacted, that in case the rector, or vicar, or perpetual curate shall not be present, the persons so assembled in pursuance of such notice shall forthwith nominate and appoint, by plurality of votes, to be ascertained as hereinafter is directed, one of the inhabitants of such parish to be the chairman of and preside in every such vestry; and in all cases of equality of votes upon any question arising therein, the chairman shall (in addition to such vote or votes as he may by virtue of this act be entitled to give in right of his assessment) have the casting vote; and minutes of the proceedings and resolutions of every vestry shall be fairly and distinctly entered in a book (1) (to be provided for that purpose by the churchwardens and overseers of the poor,) and shall be signed by the *chairman* (2), and by such other of the inhabitants present as shall think proper to sign the same.

“III. And be it further enacted, that in all such vestries every inhabitant present who shall, by the last rate which shall have been made for the relief of the poor, have been assessed and charged upon or in respect of any annual rent, profit, or value not amounting to fifty pounds, shall have and be entitled to give one vote and no more; and *every inhabitant there present* (3), who shall in such

(1) *Book*:—A vestry clerk, who is called as a witness, cannot, on the ground that it may criminate himself, object to produce the vestry book kept under Stat. 58 Geo. 3, c. 69, s. 2. *Bradshaw v. Murphy*, 7 C. & P. 612.

(2) *Chairman*:—In the office of the judge promoted by *Wilson v. M'Math*, (3 Phill. 67,) the right of an incumbent to preside at a meeting of his parishioners in vestry was established:—Sir *John Nicholl* observing, “In meetings of the parish, consisting of ‘minister, churchwardens, and parishioners,’ assembled in the church for an ecclesiastical purpose, that the *rector parochiae* should not preside, but be considered as a mere individual, would be most strangely incongruous, and that he and any other individual should be put in competition for the office of chairman, would be placing him in a degraded situation, in which he is not placed by the constitutional establishment of this country. On sound legal principle, he is the head and *præses* of the meeting.”

In *Regina v. D'Oyly* (D.D.), (12 A. & E. 139,) it was likewise holden that, at a vestry meeting summoned by the churchwardens for the purpose of electing new churchwardens in a parish regulated by Stat. 58 Geo. 3, c. 69, the rector had a right to preside: that he might adjourn such meeting, though against the wish of the majority present, on his legal responsibility, subject to the being called upon to answer for his conduct if he have done anything improperly; and that if a poll be demanded, he might, of his own authority, grant such poll.

(3) *Every inhabitant there present*:—In the election of churchwardens, if a poll be demanded the votes are to be given by the

qualified inhabitants present; but all qualified inhabitants, (whether they were present or not at the show of hands,) have a right to be admitted into the vestry-room and vote during such poll: although the qualified inhabitants present at the time of granting the poll resolve, that the poll shall be confined to those then present.

It is not a sufficient ground for impeaching such election, (on motion for a *mandamus* to elect,) that the poll was taken with closed doors, unless it be expressly sworn, that some qualified person who meant to vote, was thereby prevented from doing so.

And it seems, that if such an instance were shown, the court would grant a *mandamus*, without inquiring strictly whether the number of persons excluded was in fact such as to affect the result of the election.

Thus, in *Regina v. Lambeth* (*Rector of*), (8 A. & E. 356,) Lord *Denman* stated, “This rule must be discharged. There is no doubt of the law; that the rate-payers in vestry are to elect, and that, if a poll be demanded, it should be kept open for all qualified persons. If any single person had been excluded in the present case, it might have been a reason for demanding, that the election should be set aside; but I do not find, by the affidavits, that any person who would have voted was shut out; and, if so, nothing has been done to render the case different from what it would have been, if the election had been decided at once. If it had appeared that any one person had been excluded, we would have gone a good way in supposing that the resolution had affected the result of the election.”

last rate have been assessed or charged upon or in respect of any annual rent or rents, profit or value, amounting to fifty pounds or upwards (whether in one or in more than one sum or charge), shall have and be *entitled to give one vote* (1) for every twenty-five pounds of annual rent, profit, and value upon or in respect of which he shall have been assessed or charged in such last rate, so nevertheless that no inhabitant shall be entitled to give more than six votes; and in cases where two or more of the inhabitants present shall be jointly rated, each of them shall be entitled to vote according to the proportion and amount which shall be borne by him of the joint charge; and where one only of the persons jointly rated shall attend, he shall be *entitled to vote* (2) according to and in respect of the whole of the joint charge.

STAT. 58 GEO.
3, c. 69

(1) *Entitled to give one vote*:—In *Nightingale v. Marshall*, (2 B. & C. 313,) it appeared, that in the parish of W., the poor-rates, according to an ancient custom, had always been made without respect to the value of property in the parish, but according to the supposed ability of the party charged:—upon which it was held, that persons so rated, were not rated in respect of any annual rent, profit, or value, within the meaning of Stat. 58 Geo. 3, c. 69, s. 3, and therefore were not entitled to more than one vote at vestry meetings, although rated upon more than 50*l.*:—Chief Justice *Abbott* observing, “I give no opinion as to the validity of the rates in question. My opinion is founded entirely on the third section of the 58 Geo. 3, c. 69, which provides for a plurality of votes. By that section it was enacted, ‘that every inhabitant who shall by the last rate which shall have been made for the relief of the poor, have been assessed and charged upon or in respect of any annual rent, profit, or value, not amounting to 50*l.*, shall have and be entitled to give one vote and no more; and if upon an annual rent, profit, or value, amounting to more than 50*l.*, he shall have one vote for every 25*l.* of annual rent, &c. upon which he is assessed.’ Looking at this rate, I am clearly of opinion, that no person in the parish of St. Mary, Whitechapel, is rated upon or in respect of any annual rent, profit, or value. If the rate were so made, it must be proportioned to the amount of the rent, profit, or value, in respect of which it is imposed. It is not so proportioned; and it therefore appears not to have been imposed in respect of the property mentioned in the act, but in respect of some ability to contribute to the relief of the poor, measured by some other standard. I am therefore of opinion, that the provisions of the 58 Geo. 3, c. 69, respecting a plurality of votes, do not apply to the parish in question; the plaintiff, consequently, was not duly elected to the office of sexton, and a nonsuit must be entered.”

(2) *Entitled to vote*:—In *Regina v. D'Oyly (D.D.)*, (12 A. & E. 139,) it appeared, that on the election of churchwardens, a poll having been demanded, the rector granted the poll, and ordered it to be held immediately on the close of the other business, and continued for three successive days, at a time and a place in the parish deemed by him most convenient, and which he had appointed by previous notice, (after the publication of a summons by the old churchwardens,) in case a poll should be demanded: and he refused to

put a motion which had been proposed for a different appointment, of which a majority of the old churchwardens had given previous notice. The other business lasting till seven in the evening, he directed that the poll should commence on the following morning, at the time and place of which notice had been given; a majority of the meeting (as was alleged) dissenting. The poll was taken accordingly, and it was held to be rightly taken.

Where a local act, (Stat. 50 Geo. 3, CAP. XIX.) directed that on every Easter Tuesday, the rate-payers of the four districts of Lambeth parish, should, “in vestry assembled, or the major part of them then present, nominate,” sixteen persons, (each district nominating four,) out of whom the justices, in petty sessions, should select four to be overseers:—it was held, that the power of nomination was not confined to the persons present in vestry when the names were proposed, but that, after a show of hands, a poll might be demanded, and kept open for all the rate payers, as in ordinary cases:—and that the statute containing the above clause was not a “special act,” within s. 8 of Stat. 58 Geo. 3, c. 69, excluding the operation of s. 3; and therefore, that rate payers were entitled to one or more votes on such poll, according to the amount at which they were assessed.

Lord *Denman* remarking, “The proper place for the election of churchwardens is some convenient place within the precincts of the church; and the rector is the proper person to preside, as of common right, and as owning the freehold of the church. And churchwardens are so far ecclesiastical officers, that the rector is entitled to interfere in bringing them into existence. The cases confirm this opinion; and a further sanction is given to it by Stat. 58 Geo. 3, c. 69, which does not profess to confer this right on the rector, nor use language declaratory of it, but assumes and recognises his possession of it by enacting, in s. 2, that, ‘in case the rector’ ‘shall not be present,’ the meeting shall nominate a chairman.

“Assuming, then, that he possesses this right, the question now is, what powers he has by statute, and whether he has exercised his functions according to law. Stat. 58 Geo. 3, c. 69, s. 1, requires notice of the vestry to be given; (*vide* Stat. 7 Gul. 4 & 1 Vict. c. 45, s. 3;) but does not say who is to give it. We are of opinion, that the rector is the fit person; he is at the head

STAT. 58 GEO.
3, c. 69.

Inhabitants
coming into a
parish since
the last rate
may vote.

Inhabitants
refusing pay-
ment of rates
to be excluded
from vestries.

For preserva-
tion of parish
books and
papers.

“IV. Provided, and be it further enacted, that when any person shall have become an inhabitant of any parish, or become liable to be rated therein, since the making of the last rate for the relief of the poor thereof, he shall be entitled to vote for and in respect of the lands, tenements, and property for which he shall have become liable to be rated, and shall consent to be rated, in like manner as if he should have been actually rated for the same.

“V. Provided also, and it is hereby further enacted, that no person who shall have refused or neglected to pay any rate for the relief of the poor which shall be due from and shall have been demanded of him, and shall be entitled to vote or to be present in any vestry of the parish for which such rate shall have been made, until he shall have paid the same.

“VI. And be it further enacted, that as well the books hereby directed to be provided and kept for the entry of the proceedings of vestries, as all former vestry books, and all rates and assessments, accounts and vouchers of the churchwardens, overseers of the poor, and surveyors of the highways, and other parish officers, and all certificates, orders of courts and of justices, and other parish books, documents,

of the parish for this purpose; and in the present case he was to nominate one churchwarden at the vestry. Then, the meeting being held and a show of hands taken, some one was to declare on whom the nomination had fallen. Who was to do that? Not the body of the parishioners who had made the nomination, nor the old churchwardens, but the person presiding at the vestry, namely, the rector.

“A poll is then demanded: and it is demandable as of right; and the president of the meeting is the person to grant it. In the absence of other business, the poll should be taken immediately: if time does not allow of that, there must be an adjournment for the purpose. Then, who is to direct the adjournment? It is suggested that a majority of the voters should do so. But how is the majority to be ascertained in so large a constituency? And what is the situation of parties if the majority present decide against adjournment so as to leave no time for a considerable part of the rate-payers to vote? Setting aside the inconvenience that might arise, if a majority of the parishioners could determine the point of adjournment, we think that the person who presides at the meeting is the proper individual to decide this. It is on him that it devolves, both to preserve order in the meeting, and to regulate the proceedings so as to give all persons entitled a reasonable opportunity of voting. He is to do the acts necessary for these purposes on his own responsibility, and subject to the being called upon to answer for his conduct if he has done anything improperly.

“It is urged, that the rector ought not to preside, because he has the nomination of one churchwarden, and, as chairman, he would have a casting vote, which might enable him, indirectly, to nominate a second. But it is clear that, as a parishioner, he might give a vote deciding the nomination: and, if it be inconvenient that he should have the power in question, the legislature should have provided against it; but that has not been done.

“The case of *Stoughton v. Reynolds*, (2 Str. 1045; C. T. H. 274; Fortesc. 168;) is a good authority, but should not be pressed to

the extent to which the argument in support of this rule would carry it. As it has been explained, it does not decide, that the rector may not adjourn the meeting, but only that if he has done it so as to disturb the proceedings, the court will not interfere.

“The case of the overseers (*Reg. v. Hedger*, 12 A. & E. 151,) is nearly the same, except for the provisions of the local act. We are of opinion that the words ‘then present,’ in Stat. 50 Geo. 3, CAP. XIX. s. 11, do not confine the right of nomination to persons actually present at the first meeting, any more than such words would prevent voters from coming in during a poll. As to the word ‘nominate,’ it is the proper expression in this case, as the inhabitants of the district do not elect, but merely fix upon persons, whose names are to be laid before the justices. We granted a rule on this point, rather from anxiety to avoid any collision with the case of *Regina v. St. Pancras (Vestrymen, &c. of)*, (11 A. & E. 15,) than from any doubt which we entertained. But in that case it was necessary, that the inspectors should be ‘nominated’ before the election of vestrymen was proceeded in; here no such necessity exists; and therefore the word need not have the same effect. The rules must be discharged.”

Sir *Frederick Pollock*, on a subsequent day of the term, submitted to the court that their judgment in *Regina v. Hedger* had not decided the question as to plurality of votes. He admitted that, by that judgment, a *mandamus* could not go, requiring the justices to act upon the list carried on the show of hands; but he urged that, if the votes were improperly taken at the poll, no good list was returned at that time. He therefore moved for a rule to show cause why a *mandamus* should not issue to the rector and churchwardens, to convene another vestry for the purpose of nominating persons to be returned as fit to serve the office of overseer; but he stated, that he did not wish to take a rule if the court had no doubt on the point.

The court, without assigning any reasons, refused the rule. *Regina v. D'Oyly (D.D.)* 12 A. & E. 139.

writings, and public papers of every parish, except the registry of marriages, baptisms, and burials, shall be kept by such person and persons, and deposited in such place and manner, as the inhabitants in vestry assembled shall direct; and if any person in whose hands or custody any such book, rate, assessment, account, voucher, certificate, order, document, writing, or paper shall be, shall wilfully or negligently destroy, obliterate, or injure the same, or suffer the same to be destroyed, obliterated, or injured, or shall, after reasonable notice and demand, refuse or neglect to deliver the same to such person or persons, or to deposit the same in such place, as shall by the order of any such vestry be directed, every person so offending, and being lawfully convicted thereof, on his own confession, or on the oath of one or more credible witness or witnesses, by and before two of his majesty's justices of the peace, upon complaint thereof to them made, shall for every such offence forfeit and pay such sum, not exceeding fifty pounds nor less than forty shillings, as shall by such justices be adjudged and determined; and the same shall be recovered and levied, by warrant of such justices, in such manner and by such ways and means as poor's rates in arrear are by law to be recovered and levied, and shall be paid to the overseers of the poor of the parish against which the offence shall be committed, or to some of them, and be applied for and towards the relief of the poor thereof: provided nevertheless, that every person who shall unlawfully retain in his custody, or shall refuse to deliver to any person or persons authorized to receive the same, or who shall obliterate, destroy, or injure, or suffer to be obliterated, destroyed, or injured, any book, rate, assessment, account, voucher, certificate, order, document, writing, or paper belonging to any parish, or to the churchwardens, overseers of the poor, or surveyors of the highways thereof, may in every such case be proceeded against in any of his majesty's courts, civilly or criminally, in like manner as if this act had not been made.

"VII. Provided always, and be it further enacted, that all provisions, authorities, and directions in this act contained in relation to parishes, shall extend and be construed to extend to all townships, vills, and places having separate overseers of the poor, and maintaining their poor separately; and that all the directions and regulations herein contained in regard to vestries shall extend and be applied to all meetings which may by law be holden of the inhabitants of any parish, township, vill, or place for any of the purposes in this act expressed; and that the notices by this act required to be given of every vestry may, in places in which there is or shall be no parish church or chapel, or where there shall not be divine service in such church or chapel, be given and published in such manner as notices of the like nature shall have been there usually given and published, or as shall be most effectual for communicating the same to the inhabitants of every such parish, township, vill, or place respectively.

"VIII. Provided also, and be it further enacted, that *nothing in this act contained shall extend or be construed to extend to alter the time of holding any vestry, parish, or town meeting which is by the authority of any act required to be holden on any certain day* (1), or within any certain time in such act prescribed and directed;

STAT. 58 GEO.
3, c. 69.

Penalty on retaining or injuring parish books, &c.

Recovery and application of penalty.

Not to affect other proceedings.

Provisions in relation to parishes extended to townships, &c.

Manner of giving notices of vestries and meetings in special cases.

Not to alter the time for holding vestries specially directed:

(1) *Nothing in this act . . . shall . . . alter the time of holding any vestry, . . . which is by the authority of any act required to be holden on any certain day:—* In *Rex v. St. James's, Westminster (Churchwardens of)*, (5 A. & E. 391,) it was stated, that by Stat. 1 Jac. 2, c. 22, (1685,) the parish of St. James, Westminster, was created, by dividing a district from the parish of St. Martin, and it was enacted, that the inhabitants of St. James's "shall be from time to time subject to the laws and statutes now in force, or hereafter to be made for the choice of churchwardens," &c. "and such other like parish officers, and other parochial duties within the said parish, in like manner as the inhabitants of the said parish of St. Martin's are or might be subject and liable

unto." St. Martin's had been governed by a select vestry; and provision was made for continuing such a vestry in St. James's.

Before 1685, the practice in St. Martin's, on the election of the two churchwardens, had been, that the vestry chose them by scoring certain prepared lists, (the greatest number of scores carrying the election;) but, by usage, the junior churchwarden of the preceding year was re-elected of course. It did not appear how or when this practice originated. The power of the select vestry to choose the churchwardens was often disputed in St. Martin's, after 1685; and, for the last two years, the elections by them were discontinued; and the officers chosen according to Stat. 58 Geo. 3, c. 69. No alteration was made in St. James's. It was

STAT. 58 GEO. 3, c. 69. nor shall any thing in this act contained extend to take away, lessen, prejudice, or affect the *powers of any vestry or meeting holden* in any parish, township, or place, *nor to affect special vestries.* *by virtue of any special act*(1), or acts, of *any ancient and special usage or custom*(2), or to change or affect the right or manner of voting in any vestry or meeting so holden.

Not to extend to London; "IX. Provided always, and be it enacted, that nothing in this act contained shall extend to any parish within the city of London.

nor to Southwark. "X. Provided always, and be it further enacted, that nothing in this act contained shall extend to any parish in the borough of Southwark.

To extend only to England and Wales. "XI. And be it further enacted, that this act shall extend only to that part of the United Kingdom called England and Wales; and that the same shall be a public act, and be judicially taken notice of as such by all judges, justices, and others, without specially pleading the same."

STAT. 58 GEO. 3, c. 81. [IR.] "DLXXIII. STAT. 58 GEORGII 3, c. 81. [IRELAND.] A.D. 1818. *"An Act for extending to that part of the United Kingdom called Ireland, certain Provisions of the Parliament of Great Britain in relation to Executors under the age of twenty-one years, and to Matrimonial Contracts."*

38 Geo. 3, c. 87, s. 6. "Whereas by an act made in the parliament of Great Britain, in the thirty-eighth year of the reign of his present majesty, intituled, 'An Act for the Administration of Assets in cases where the Executor to whom Probate has been granted is out of the Realm,' it is amongst other things enacted, that where an infant is sole executor, administration with the will annexed shall be granted to the guardian of such infant, or to such other person as the court shall think fit, until

held, that the mode of election practised in 1685 was one of the laws then in force, by which, under Stat. 1 Jac. 2, c. 22, the parish of St. James was to be governed. And that the abandonment of the custom by St. Martin's did not oblige St. James's to discontinue it also.

It was agreed, that although St. James's had adopted Sir John Hobhouse's Act, such an adoption made no difference.

(1) *Powers of any vestry or meeting holden . . . by virtue of any special act*:—A local act passed before the Stat. 58 Geo. 3, c. 69, for the regulation of parish vestries, created the office of guardians of the poor for a particular parish, and enacted, that vacancies should be annually filled up by the rated inhabitants assembled in the vestry room, who should elect persons in the room of those going out:—it was held, that after the passing of Stat. 58 Geo. 3, c. 69, the inhabitants must be allowed in such election the number of votes, in proportion to their respective assessments, defined in the latter act; for that the local act did not give this vestry such a peculiar constitution, as to bring it within s. 8 of Stat. 58 Geo. 3, c. 69, which preserves to vestries holden under any special act, the powers and rights of voting which they previously enjoyed. *Rex v. St. James's, Clerkenwell (Churchwardens of)*, 1 A. & E. 317.

(2) *Any ancient and special usage or custom*:—By a deed of feoffment of 1621, Sir Nicholas Salter, (in consideration of 100l. paid by the feoffees and the other inhabitants of Enfield, and of a free school for ever, to be held for the instruction of the children of the inhabitants of Enfield,) granted certain lands to fourteen feoffees, to the intent that they and their heirs should pay 20l. a year out of the rents towards the maintenance of

a schoolmaster for such school, and the residue for other purposes, provided, that no act concerning the lands or their rents, should be done, but in a vestry, or meeting of the feoffees, and ten at least of the inhabitants of Enfield, which should be vestrymen, and not feoffees, in a vestry to be held by them in a chamber over the school, or in the vestry, situate in the parish church, upon public warning, to be given in the church the Sunday before the meeting. Schoolmasters were to be elected in this way, within three months after every vacancy, and were to give a bond to three feoffees to resign the appointment upon half a year's warning by the feoffees, or any of them, so it were with the consent and agreement of the feoffees and vestrymen, or the most part of them, which should be assembled in a vestry or meeting, to be held as aforesaid, so always as at least ten of the vestrymen which were not feoffees should vote at the holding of the vestry. Two feoffees were to receive the rents, and account for them the Sunday after the receipt, at a vestry, consisting of the persons before described, and held and convened in the mode before mentioned. When the feoffees should be all dead but five, four, or three, at the least, or gone to live out of the parish, the survivors were to enfeof fourteen others, of discreet and wealthy men, then inhabitants in the parish, to be chosen by the vestrymen of the parish, or the greater number, at a vestry, to be holden in the manner before described:—upon such facts, it was held, in *Attorney-General v. Wilkinson*, (3 B. & B. 266,) that, in the execution of the power of removal of the schoolmaster, the votes were to be taken *per capita*, and not according to the provisions of Stat. 58 Geo. 3, c. 69.

such infant shall have attained the full age of twenty-one years, at which period, and not before, probate of the will shall be granted to him: and whereas by a certain other act made in the parliament of Great Britain, in the twenty-sixth year of the reign of his late majesty King George the Second, intituled, 'An Act for the better preventing of Clandestine Marriages,' it is amongst other things enacted, that in no case whatsoever shall any suit or proceeding be had in any ecclesiastical court, in order to compel a celebration of any marriage *in facie ecclesie*, by reason of any contract of matrimony whatsoever, whether *per verba de presenti*, or *per verba de futuro*. And whereas, it is expedient to extend the aforesaid provisions of the said in part recited acts to that part of the United Kingdom called Ireland: be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that where an infant is sole executor, administration with the will annexed, in that part of the United Kingdom called Ireland, shall be granted to the guardian of such infant, or to such other person as the spiritual court there shall think fit, until such infant shall have attained the full age of twenty-one years, at which period, and not before, probate of the will shall be granted to him.

"II. And be it further enacted, that the person to whom such administration shall be granted shall have the same powers vested in him, as an administrator now hath by reason of an administration granted to him, *durante minore etate* of the next of kin.

"III. And be it further enacted by the authority aforesaid, that in no case whatsoever shall any suit or proceeding be had in any ecclesiastical court of that part of the United Kingdom called Ireland, in order to compel a celebration of any marriage *in facie ecclesie* by reason of any contract of matrimony whatsoever, whether *per verba de presenti*, or *per verba de futuro*, which shall be entered into after the end and expiration of ten days next after the passing of this act; any law or usage to the contrary notwithstanding."

DLXXIV. STAT. 58 GEORGII 3, c. 84. A.D. 1818.

"An Act to remove Doubts as to the Validity of certain Marriages had and solemnized within the British Territories in India."

"Whereas doubts have arisen concerning the validity of marriages which have been had and solemnized within the British territories in India, by ordained ministers of the church of Scotland as by law established: and whereas it is expedient that such doubts should be quieted, and that the law respecting such marriages should be declared for the future; be it declared and enacted; and it is hereby declared and enacted, by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that all marriages heretofore had and solemnized, or which shall be had and solemnized within the said territories in India, before the thirty-first day of December now next ensuing, by ordained ministers of the church of Scotland as by law established, shall be, and shall be adjudged, esteemed, and taken to have been, and to be, of the same and no other force and effect as if such marriages had been had and solemnized by clergymen of the church of England, according to the rites and ceremonies of the church of England; and that from and after the said thirty-first day of December now next ensuing, all marriages between persons, both or one of such persons being members or member of or holding communion with the church of Scotland, and making a declaration to the effect hereinafter mentioned, which marriages shall be had and solemnized within the British territories in India, by ordained ministers of the church of Scotland as by law established, and appointed by the united company of merchants of England trading to the East Indies to officiate as chaplains within the said territories, shall be, and shall be adjudged, esteemed, and taken to be, of the same and no other force and effect as if such marriages were had and solemnized by clergymen of the church of England, according to the rites and

STAT. 58 GEO.
3, c. 81. [18.]
26 Geo. 2, c. 33,
s. 13.

Where infant
sole executor,
administration,
with will an-
nexed, to
guardian.

Administrator
shall have the
usual powers.

No proceeding
to compel a
celebration of
marriage *in
facie ecclesie*
by reason of
contract.

STAT. 58 GEO.
3, c. 84.

Marriages
solemnized in
India before
31st December
by ministers of
the church of
Scotland to be
of the same
force as if
solemnized by
clergymen of
the church of
England; and
after that
period, mar-
riages between
persons of the
church of
Scotland by
ministers of
that commu-
nion, and
appointed by
the East India
Company, to
be valid.

STAT. 58 GEO.
3, c. 84.

Declaration to
be made by
parties.

Minister shall
certify the
marriage; and
shall deliver a
duplicate of
the certificate
to the party,
and transmit
another to the
secretary of
the presidency.

ceremonies of the church of England: provided always, that from and after the said thirty-first day of December, no such marriage as aforesaid shall be had and solemnized, till both or one of such persons, as the case may be, shall have signed a declaration in writing, in duplicate, stating that they, or he or she, as the case may be, are or is members or member of or holding communion with the church of Scotland by law established.

"II. And be it further enacted, that the minister by whom such marriage shall be solemnized, shall, immediately upon the solemnization thereof, certify such marriage by a writing under his hand in duplicate, subjoined to or indorsed upon the declaration in duplicate hereinbefore mentioned, specifying in such certificate the names and descriptions of the parties between whom and of the witnesses in whose presence the said marriage has been had and solemnized, and the time and place of the celebration of the same; and such certificate in duplicate shall be also signed forthwith by the parties entering into such marriage, and by the witnesses to the same; and the minister officiating shall deliver one duplicate of such declaration and certificate to the persons married, or to one of them, and shall transmit the other duplicate of such declaration and certificate to the chief secretary of government at the presidency within which such marriage shall have been had and solemnized."

STAT. 58 GEO.
3, CAP.
LXXXVI.

DLXXV. STAT. 58 GEORGII 3, CAP. LXXXVI. A.D. 1818.

"An Act for building a Chapel of Ease in the Township of Pendleton and Parish of Eccles, in the County Palatine of Lancaster."

STAT. 58 GEO.
3, c. 91.

DLXXVI. STAT. 58 GEORGII 3, c. 91 (1). A.D. 1818.

"An Act for appointing Commissioners to inquire concerning Charities in England for the Education of the Poor."

STAT. 59 GEO.
3, cap. vi.

DLXXVII. STAT. 59 GEORGII 3, cap. vi. A.D. 1819.

"An Act to enable the Curate and Patron of the Curacy of the Parochial Chapel of the Chapelry of Burnley, in the County Palatine of Lancaster, for the time being, to grant Leases of the Glebe Lands belonging to the said Curacy."

STAT. 59 GEO.
3, CAP. XI.

DLXXVIII. STAT. 59 GEORGII 3, CAP. XI. A.D. 1819.

"An Act for altering, amending, and extending the Provisions of an Act passed in the fifty-sixth year of His present Majesty, for repairing and altering the Parish Church of Saint George the Martyr, in the County of Middlesex, and for making further Provision for the Rector of the said Parish, and for improving the Churchyard thereof."

STAT. 59 GEO.
3, c. 12.

DLXXIX. STAT. 59 GEORGII 3, c. 12(2). A.D. 1819.

"An Act to amend the Laws for the Relief of the Poor."

STAT. 59 GEO.
3, cap. xx.

DLXXX. STAT. 59 GEORGII 3, cap. xx. A.D. 1819.

"An Act to authorize the Sale of Lands settled for the perpetual Augmentation of the Curacy of Morton, in the County of Salop."

STAT. 59 GEO.
3, cap. xxii.

DLXXXI. STAT. 59 GEORGII 3, cap. xxii. A.D. 1819.

"An Act to enable the Dean and Chapter of Hereford to rebuild the Almshouses of Saint Catherine's Hospital, in the Borough of Ledbury, in the County of Hereford, and for the better Regulation of the Affairs of that Charity."

(1) Amended by Stat. 59 Geo. 3, c. 81. *Sed vide* Stat. 1 & 2 Gul. 4, c. 34, and Stat. Continued by Stat. 5 Geo. 4, c. 58, and 5 & 6 Gul. 4, c. 71.
Stat. 10 Geo. 4, c. 57; which have expired. (2) *Vide post.* Stat. 1 & 2 Gul. 4, c. 60.

DLXXXII. STAT. 59 GEORGII 3, cap. xxiii. A.D. 1819.

STAT. 59 GEO.
3, cap. xxiii.

"An Act to enable the Dean and Chapter of Hereford to discharge certain Debts incurred in repairing the Cathedral Church of Hereford."

DLXXXIII. STAT. 59 GEORGII 3, CAP. XXXV. A.D. 1819.

STAT. 59 GEO.
3, CAP. XXXV.

"An Act for building a new Church in the Parish of Saint Luke, Chelsea, in the County of Middlesex, and for other Purposes relating thereto."

DLXXXIV. STAT. 59 GEORGII 3, c. 36 (1). A.D. 1819.

STAT. 59 GEO.
3, c. 36.

"An Act to repeal certain Acts now in force for regulating and making Sale of Bread out of the City of London, and the Liberties thereof, and beyond the Weekly Bills of Mortality, and ten Miles of the Royal Exchange, where no Assize is set, and for establishing other Provisions and Regulations relative thereto."

DLXXXV. STAT. 59 GEORGII 3, CAP. XXXVI. A.D. 1819.

STAT. 59 GEO.
3, CAP. XXXVI.

"An Act for repairing and enlarging the Church of the Parish of Mitcham, in the County of Surrey, and providing an additional Burial Ground thereto."

DLXXXVI. STAT. 59 GEORGII 3, CAP. XXXVII. A.D. 1819.

STAT. 59 GEO.
3, CAP.
XXXVII.

"An Act for defraying the Expenses incurred in taking down, rebuilding, and enlarging the Chapel of Saint Hilds, in the Parish of Jarrow, in the County Palatine of Durham."

DLXXXVII. STAT. 59 GEORGII 3, CAP. XXXVIII. A.D. 1819.

STAT. 59 GEO.
3, CAP.
XXXVIII.

"An Act for building a Chapel of Ease in the Parish of Boston, in the County of Lincoln."

DLXXXVIII. STAT. 59 GEORGII 3, CAP. XXXIX.(2). A.D. 1819.

STAT. 59 GEO.
3, CAP.
XXXIX.

"An Act for establishing a Select Vestry in the Parish of Saint Pancras, in the County of Middlesex, and for other Purposes relating thereto."

DLXXXIX. STAT. 59 GEORGII 3, c. 40. A.D. 1819.

STAT. 59 GEO.
3, c. 40.

"An Act to secure Spiritual Persons in the Possession of Benefices in certain Cases."

"Whereas certain spiritual persons having been possessed of two benefices, which they were lawfully entitled to hold together by virtue of a dispensation granted by the Lord Archbishop of Canterbury, and confirmed under the great seal, have afterwards, without having resigned or otherwise vacated one of the benefices so held by them, obtained a new dispensation to hold another benefice with one of those benefices of which they were before possessed, and have thereupon been put into the possession of such other benefice, by nomination, licence, institution, collation and induction, as the nature of the said benefice might require: and whereas doubts have arisen whether, for want of the previous resignation or other vacation by such spiritual persons of such one of the benefices before possessed by them by dispensation, as was not intended to be held with the last taken benefice, the subsequent dispensation was valid in law, and whether not only the benefice intended to be made void, but also the other benefice so previously possessed by such spiritual persons, and intended to be held by them with the other benefice by virtue of such subsequent dispensation, have not been rendered void; and whereas it would be most injurious to the spiritual persons who now hold

(1) The provisions of Stat. 59 Geo. 3, c. 36, s. 12, which applied to baking upon Sunday, were embodied in Stat. 1 & 2 Geo. 4, c. 59. *Vide ante* 614.

(2) As to the responsibilities of the subordinate officers under this act, *vide M'Gahy v. Alston*, 1 M. & W. 386.

STAT. 59 GEO.
3, c. 40.

Securing benefices in certain cases where dispensation is granted for holding another benefice therewith.

Incumbents of such benefices to enjoy the emoluments.

Patrons not prevented from nominating to such benefices on death or resignation of incumbent.

benefices which may have been so inadvertently rendered void, and to the patrons of the said benefices, by means of lapse to the bishop, or the archbishop, or the crown, if advantage of such avoidance should be taken; wherefore, and for the relief of such spiritual persons and patrons, be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that in every case which has occurred before the passing of this act, where a spiritual person has obtained a dispensation to hold a benefice to which he had been nominated, presented, or was to be licensed or collated, with a benefice which he had held with another benefice by virtue of a former dispensation, without having in due time before resigned or otherwise vacated the other benefice included in the former dispensation, and where, for want of such previous resignation or vacation, the benefice held by such spiritual person by the former dispensation, and intended to be secured to him by the subsequent dispensation, may have been rendered void, it shall not be lawful for the king's most excellent majesty, or any other patron or patrons, or for his said majesty, or any archbishop or bishop having the right of nomination, presentation, licence, or collation, by reason of lapse or otherwise, to any benefice which may have been so rendered void, to nominate, present, license, or collate to any such benefice by reason of the same having been rendered void in the manner before mentioned.

"II. And be it further enacted, that every spiritual person now holding a benefice, which may have been rendered void at any time before the passing of this act, in the manner before mentioned, shall and may, notwithstanding such avoidance thereof, continue henceforth to hold and enjoy the same, and the fruits, advantages, emoluments, and profits thereof, and shall be and be taken to be, to all intents and purposes in the law whatsoever, the lawful incumbent thereof, in the same manner as if the resignation or other vacation of the other benefice held therewith by virtue of the former dispensation, had been duly made prior to the subsequent dispensation, and such subsequent dispensation had been good and valid in law; and that every spiritual person now holding a benefice, which may have been so rendered void, shall, notwithstanding such avoidance, be taken to have been the lawful incumbent thereof since such avoidance happened, to all intents and purposes in the law whatsoever; and that all acts and deeds whatsoever, which have been done, performed, and executed by the spiritual person or persons now holding or who shall have held any such benefice since the avoidance thereof, in the manner before mentioned, shall be as valid and effectual, to all intents and purposes in the law whatsoever, as if such avoidance had not taken place; any law, statute, canon, usage, or custom to the contrary in any wise notwithstanding; it being the true intent and meaning of this act, to place the aforesaid spiritual persons, whose benefices have or may have become void in the manner before mentioned, precisely in the same situation, to all intents and purposes in the law whatsoever, as if no such avoidance had taken place.

"III. Provided always, and be it further enacted, that nothing in this act shall extend, or be construed to extend, to prevent the patron or patrons of any benefice, which may have been rendered void in the manner before mentioned, from nominating, presenting, licensing, or collating to such benefice, on the death, resignation, or cession, or other lawful cause of avoidance of or by the spiritual person now holding any such benefice, in the same manner as if this act had not passed; save and except as to the avoidance made before the passing of this act, in the manner and under the circumstances particularly mentioned and set forth herein."

STAT. 59 GEO.
3, c. 59.

DXC. STAT. 59 GEORGII 3, c. 59 (1). A.D. 1819.

"An Act to extend the Provisions of an Act made in the fifty-fifth year of His present Majesty, for the Payment of Wages due to deceased Seamen and Marines, to Wages due to Intestate Bastards."

(1) *Vide* Stat. 1 & 2 Geo. 4, c. 49. Re- 11 Geo. 4 & 1 Gul. 4, c. 20; Stat. 2 & 3 pealed, and other provisions made, by Stat. Gul. 4, c. 40; and Stat. 4 & 5 Gul. 4, c. 25.

DXCI. STAT. 59 GEORGH 3, c. 60(1). A.D. 1819.

STAT. 59 GEO.
3, c. 60.

“An Act to permit the Archbishops of Canterbury and York and the Bishop of London, for the time being, to admit Persons into Holy Orders specially for the Colonies.”

“Whereas it is expedient that the archbishops and bishops of this realm should from time to time admit into holy orders persons specially destined for the cure of souls in his majesty’s foreign possessions, although such persons may not be provided with the title required by the canon of the church of England, of such as are to be made ministers: and whereas it will greatly tend to the advancement of religion within the same, that due provision shall be regularly made for a supply of persons properly qualified to serve as parsons, vicars, curates, or chaplains; be it therefore enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the passing of this act it shall be lawful for the Archbishop of Canterbury, the Archbishop of York, or the Bishop of London, for the time being, or any bishop specially authorized and empowered by any or either of them, to admit into the holy orders of deacon or priest any person whom he shall upon examination deem duly qualified specially for the purpose of taking upon himself the cure of souls, or officiating in any spiritual capacity in his majesty’s colonies or foreign possessions and residing therein, and that a declaration of such purpose and a written engagement to perform the same under the hand of such person, being deposited in the hands of such archbishop or bishop, shall be held to be a sufficient title with a view to such ordination; and that in every such case it shall be distinctly stated in the letters of ordination of every person so admitted to holy orders, that he has been ordained for the cure of souls in his majesty’s foreign possessions.

“II. Provided always, and be it further enacted by the authority aforesaid, that no person so admitted into the holy orders of deacon or priest, for the purpose of taking upon himself the cure of souls, or officiating in any spiritual capacity in his majesty’s foreign possessions, shall be capable of having, holding, or enjoying, or of being admitted to any parsonage, vicarage, benefice, or other ecclesiastical promotion or dignity whatsoever, within the United Kingdom of Great Britain and Ireland, or of acting as curate therein, without the previous consent and approbation in writing of the bishop of the diocese under his hand and seal in which any such parsonage, vicarage, benefice, or other ecclesiastical promotion or dignity shall be locally situated, nor without the like consent and approbation of such one of the said archbishops, or Bishop of London, by whom, or by whose authority such person shall have been originally ordained, or in case of the demise or translation of such archbishop or bishop, of his successor in the same see: provided always, that no such consent and approbation shall be given by any such archbishop, or Bishop of London, unless the party applying for the same shall first produce a testimony of his good behaviour during the time of his residence abroad, from the bishop in whose diocese he may have officiated, or in case there be no bishop, from the governor in council of the colony in which he may have been resident, or from his majesty’s principal secretary of state for the colonial department.

“III. And be it further enacted, that from and after the passing of this act no person who shall have been admitted into holy orders by the Bishops of Quebec, Nova Scotia, or Calcutta, or by any other bishop or archbishop than those of England or Ireland, shall be capable of officiating in any church or chapel of England or Ireland without special permission from the archbishop of the province in which he proposes to officiate, or of having, holding, or enjoying, or of being admitted to any parsonage or other ecclesiastical preferment in England or Ireland, or of acting as curate therein, without the consent and approbation of the archbishop of the province, and also of the bishop of the diocese, in which any such parsonage or ecclesiastical preferment or curacy may be situated.

Archbishop of Canterbury or York, or Bishop of London, or any bishop specially authorized by any of them, may ordain specially for the colonies.

The fact to be stated in the letters of ordination.

No person so ordained capable of holding a living in Great Britain or Ireland without the consent of the bishop of the diocese, &c.

Certificate of good behaviour to be produced.

Persons ordained by the Bishops of Quebec, Nova Scotia, or Calcutta, equally restrained.

STAT. 59 GEO.
3, c. 60.

Persons ordained by a colonial bishop not possessing or residing in a diocese, &c. not to be capable of holding preferment, or acting as a minister of the established church.

Admissions to benefices, and appointments to curacies, contrary hereto, void.

Act not to affect or to repeal 26 Geo. 3, c. 84.

“IV. Provided always, that no person who after the passing of this act shall have been ordained a deacon or priest by a colonial bishop, who at the time of such ordination did not actually possess an episcopal jurisdiction over some diocese, district, or place, or was not actually residing within such division, district, or place, shall be capable in any way, or on any pretence whatever, of at any time holding any parsonage or other ecclesiastical preferment within his majesty's dominions, or of being a stipendiary curate or chaplain, or of officiating at any place, or in any manner, as a minister of the established church of England and Ireland.

“V. And be it further enacted, that all admissions, institutions, and inductions to benefices in the church of England, or church of Ireland, and all appointments to act as curates therein, which shall be made contrary to the provisions of this act, shall be to all intents and purposes null and void : provided always, that nothing herein shall be construed to make void any admission, institution, or induction to any benefice, or any appointment as curate, which shall have been made previous to the passing of this act.

“VI. Provided always, that nothing in this act contained shall be construed to affect or to repeal any of the provisions of an act passed in the twenty-sixth year of the reign of his present majesty, intituled, ‘An Act to empower the Archbishop of Canterbury, or the Archbishop of York for the time being, to consecrate to the Office of a Bishop, Persons being Subjects or Citizens of Countries out of his Majesty's Dominions.’”

STAT. 59 GEO.
3, CAP. LXIII.

DXCII. STAT. 59 GEORGII 3, CAP. LXIII. A.D. 1819.

“An Act for repairing and altering, and taking down and rebuilding certain parts of the Parish Church of Saint John the Baptist, Peterborough, in the County of Northampton.”

STAT. 59 GEO.
3, CAP. LXV.

DXCIII. STAT. 59 GEORGII 3, CAP. LXV. A.D. 1819.

“An Act for taking down and rebuilding the Parish Church of Blackburn, in the County Palatine of Lancaster; and for providing additional Burial Ground, and for equalizing the Church Rates in the said Parish, and other Purposes.”

STAT. 59 GEO.
3, CAP. LXXVII.

DXCIV. STAT. 59 GEORGII 3, CAP. LXXVII. A.D. 1819.

“An Act to amend and enlarge the Powers of an Act of His present Majesty for draining, inclosing, and improving the Lands called Borough Fen Common, and the Four Hundred Acre Common, in the County of Northampton, and for forming the same into a Parish, to be called Newborough, and for building and endowing a Church for such Parish.”

STAT. 59 GEO.
3, cap. lxxvii.

DXCV. STAT. 59 GEORGII 3, cap. lxxvii. A.D. 1819.

“An Act for regulating the Appropriation of the Revenues of certain Trust Estates, given by Walter Stanley for Pious Purposes; for effectuating in a more extensive and beneficial manner the general Objects of the Trust; and making a Provision for and regulating the Appointment of a Minister of a new Church intended to be built at West Bromwich, in the County of Stafford.”

STAT. 59 GEO.
3, c. 81.

DXCVI. STAT. 59 GEORGII 3, c. 81 (1). A.D. 1819.

“An Act to amend an Act of the last Session of Parliament, for appointing Commissioners to inquire concerning Charities in England for the Education of the Poor; and to extend the Powers thereof to other Charities in England and Wales, to continue in force until the first day of August, One thousand eight hundred and twenty-three, and from thence until the end of the then next Session of Parliament.”

DXCVII. STAT. 59 GEORGII 3, c. 85(1). A.D. 1819.

STAT. 59 GEO
3, c. 85.

"An Act to amend and correct an Act of the last Session of Parliament for the Regulation of Parish Vestries in England."

"Whereas an act was passed in the last session of parliament, intituled, 'An Act for the Regulation of Parish Vestries,' and it is expedient to amend the same; be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the passing of this act, any person who shall be assessed and rated for the relief of the poor in respect of any annual rent, profit, or value arising from any lands, tenements, or hereditaments situate in any parish in which any vestry shall be holden under the said recited act, although such person shall not reside in or be an inhabitant of such parish, shall and may lawfully be present at such vestry, and such person shall have and be entitled to give such and so many vote or votes at such vestry, in respect of the amount of such rent, profit, or value, as by the said act any inhabitant of such parish present at such vestry might or ought to have and be entitled to give in respect of such amount, and to all intents and purposes as if such person were an inhabitant of such parish; anything in the said recited act to the contrary in anywise notwithstanding.

58 Geo. 3, c. 69.

Persons rated to the poor, though not parishioners, may vote in vestry according to the value of the premises rated.

"II. And be it further enacted, that in all cases where any corporation or body politic or corporate or company shall be charged to the rate for the relief of the poor of such parish, either in the name of such corporation or of any officer of the said corporation, it shall and may be lawful for the clerk, secretary, steward, or other agent duly authorized for that purpose, of such corporation or body politic or corporate or company, to be present at any vestry to be holden in the said parish under the said recited act; and such clerk, secretary, steward, or agent, shall be entitled to give such and so many vote or votes at such vestry, in respect of the amount of the rent, profit, or value of such lands, tenements, or hereditaments as by the said act any inhabitant assessed to such rate present at such vestry might or ought to have and be entitled to in respect of such amount; anything in the said recited act to the contrary in anywise notwithstanding.

Clerk or agent of corporation, &c. may vote in vestry according to the value of the premises rated.

"III. And whereas by the said act it was intended to be enacted that no person should be present at or vote at any vestry who should have refused to pay any assessment that had become due and had been demanded of such person, but the word 'and' was by mistake so inserted in the said act as to make the same in that respect ambiguous; now to rectify such mistake be it further enacted, that no person who shall have refused or neglected to pay any rate for the relief of the poor, which shall be due from and shall have been demanded of him, shall be entitled to vote or to be present in any vestry of the parish for which such rate shall have been made, until he shall have paid the same; nor shall any such clerk, secretary, steward, or agent be entitled to be present or to vote, nor shall be present or vote, at any vestry in such parish, unless all rates for the relief of the poor which shall have been assessed and charged upon or in respect of the annual rent, profit, or value in right of which any such clerk, secretary, steward, or agent shall claim to be present and vote, which shall be due, and which shall have been demanded at any time before the meeting of such vestry, shall have been paid and satisfied."

Non-payment of rates to disqualify from being present or voting in vestry.

DXCVIII. STAT. 59 GEORGII 3, c. 91 (2). A.D. 1819.

STAT. 59 GEO.
3, c. 91.

"An Act for giving additional Facilites in Applications to Courts of Equity, regarding the Management of Estates or Funds belonging to Charities."

"Whereas an act was passed in the last session of parliament, intituled, 'An Act for appointing Commissioners to inquire concerning Charities in England for

58 Geo. 3, c. 91.

(1) *Vide* Stat. 7 Gul. 4 & 1 Vict. c. 45; (2) Continued and extended by Stat. 2 Stat. 1 & 2 Gul. 4, c. 60; and Stat. 4 & 5 Gul. 4, c. 57.
Gul. 4, c. 76.

STAT. 59 GEO.
3, c. 91.

59 Geo. 3, c. 81.

When it shall appear that the directions of a court of equity are requisite, commissioners may certify the particulars to the attorney general, who may apply to commence a suit in the court of Chancery, or court of Exchequer, &c.

the Education of the Poor;’ and certain commissioners were appointed for the execution of the said act : and whereas an act hath passed in the present session of parliament, intituled, ‘*An Act* (1) to amend an Act of the last Session of Parliament for appointing Commissioners to inquire concerning Charities in England, for the Education of the Poor, and to extend the Powers thereof to other Charities in England and Wales;’ whereby the numbers and powers of the commissioners were extended : and whereas it is expedient that additional facilities should be afforded for applications to the courts of equity regarding the managements of estates or funds appropriated to charitable purposes ; be it therefore enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that whenever, upon any examination or investigation taken or had by and before the commissioners appointed or to be appointed under the authority of the before-mentioned acts, any case shall arise or happen in which it shall appear to the said commissioners that the directions or orders of a court of equity are requisite for the remedying of any neglect, breach of trust, fraud, abuse, or misconduct in the management of any trust created for any charitable purposes as aforesaid, or of the estates or funds thereto belonging, or for the regulating the administration of any such trust, or of the estates or funds thereof, it shall and may be lawful for the said commissioners, or any five or more of them, if they shall think fit, to certify the particulars of such case in writing under their hands, to his majesty’s attorney-general, and thereupon it shall be lawful for his majesty’s attorney-general, if he shall so think fit, either by a summary application in the nature of a petition, or by information, as the case may require, to apply to or commence a suit in his majesty’s high court of Chancery, or to or in his majesty’s court of Exchequer sitting as a court of equity, stating and setting forth the neglect, breach of trust, fraud, abuse, or misconduct, or other cause of complaint or application, and praying such relief as the nature of the case may require ; and when such petition or suit is instituted in the said court of Exchequer, it shall be lawful for that court to proceed in the hearing and deciding of the same, according to the due course of the said court ; and any order or decree of the same court in such proceeding shall be final and conclusive to all intents and purposes whatsoever, unless the party or parties who shall think himself or themselves aggrieved thereby shall within one year after the time when such order or decree shall have been made and entered by the proper officer, prefer an appeal from such order or decree to the house of lords ; and when such petition or suit is presented or commenced in the said high court of Chancery, it shall and may be lawful to and for the lord chancellor, lord keeper, or lords commissioners for the custody of the great seal, and they are hereby required, to order and direct such petition or suit to be heard and determined either before the master of the rolls or vice-chancellor, as to the said lord chancellor, lord keeper, or lords commissioners shall seem meet ; and thereupon the master of the rolls or vice-chancellor shall proceed to hear and to re-hear, if to him it shall appear necessary, and to determine the same ; and all decrees, orders, and acts, of the master of the rolls and vice-chancellor made and done therein, shall be deemed and taken to be respectively decrees, orders, and acts of the said court of Chancery, and be executed accordingly, subject nevertheless in every case to be reversed, discharged, or altered by the lord chancellor, lord keeper, or lords commissioners for the custody of the great seal for the time being ; and no such decree or order shall be enrolled, until the same be signed by the lord chancellor, lord keeper, or lords commissioners of the great seal for the time being.

No appeal
from the lord

“ II. And be it further enacted, that when any *appeal* (2) shall be made to the lord chancellor, lord keeper, or lords commissioners of the great seal, from any

(1) *An Act*:—The statutes upon which these provisions are founded have expired ; but it has been deemed expedient to print Stat. 59 Geo. 3, c. 91, as numerous questions have been decided upon its enactments.

Vide Shelford on Mortmain, 428, 430, 497.

(2) *Appeal*:—It seems to have been contrary to the policy of Stat. 59 Geo. 3, c. 91, to permit a rehearing of an appeal presented under its provisions. But it is questionable,

order or decree of the master of the rolls or vice-chancellor, made in any matter aforesaid, the decree or order which shall be made on such appeal by the lord chancellor, lord keeper, or lords commissioners of the great seal, shall be final and conclusive, to all intents and purposes whatsoever; and no appeal from such decree or order of the lord chancellor, lord keeper, or lords commissioners for the custody of the great seal, to the house of lords, shall be allowed or entertained.

“III. And be it further enacted, that no petition or information presented, filed, or prosecuted under this act, nor any answer thereto; nor any depositions, interrogatories, affidavits, or proceedings, nor any order or decree upon the same, or in relation thereto; nor any copies of any such petition, information, answer, depositions, interrogatories, affidavits, order, or decree, nor of any other proceedings whatsoever under this act, shall be subject or liable to the payment of any stamp duty whatever.

“IV. And be it further enacted, that if any person summoned to appear before any two or more of the said commissioners, shall wilfully omit or refuse to appear before such commissioners, or to bring or to produce any deed, paper or writing, instrument, or other document, in his, her, or their possession, custody, or power, and which he, she, or they shall be required by the precept of such commissioners to produce, relating wholly to the estates or funds which shall be the subject of inquiry before such commissioners, or to the receipt or application, or non-application or misapplication thereof, or to the state of the schools or charities which shall be the subject of inquiry before such commissioners, or the true copy of any part or parts of any deed, paper, writing, or other instrument, (and which copy any two of such commissioners are hereby empowered to require by such precept,) or shall refuse to be sworn, or being a quaker to affirm, or being sworn, or being a quaker having affirmed, shall refuse to answer to and before the said commissioners, or any two of them, or to answer fully any lawful question on oath or affirmation touching or concerning any matter or thing relating to such estates or funds as aforesaid, or to the state of such schools or charities as aforesaid, (except in cases excepted by the said first recited acts,) every such person so refusing to comply with any such lawful requisitions of the said commissioners, shall be liable to the payment of such fine to his majesty, as the court of King’s Bench or the court of the Exchequer, on application made by or on the behalf of the said commissioners, or any two of them, or by his majesty’s attorney-general for the time being, shall think fit to set and impose, which fine the said court of King’s Bench or court of Exchequer is hereby authorized and empowered to set and impose according to their discretion respectively, and to enforce payment of the same by attachment or otherwise, in such manner as the said courts respectively may do in cases of contempt of the same courts.

“V. And be it further enacted, that whenever it shall appear to the trustees of any free school, hospital, or other charitable institution or donation within the provisions of this act, that the statutes or regulations thereof are insufficient for the secure and due administration of the funds thereto belonging, it shall be lawful for such numbers of them as are by the said statutes or regulations empowered to do any act, by and with the consent of any five or more of the said commissioners, to present a petition to the lord chancellor, lord keeper, or lords commissioners of the great seal, or to the court of Exchequer sitting as a court of equity (1), praying such relief as the nature of the case may require; and the lord chancellor, lord keeper, and lords commissioners of the great seal, and the said court of Exchequer, are hereby authorized and empowered to give such directions, and to make such order touching the matter of the said application, as to them respectively shall seem fit; which order shall be final and conclusive to all intents and purposes whatsoever, unless the party or parties who shall think himself or themselves aggrieved thereby shall, within two years after the time when such order shall

STAT. 59 GEO. 3, c. 91.

chancellor to the house of lords.

No proceedings subject to a stamp duty.

Persons refusing to appear before commissioners, or to produce deeds, or refusing to answer questions upon oath, liable to be fined by the court of King’s Bench or Exchequer.

Where regulations are insufficient for a due administration of the funds of any institution, trustees may apply to Chancellor for relief.

whether the statute can be construed, as having actually prohibited such a rehearing. *Attorney-General v. Ward*, 1 M. & C. 449.

(1) *Court of Exchequer sitting as a court of equity*:—*Vide* Stat. 5 Vict. c. 5, abolishing the equity jurisdiction of the Exchequer.

STAT. 59 GEO. 3, c. 91. have been made and entered by the proper officer, prefer an appeal from such order to the house of lords, to whom it is hereby enacted and declared that an appeal shall lie from such order."

STAT. 59 GEO. 3, c. 134.

DXCIX. STAT. 59 GEORGII 3, c. 134 (1). A.D. 1819.

"An Act to amend and render more effectual an Act passed in the last Session of Parliament, for building and promoting the building of additional Churches in populous Parishes."

58 Geo. 3, c. 45.

"Whereas an act passed in the last session of parliament, intituled, 'An Act for building and promoting the building of additional Churches in populous Parishes:' and whereas it is expedient and necessary that some of the provisions of the said act should be amended, and other provisions thereof enlarged, and that further and additional provision should be made for rendering the said act more effectual: be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that the exchequer bills to be made out in pursuance of the said recited act or this act shall and may bear such an interest as may be directed by the lord high treasurer or lords commissioners of his majesty's treasury of the United Kingdom of Great Britain and Ireland, not exceeding the rate of three-pence halfpenny per centum per diem upon or in respect of the whole of the monies respectively contained therein; and that all such bills as shall be advanced for the purposes of carrying the said act or this act into execution, shall be made payable at such periods, and, together with the interest that shall be due thereon, shall be paid off and discharged out of such aids or supplies granted by parliament for the service of any year, as in each and every exchequer bill so made forth shall be particularly specified and expressed, pursuant to such directions as shall be given in that behalf to the auditor of the receipt of exchequer, by warrant or warrants from the said commissioners of his majesty's treasury, or any three or more of them, for the time being.

Exchequer bills issued in pursuance of recited act to bear a certain rate of interest.

Commissioners under recited act to apply for exchequer bills;

"II. And be it further enacted, that from time to time, as the commissioners appointed for the execution of the said recited act shall find it necessary to apply to the purposes thereof any amount of such bills to be advanced under the provisions of the said recited act or of this act, the said commissioners shall forthwith represent the same to the said commissioners of the treasury of the United Kingdom of Great Britain and Ireland, and the said commissioners, or any three or more of them, for the time being, shall thereupon, if satisfied of such necessity, direct the said commissioners to issue a certificate, to be signed by any three or more of them, to such person or persons as may be authorized to receive the same, containing the amount so by the said commissioners intended to be advanced by exchequer bills; which certificate shall and may be presented to the auditor at the receipt of exchequer at Westminster, and the said auditor shall, immediately upon the receipt of such certificate, deliver to the bearer thereof a like amount in exchequer bills, to be made out in pursuance of the said recited act or of this act, and payable at such period as shall in such exchequer bills be specified and expressed; provided that the total amount so to be issued by virtue of such certificate shall not at any time exceed the amount directed to be advanced under the said recited act; and every such exchequer bill shall bear date on the day on which such certificate shall be so received by the said auditor, or on such other day as in such certificate shall be specified, anything in the said recited act to the contrary notwithstanding; and all such exchequer bills so to be delivered shall and may be signed by the said auditor, or in his name by any person duly authorized to sign exchequer bills.

which are to be delivered by the auditor of the Exchequer.

Date of the said exchequer bills.

His majesty may appoint

"III. And be it further enacted, that it shall be lawful for his majesty, his heirs and successors, when and so often as any vacancies shall or may arise by

death, resignation, or otherwise, of any of the commissioners appointed by his majesty under the provisions of the said recited act or this act, from time to time to supply any such vacancy or vacancies by the appointment of any other person or persons, and also from time to time to appoint additional commissioners, who, together with the persons before appointed, shall be the commissioners for carrying into execution the purposes of the said act and this act; and the commissioners so appointed by his majesty under the provisions of the said act or this act, shall be and are hereby declared to be a body corporate by the name and style of 'His Majesty's Commissioners for building new Churches,' and by that name shall from and after the passing of this act be a body corporate while any commission appointing such commissioners shall continue in full force, and shall have a common seal.

"IV. And be it further enacted, that it shall be lawful for the said commissioners, and they are hereby empowered to allow and make grants for the defraying the whole of the charges and expenses of building any churches or chapels, under the provisions of the said recited act or this act, in all cases in which the commissioners shall see fit, either on account of the inability of the inhabitants to bear any part of the charge of building any such churches or chapels, or from any other cause which shall in the judgment and discretion of the said commissioners be sufficient; any thing in the said recited act contained to the contrary notwithstanding.

"V. And whereas many parishes are divided into townships, hamlets, vills, chapelries, and other divisions, which are oftentimes very large and populous; and it is therefore expedient that the said commissioners shall be empowered to consider divisions of parishes as parishes for the purposes of the said recited act and of this act; be it therefore enacted, that it shall be lawful for the said commissioners, and they are hereby empowered to make grants or loans, or grants and loans, to any such townships, hamlets, vills, chapelries, or other divisions of parishes as may in the judgment of the commissioners, from their population, require further accommodation for divine service according to the rites of the united church of England and Ireland, although the population of any such division may not amount to four thousand, and although in the whole parish there may be accommodation for more than one fourth part of the inhabitants; and the commissioners may in every such case proceed, in relation to any such divisions, under the provisions of the said act and this act, in every respect as if they were separate and distinct parishes; and all the provisions in the said act and this act contained for enabling the said commissioners to make grants or loans to any parishes or extra-parochial places shall extend and apply and be in full force, as to such divisions of parishes, as fully and effectually to all intents and purposes, as if such divisions were separate and distinct parishes, and as if all the powers, authorities, and provisions in the said act and this act contained, in relation to parishes, were severally and separately re-enacted as to such divisions of parishes.

"VI. And whereas a considerable population is frequently collected together at the extremities of and locally situate in parishes or extra-parochial places contiguous to each other, at a distance from the respective churches or chapels of such respective parishes or extra-parochial places; be it therefore enacted, that it shall be lawful for the said commissioners, with such consent as is required by the said recited act in the case of district parishes, to unite and consolidate any such contiguous parts of such parishes and extra-parochial places into a separate and distinct district, for all ecclesiastical purposes, and to cause such district to be named, ascertained, and marked out by described bounds, and such name and the description of such bounds, when approved by his majesty in council, to be enrolled in the high court of Chancery, and in the office of the registry of the diocese to which such district shall belong, under the provisions of this act, and to make grants or loans, for or towards the building of or to build any chapel or chapels, with or without cemeteries, in and for the use of the inhabitants of any such district, in such manner and under such regulations as may in the judgment of the commissioners appear from the circumstances to be most expedient, and to constitute any such district a consolidated chapelry; and every such chapelry shall be under the

STAT. 59 GEO.
3, c. 134.

commissioners
to supply
vacancies.

Commissioners
shall be a
body corpo-
rate.

Commissioners
empowered to
allow the whole
of the expenses
in certain
cases.

Commissioners
may treat with
and make
grants to divi-
sions of pa-
rishes as if they
were distinct
parishes.

Commissioners
may unite parts
of contiguous
parishes into
ecclesiastical
districts for
the purposes
of the acts;
and build cha-
pels for the
use of such
districts.

STAT. 59 GEO.
3, c. 134.

superintendence of such spiritual person as shall be appointed under the provisions of this act to serve any such chapel, and such spiritual person shall have cure of souls in such district, and the right of presentation and appointment of such spiritual person shall thenceforth belong to such person or persons, and be exercised in such manner as may be agreed by the several patrons of the churches or chapels of such parishes and extra-parochial places respectively, with the approbation of the commissioners; and banns of marriage may be published, and marriages, christenings, churchings, and burials may be solemnized and performed in any such chapel, immediately and at all times after the consecration thereof; and the pew rents in such chapel shall be fixed, and salaries to the minister and clerk assigned therefrom, in such manner as is directed in the said recited act or in this act concerning pew rents and salaries in separate or district parishes; and all fees and offerings which may arise and accrue within such chapelry, according to such table of fees as the commissioners shall make, with the approbation of the bishop, may be demanded, received, sued for, prosecuted, and recovered by the spiritual person having cure of souls therein, and by the clerk and sexton of such chapelries, in like manner as if every such chapelry was a distinct parish; and it shall be lawful for the said commissioners, and they are hereby required in every such case to ascertain and make compensation, in manner directed in like cases under the said recited act, for any loss which may be sustained by the incumbent of any contiguous parish or extra-parochial place which shall form part of any such district, by reason of any fees, oblations, and offerings being transferred to the spiritual person serving any such chapel; and all such chapelries shall be deemed to be benefices, and be subject to the jurisdiction of the bishop and archdeacon within whose diocese and archdeaconry the altar of such chapel shall be locally situate, and to all the laws in force concerning presentation and appointment to benefices and churches, and lapse, and all other laws relating to the holding of benefices and churches.

Commissioners may build without previous determination as to division of the parish, or whether such buildings shall be deemed churches or chapels when built.

"VII. And be it further enacted, that in every case in which the commissioners shall determine that any additional church or chapel or churches or chapels shall be erected in any parish or extra-parochial place, it shall be lawful for the said commissioners to require sites to be provided for the same, in manner directed by the said recited act, and to grant or lend money for the purchasing of sites, and for the erecting, or to erect or build, under the provisions of the said act or this act, any building or buildings for the celebration of divine service according to the rites of the united church of England and Ireland, without determining before the making of any such requisition of sites, or of any such grant or loan, or before the erecting or building any such church or chapel, whether the parish or extra-parochial place in which the same shall be built, shall be divided into separate and distinct parishes or districts for ecclesiastical purposes under the provisions of the said act, or whether any such building shall, after the consecration thereof, be deemed a church or chapel, or whether the same shall be appropriated to the accommodation of the parish at large in which the same is built, or to any particular district or division or divisions thereof; anything in the said recited act to the contrary notwithstanding.

In divided parishes glebe, &c. may be apportioned without regard to local situation.

"VIII. And be it further enacted, that in every case in which the said commissioners shall be of opinion that it will be expedient to divide any parish or extra-parochial place into two or more distinct and separate parishes for ecclesiastical purposes under the provisions of the said recited act, it shall be lawful for the said commissioners, with such consents as are by the said act required in such cases, to apportion the relative and respective proportions of glebe land, tithes, moduses, or other endowments or emoluments which it may be expedient to assign and attach to each of such respective divisions, without regard to whether any such respective proportions of glebe land, tithes, moduses, or other endowments or emoluments are locally situate or arise, or accrue within the division or district to which they may be so assigned, or are locally situate or arise, or accrue within the parish or extra-parochial place so proposed to be divided, or elsewhere; any thing in the said recited act to the contrary notwithstanding.

“IX. And be it further enacted, that it shall be lawful for the commissioners, with the consent of the bishop, in the division of any parish, and of the relative proportion of glebe land, tithes, moduses, or other endowments, under the provisions of the said recited act or this act, to apportion also the permanent charges in respect thereof or in any manner affecting the same or the incumbent for the time being of the said parish, and such charges so apportioned shall thereafter be borne by and belong to each of the divisions of such parish, or by the spiritual person serving the same respectively ; any thing in the said recited act to the contrary notwithstanding.

STAT. 59 GEO. 3, c. 134.

Commissioners in dividing parishes to apportion permanent charges as well as glebe, &c.

“X. And be it further enacted, that when any parish shall be divided, under the provisions of the said recited act or this act, all fees, dues, profits, and emoluments belonging to the parish clerk or sexton respectively of any such parish, whether by prescription, usage, or otherwise, which shall thereafter arise in any district or division of any parish divided under the provisions of the said recited act, shall belong to and be recoverable by the clerks and sextons respectively of each of the divisions respectively of the parish to which they shall be assigned, in like manner in every respect and after the same rate as they were before recoverable by the clerk and sexton respectively of the original parish ; and it shall be lawful for the said commissioners in every such case to ascertain and make compensation, in manner directed by the said recited act in cases of compensation by reason of loss of fees, for any loss of fees, dues, profits, and emoluments which any clerk or sexton may sustain by reason of any such division.

Clerks and sextons of divisions of parish may recover their fees, &c.

“XI. And be it further enacted, that it shall be lawful for the said commissioners, and they are hereby empowered to make and fix any table of fees for any parish, with the consent of the vestry or select vestry, or persons exercising the powers of vestry in such parish, and also to make and fix any such table of fees for any extra-parochial place, or in or for any district chapelry or parochial chapelry in which any church or chapel shall be built or appropriated under the provisions of the said recited act or this act, with the consent nevertheless in all such cases of the bishop of the diocese ; and all fees so fixed may be demanded, received, sued for, prosecuted, and recovered, by the spiritual person or clerk, or sexton, to whom the same shall be assigned, in like manner and by such and the same means as any ancient legal fees of a like nature may be sued for, prosecuted, and recovered.

Commissioners may fix table of fees.

“XII. And be it further enacted, that all churches which shall be built or acquired under the provisions of the said act or this act, whether belonging to parishes completely divided or to district parishes, shall immediately after the consecration thereof become and be deemed to be, and be distinct benefices and churches for all ecclesiastical purposes : provided always, that during the incumbency of the then existing incumbent of the parish, except as hereinafter excepted, such churches shall be served by licensed stipendiary curates appointed by the existing incumbent, and subject to all the laws in force relating to stipendiary curates, except as to the assigning salaries to such curates by the bishop of the diocese ; and every such existing incumbent shall, until his death or other avoidance, continue to hold all the churches of the several divisions of his parish as if they were one church, unless he shall voluntarily resign one or more of them ; any statute or law against plurality of benefices, or any thing contained in the said recited act or any other act or acts of parliament, to the contrary notwithstanding.

New churches to become distinct benefices ; but to be served during existing incumbency by stipendiary curates, and be deemed one church.

“XIII. Provided always, and be it further enacted, that the right of presentation and appointment of the spiritual persons to be the respective incumbents of or to serve the churches of the several parishes created by the complete division of any parish under the provisions of the said recited act or this act, shall in every case belong to the patron of the church of the original parish ; and the exercise of such right of presentation or appointment shall commence on the death or other avoidance of the existing incumbent, except in any case in which the division of any parish shall have been made, or in which the commissioners shall have declared their intention of dividing any parish before or during any avoidance, in which cases the exercise of such right of presentation or appointment shall com-

Right of patronage of parishes divided to belong to the patron of the original church, and be exercised after existing incumbency.

STAT. 59 GEO.
3, c. 134.

mence upon the consecration of the church or churches respectively of any such division; and the several churches erected in and for such divisions respectively shall immediately upon consecration become benefices, and subject to all the laws in force concerning presentations and appointments to benefices and churches, and lapse, and all other laws, provisions, and regulations relating to the holding of benefices and churches; any thing in the said recited act or in this act to the contrary notwithstanding: provided always, that the spiritual care and superintendence of every parish so divided during avoidance shall, until incumbents shall have been presented or appointed for the divisions thereof, continue in the spiritual person who shall be the incumbent of the original parish; and such spiritual person shall receive all emoluments accruing and arising within the parish during such superintendence.

Churchwardens, with consent of vestry and the bishop of the diocese, may

“XIV. And be it further enacted, that it shall and may be lawful for the churchwardens of any parish, with the consent of the vestry or persons possessing the powers of vestry, and with the consent of the bishop and incumbent, and they are hereby authorized and empowered, *to borrow and raise, upon the credit of the church rates* (1), or of any rates made under the said recited act or this act of any

(1) *To borrow and raise, upon the credit of the church rates*:—In *Rex v. Dursley, (Churchwardens of)*, (5 A. & E. 10,) it was held, that under Stat. 59 Geo. 3, c. 134, s. 14, churchwardens could not raise a loan on the credit of the church rates, to pay a debt for repairs which were incurred in a past year. That the loan ought to be raised at the time when the repairs were done, and that the laying of rates for the repayment, should commence immediately, and be continued so as to pay off the debt by ten annual instalments: Lord Denman observing, “It appeared, among other facts, that the repairs in question had been done in the years 1824, 1825, and 1826, at an expense of 1585*l.*; that in 1832, the sum of 350*l.* remaining unpaid, the applicant had been asked to lend that sum, and had done so, receiving a deed of charge, regular in form, and with the necessary consent of the bishop, incumbent, and vestry. One instalment of the principal and interest had been paid in 1833, and the interest to August, 1834.

“It was objected, on showing cause, that the section in question, (59 Geo. 3, c. 134, s. 14,) does not authorize the borrowing money and charging the rates retrospectively. We have considered this objection; and, although the words of the statute are in this respect general, we are of opinion, that it must prevail.

“It is a general rule with respect to parish rates, founded on obvious principles of policy and justice, that they are not to be made retrospectively. The payers being a fluctuating body, nothing, generally speaking, is more just, or more likely to conduce to economy, than to hold, that they who create a charge shall themselves bear it. The statute has, to a certain extent, modified this general rule, and the churchwardens are authorized, with the sanction of the vestry, bishop, and incumbent, to borrow, on the credit of the rates, such sum of money as shall be necessary for defraying the expense of repairing the church; and they are then empowered and required to raise, by rate, a sum sufficient from time to time to pay the interest, and not less than ten per cent. of the principal,

until the whole of the money so borrowed shall be repaid.

“It appears to us, that all these provisions point clearly to the limits of departure from the general principle above stated. The consent of the incumbent and bishop appear to have been thought necessary, in order to see that the repairs should be of that onerous and yet permanent nature, which might properly be thrown in part on the payers of succeeding years. Their consent, and that of the vestry, have the effect also of securing the parish from an improvident outlay; and, finally, the provision, that the principal and interest shall be paid in ten instalments, which ought, in our opinion, to be annual, secures the participation of the existing rate-payers in the discharge of the loan, and prevents it from becoming a burthen, at any indefinite period, on their successors.

“These obvious purposes of the act, so necessary to prevent abuses of the power given by it, can only be secured by an adherence to the general rule stated above, in all particulars not specially provided for by the clause. We are therefore of opinion that the rate now sought to be imposed would not be authorized by the statute, and of course, that the present rule must be discharged.”

Stat. 59 Geo. 3, c. 134, s. 14, will not authorize the borrowing of money upon the credit of the rates, for the payment of sums previously expended. And if a rate be made, which is in part only for the purpose of repaying the amount borrowed for such purposes, it is, nevertheless, illegal. Thus, in *Piggott v. Bearblock*, (8 Jurist, 479,) Lord Brougham observed, “It is not necessary that the court should decide upon the questions raised in the course of the argument as to the liability of the inhabitants of Romford as parishioners of Hornchurch, or as to the due publication of any of the notices required by law; for we have no option, but to reverse the decision of the court below, upon the more material ground, that the payment out of the rates of money previously borrowed or expended, is illegal, and will vitiate those rates. An illegal payment of any amount,

such parish, such sum or sums of money as shall be necessary for defraying the expense of *repairing any churches or chapels*(1); and they are hereby empowered

STAT. 59 GEO.
3, c. 134.

raise money
upon the credit

however small, will have that effect. In Hampden's celebrated case, the illegal amount was but a few shillings; but take the accounts in any way, it will be found that the sums objected to, constitute a sixth of the whole rates. The case of *The King v. Dursley (the Churchwardens of)*, (5 A. & E. 10,) is conclusive; for if the *mandamus* had been granted, it would have been equivalent to a declaration, that the rate in question was good; but the *mandamus* having been refused, the conclusion is equally clear, that the rate was bad. The court in that case did not make or lay down any new law, but only declared the law as it existed before the statute, that the rate, if retrospective, was bad. Upon this ground, we have come to the conclusion, that we have no option but to reverse the judgment appealed from, including of course that part which condemns Mr. Piggott in the payment of costs in the court below; but as he has defended himself, and, therefore, incurred but trifling expenses on his own account, we do not think it necessary, under the circumstances, to make any award of costs to him."

to restrain the parish officers of Wakefield from enforcing a rate for the repair of the parish church, and of three chapels belonging to three townships within the parish, two of which chapels were appropriated to districts under the church building acts, and one was not so appropriated. The rate was imposed on all the occupiers within the parish, except those within a fourth township, called Horbury. The question was, whether they were properly omitted from the rate. The jury found a verdict in the defendant's favour at the summer assizes in 1834, and again in substance the same verdict on a new trial in the spring of 1836, though the plea had undergone some amendment. We are to determine whether the amended plea states a legal exemption for that township from the common law liability to be taxed for the reparation of the parish church. The replication, on which the parties went to the country, after stating that the chapels of the three other townships were not built in aid of the parish church, (on which, however, no dispute was raised,) further alleged, in denial of the plea, that there is not, from time whereof the memory, &c., a church or chapel within Horbury, at which the inhabitants of that township receive, and have immemorially received, all manner of divine rites and services, and that the costs and expenses of repairing the said church or chapel, and of providing necessaries for the performance of the same, have not from time immemorial been defrayed by rates and assessments on property in Horbury; and that the inhabitants of Horbury are not exempted from repairs of the parish church, but ought to be rated and assessed thereto. Then does the affirmative of these facts establish the exemption contended for?

"The plaintiff's argument was, that all may be true, and the township of Horbury may, notwithstanding, have had a church or chapel originally built in aid, or (as it is sometimes expressed,) in ease, of the parish church. It was said that, even before time of memory, the parish might be first created, and the church erected, and afterwards the chapel built; that all parochial rites may have been performed there, the inhabitants of the township taking upon themselves exclusively the burden of repairing it, in which state of things the defendant did not dispute that the liability to contribute to the repairing of the church would not be taken away.

"The plaintiff referred to 1 Gibson's Codex, 197, edit. 1761, (p. 221, edit. 1713.) No reference was made to the Constitution of Othobon, which is copied in the same volume, p. 209, edit. 1761, (p. 235, edit. 1713.) "De oblationibus capellarum restituendis ecclesiæ Matrici," which enjoins restitution of offerings from chapels to parish churches, by chaplains called "ministrantes in capellis hujusmodi, quæ salvo jure matricis ecclesiæ sunt concessæ;" which passage shows, that chapels have existed without the reservation of any privilege to the mother

(1) *Repairing any churches or chapels*:—In *Craven v. Sanderson*, (7 A. & E. 880,) it appeared, that an inhabitant of the parish of W. was libelled for non-payment of rates imposed for the repair of the parish church, and of certain chapels built within the parish, under Stat. 58 Geo. 3, c. 45, Stat. 59 Geo. 3, c. 134, and Stat. 3 Geo. 4, c. 72. He declared in prohibition, alleging that the rate was improperly laid on a part of the parish only, excluding the township of H. It was pleaded, that the chapels were built in aid of the parish church; that there has immemorially been a chapel in H., at which the inhabitants of H. have received all divine rites and services; that the costs of repairing the chapel have been immemorially defrayed by the inhabitants of H., and no others; that from time, &c., no rate for repairing the parish church has been laid on any person in H.; and that the inhabitants of H. have from time, &c., been exempt from contributing to the repairs of the parish church. A verdict having been given for the defendants on a traverse upon this plea, it was held;—on motion for judgment, *non obstante veredicto*, that the court must, after verdict, intend the chapel to have been coeval with the church (although that fact was not pleaded); and that the chapel and church being coeval, and the inhabitants having always been exempt from the church rate, no rate for repairing the church could now be imposed upon them; also that, under Stat. 3 Geo. 4, c. 72, s. 20, which directs that chapels built under the two first-mentioned acts, or that act, shall be repaired by the parishes or places at large to which they belong, the new chapels mentioned in the above pleadings were repairable by the district which repaired the church, viz., the parish of W. minus the township of H.:—Lord Denman observing, "This was a suit in prohibition

STAT. 59 GEO.
3, c. 134.

of the rates for
the repair of

and required, in any case in which such money shall have been borrowed, to raise by rate a sum sufficient from time to time to pay the interest of the money so borrowed, and not less than ten per cent. of the principal sum borrowed, out of

church, or rather that a parish church and a chapelry may exist within the same parochial boundaries, without the relation of mother and offspring, but independent of each other, and most probably coeval.

"In the other place above mentioned, Gibson's text is no doubt strong in its import; but it is needless to observe, that that writer is not to be considered as an authority. The passage is made up of extracts from cases decided in our courts, from which it will be found extremely difficult to deduce any rule of law whatever. In some it is said, that a ground of exemption must be stated in pleading, in others, that the exemption should be directly averred, and that if it is qualified with *ratione inde* it will be bad. In some cases it is holden, that to leave out of a church rate certain parishioners or districts is no ground for prohibition, in others the writ has been granted for that reason without any hesitation. In a case between *Aston and Castle Birmidge*, (Hob. 66, 5th edit.; 2 Rol. Abr. *Prohibition* (H), pl. 7,) the court held, that the inhabitants of a chapelry sued for a rate raised for repairing a parish church, did not entitle themselves to a prohibition by showing, that they had, in fact, repaired their chapel, and had performed there the rites of baptism and marriage, if they buried at the parish church. On all hands, it was agreed, that the mere fact of repairing their own place of worship gave no exemption. These authorities could hardly have supplied any safe rule for the decision of the present case; but at a later period Lord Holt had to deal with a case, the circumstances of which were almost identical with *Aston v. Castle Birmidge*, (Ibid.,) and, though there was no necessity for laying down the principle on which legal exemptions must depend, yet he has explained it, in a clear and satisfactory manner. In *Ball v. Cross*, (1 Salk. 164; Holt, 138,) he said 'that by common law the parishioners of every parish are bound to repair the church.' 'In the principal case, those of a chapelry may prescribe to be exempt from repairing the mother-church, as where i buries and christens within itself, and has never contributed to the mother-church; for in that case it shall be intended coeval, and not a latter erection.' But he observed, 'that the chapel could be only an erection in ease and favour of them of the chapelry; for they of the chapelry buried at the mother-church till Henry the Eighth's time, and then undertook to contribute to the repairs of the mother-church.' We have then the opinion of this learned judge, at a time when the doctrine of prohibition was far from obsolete, that, where the chapelry has from beyond memory performed all its own parochial rites and services, it shall be intended coeval and exempt from contribution; and such is the effect of the plea. It might, perhaps, be argued, that the fact of its being

coeval ought to have been pleaded, and the opinion of the jury taken upon the proof; but in truth, it seems much more reasonable to say, that the law will presume its independence and coeval antiquity from facts susceptible of clear proof, which cannot be conceived to have existed, if it were a mere chapel of ease. At any rate, if that fact is necessary to constitute exemption, it must be taken, after verdict, to have been proved to the satisfaction of the jury, who would unquestionably have drawn the inference, from what they must have found in sustaining the defendant's plea.

"Another point was made on the effect of the church-building acts, in connexion with a local act for the parish of Wakefield, set out in the pleadings. That act, passed in 55 Geo. 3, enacts, that the parish church of Wakefield, and a chapel of St. John, in Wakefield, are to be repaired by a rate, without saying on whom the rate is to be levied. The declaration also alleges, that three new chapels have been, under the statutes of 58 & 59 Geo. 3, built within the parish. Now, the 58 Geo. 3, c. 45, s. 70, imposes the repair of district churches and chapels on the districts to which they may be assigned. The 59 Geo. 3, c. 134, s. 14, authorizes and empowers churchwardens of any parish, with consent of the vestry, to raise money for the repair of any churches or chapels, (*i. e.* any within the parish,) on the credit of the rates; and then 3 Geo. 4, c. 72, s. 20, reciting that 'doubts may arise as to the repairs of churches or chapels' built under the provisions of the two former acts, or of this act, 'for remedy and prevention thereof,' (*i. e.* of the doubts,) enacts: (his lordship then read the twentieth section of Stat. 3 Geo. 4, c. 72.) From these clauses in the three acts taken together, a right is claimed to rate the parish at large, (of course including Horbury,) for the repairs of the district chapels; as neither by the church-building acts, nor by the local act, is any express provision made relating to the levy of rates. And, if this liability had been thrown on 'parishes' at large without 'places,' the words could hardly have been satisfied by any other construction. But the addition of that word shews, that other divisions besides parishes were considered capable of coming under the church-building acts; and the studious preservation of all laws then in force seems to keep the power of imposing rates precisely as it was then actually existing in each place. The place, then, for which rates may be imposed in respect of the new chapels in Wakefield, is the whole parish, *minus* Horbury; for the law then in force excluded it from the parish for that purpose. We therefore think the plea good, as disclosing a substantial defence at common law, and open to no objection from the recent statutes."

the produce of such rates, until the whole of the money so borrowed shall be repaid.

“XV. And be it further enacted, that it shall be lawful for all bodies politic, corporate, or collegiate, corporations aggregate or sole, tenants for life or in tail, husbands, guardians, trustees, and feoffees in trust, committees, executors, and administrators, and all other persons and trustees whomsoever, not only for or on behalf of themselves, their heirs and successors, but also for and on behalf of cestuique trusts, whether infants, issue unborn, lunatics, idiots, femmes covert, or other person or persons, and to and for all femmes covert who are or shall be possessed of or entitled to or interested in their own right, and for every other person whomsoever who shall be possessed of or entitled to or interested in any right of patronage or of presentation or appointment to any benefice, donative, perpetual curacy, or of any spiritual person to any church or chapel, or the performance of any ecclesiastical duties in any church or chapel, to surrender any such right of patronage, presentation, or appointment, or enter into or make any agreement relating thereto with the said commissioners, or the bishop of the diocese, for the purpose of regulating the same according to the provisions of this act; and it shall also be lawful for any such bodies or persons as aforesaid to endow or agree to the endowment of any chapel heretofore built, out of the pew rents thereof; anything contained in any act or acts of parliament, or in any deed or deeds, or any trusts relating thereto respectively, to the contrary notwithstanding.

“XVI. And be it further enacted, that it shall be lawful for the commissioners, in the same manner and with the like consents as are required in case of division into ecclesiastical districts under the said recited act or this act, to assign a particular district to any chapel of ease or parochial chapel already existing, or to any chapel built or which may hereafter be built or acquired under the powers of the said act or this act; and such district shall be under the immediate care of the curate appointed to serve such chapel, but subject nevertheless to the superintendence and control of the incumbent of the parish church; and all such curates shall be nominated by the incumbent of the parish to the bishop for his licence, except where the right of nomination shall already be legally vested in any other person or persons, and in every such case by the person or persons possessing such right of nomination, subject to all the laws in force relating to stipendiary curates, except as to the assigning of salaries to such curates: provided always, that it shall be lawful for the commissioners, with the consent of the bishop of the diocese, to determine whether any and what part or proportion of the fees or dues for marriages, baptisms, churchings, and burials shall be assigned to any such curate, and whether banns of marriage shall be published, and marriages or baptisms, churchings or burials, shall be solemnized or performed in any such chapel or not; and in any case in which marriages shall be allowed in any such chapel the commissioners shall cause the boundaries of the district assigned to such chapel to be enrolled in the high court of Chancery, and in the office of the registry of the diocese, anything in the said recited act to the contrary notwithstanding; and no such chapelry shall become a benefice by reason of any augmentation of the maintenance of the curate, by any grant or bounty under the provision of any act or acts of parliament or law or laws for augmenting small livings; anything in such act or acts of parliament or law or laws to the contrary notwithstanding.

“XVII. And be it further enacted, that all acts of parliament, laws, and customs relating to publishing banns of marriage, marriages, christenings, churchings, and burials, and the registering thereof, and to all ecclesiastical fees, oblations, or offerings, shall apply to all districts and consolidated or district chapelries and divisions of any parishes or extra-parochial places whereof the boundaries shall be enrolled in the high court of Chancery under the provisions of the said recited act and this act; and in the churches and chapels whereof banns of marriage shall be allowed to be published, and marriages, christenings, churchings, and burials, or any of them, shall be allowed to be solemnized, and to the churches and chapels thereof, and to the ecclesiastical persons having cure of souls therein or serving the same, in like manner in every respect as if the same respectively had been ancient

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churches or chapels, and provide for the repayment thereof.

Bodies politic, &c. empowered to give up rights of patronage, and endow chapels.

Commissioners may assign districts to chapels under the care of curates, subject to the control of incumbents.

Commissioners, with consent of bishop, may determine what fees for marriages, &c. shall be assigned.

All acts of parliament, &c. relating to publishing banns of marriage, marriages, &c. to apply to churches and chapels of districts.

STAT. 59 GEO. 3, c. 134. separate and distinct parishes and parish churches by law, to all intents and purposes.

All apportionments of glebe and emoluments, and of charges, shall be registered in the registry of the diocese, and not enrolled in Chancery.

“XVIII. And be it further enacted, that every apportionment of glebe land, tithes, moduses, and other endowments and emoluments, and of any fees, oblations, offerings, or other ecclesiastical dues or profits, and also of all permanent and other charges made under the provisions of the said recited act or this act, and also the description of boundaries assigned to chapels under this act in which no marriages shall be allowed to be solemnized, and all tables of fees made under the provisions of this act, shall be registered in the registry of the diocese to which the parish in relation to which any such apportionment shall be made shall be or be locally situate, and not enrolled in the court of Chancery; anything in the said recited act to the contrary notwithstanding.

No chapels built under provisions of recited act to be deemed perpetual curacies, &c.

“XIX. And be it further enacted, that no chapel built or acquired under the provisions of the said recited act which shall be situate in any district parish made a parish for ecclesiastical purposes under the provisions of the said recited act, and which shall not be or be made the church of such district, shall be or be deemed to be a perpetual curacy, or considered in law as a benefice presentative, under the provisions of the said recited act; anything therein contained to the contrary notwithstanding.

Commissioners of woods and forests, &c. with consent of treasury, may grant materials for building churches and chapels.

“XX. And be it further enacted, that it shall be lawful for the commissioners of his majesty’s woods, forests, and land revenues, by and with the consent of the lord high treasurer of the United Kingdom of Great Britain and Ireland, or the commissioners of his majesty’s treasury of the United Kingdom of Great Britain and Ireland, or any three or more of them, in writing, or for his majesty, by any grant signed by the chancellor of the duchy of Lancaster for the time being, or for the Duke of Cornwall, by any grant signed by the chancellor of the duchy of Cornwall for the time being, or for any body politic, corporate, or collegiate, or corporation aggregate or sole, to give and grant any stone, slate, or timber, or other materials respectively, from any quarries, forests, or wastes belonging to his majesty or the Duke of Cornwall or any such body respectively, for or towards the building of any churches or chapels under the provisions of the said recited act or this act, and any house or appurtenances and garden for the residence of the spiritual person who may serve the church or chapel; anything in any statute or act of parliament, or law or charter, to the contrary notwithstanding.

Treasury may remit duties of customs or excise on materials used for the building of churches.

“XXI. And be it further enacted, that it shall be lawful for the commissioners of customs and excise of England, Ireland, and Scotland respectively, and with the consent and under the authority in writing of the lord high treasurer of the United Kingdom of Great Britain and Ireland, or for any three or more of the commissioners of his majesty’s treasury for the time being respectively, to remit all or any proportion of the duties of custom or excise respectively, or to order the same to be drawn back or repaid, for, upon, or in respect of any stone, slate, bricks, timber, or other materials which shall be *bonâ fide* procured for and used in the building of any churches or chapels under the provisions of the said recited act or this act; and such duties shall in every such case be remitted, drawn back, or repaid, as the case may be, under such rules, regulations, and restrictions, and in such manner, as shall be ordered and directed by the lord high treasurer, or any three or more of the commissioners of his majesty’s treasury, in that behalf; anything in any act or acts of parliament to the contrary notwithstanding.

Commissioners may grant money for providing sites, without requiring repayment or security, as required under recited act.

“XXII. And be it further enacted, that it shall be lawful for the commissioners, and they are hereby authorized and empowered, in any case or cases in which they shall deem it expedient, from the amount or description of the population of any parish, township, hamlet, vill, chapelry, or other division of any parish, and the amount of the rates paid therein, or any other good and sufficient cause, to grant money for or towards the purchase of sites, or to treat by themselves or their agents for the purchase of sites, for the building of churches or chapels, with or without cemeteries, and without requiring or demanding repayment or security for the repayment of the money so granted or expended in the purchase of such sites or cemeteries from the parishes or divisions of parishes for which such sites

shall be so provided; and it shall also be lawful for the said commissioners to purchase or grant money for the purchasing of cemeteries not within the bounds of the parish for which the same shall be provided, or for enlarging cemeteries or providing additional cemeteries within such parish respectively; all which cemeteries, if not within the bounds of such parish, shall, after consecration, be deemed part of the parish for the use of which they shall have been purchased or provided; anything in the said recited act, or in any act or acts of parliament, or law or laws, to the contrary notwithstanding.

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“XXIII. And be it further enacted, that it shall be lawful for any churchwarden or chapelwarden of any parish or division of any parish, or of any consolidated or district chapelry, in which any rates shall be made under the provisions of the said recited act or this act, to demand, receive, sue for, levy, and recover all such rates by all such ways and means as any church rates may be demanded, sued for, levied, and recovered, as fully and effectually as if all powers, authorities, provisions, penalties, and forfeitures relating to the demanding, suing for, levying, and recovering of any church rates, or for any refusal to pay any like rates, were specially enacted for that purpose in the said recited act and this act: provided always, that any churchwardens or chapelwardens appointed under the provisions of the said recited act or this act shall not in virtue of such office be deemed overseers of the poor.

Churchwardens empowered to levy rates.

“XXIV. And whereas it is by the said recited act enacted, that no application and offer to build or to enlarge any church or chapel, either wholly or in part, by means of rates, shall be made, unless two third parts in value of the proprietors of messuages, lands, and tenements within the parish shall have consented thereto in writing; and it is expedient that such provision should be repealed, and other provisions made in lieu thereof; be it therefore enacted, that so much of the said recited act as requires the consent of such proportion of proprietors of lands in manner directed by the said act shall be and the same is hereby repealed; and that from and after the passing of this act no application and offer to build or enlarge any church or chapel, either wholly or in part, shall be made, nor shall any church or chapel be built or rebuilt or enlarged, or any purchase made of any new or additional burial ground by means of any rates upon any parish, in any case in which one third part or more in value, such value to be ascertained by an average of the rate for the relief of the poor for the preceding three years of the proprietors of messuages, lands, and tenements within such parish, whether for estates of freehold or copyhold, or by virtue of leases for terms of years absolute, whereof not less than fifteen years shall be unexpired, or determinable upon a life or lives, shall dissent therefrom; such dissent to be entered in the book containing the proceedings of the vestry, and to be signified, in case of any future vestry, within two months after any resolution for the purposes aforesaid of such vestry or select vestry as aforesaid; and in case of any vestry already holden at which such resolution shall have been passed within two months from the passing of this act, under the hands of such proprietors and persons interested as aforesaid; and in case of corporations aggregate, under the hand of the president, head, or chief member thereof for the time being; and in case of females covert, minors, insane persons, and persons absent from the kingdom, under the hands of their respective husbands, guardians, committees, trustees, attorneys, or agents, who are hereby respectively authorized to sign such dissents; and in cases of trustees of charitable institutions, under the hands of the major part of the trustees, or of any such body of any such trustees as may under their respective trusts be authorized to act in the execution of the trusts.

So much of recited act as requires the consent of two thirds of the proprietors of messuages, &c. to the enlargement of any church, &c. repealed. No application to build or enlarge any church, &c. shall be made if one third of the proprietors of messuages, &c. shall dissent thereto.

Manner of signifying such dissents.

“XXV. Provided always, and be it further enacted, that it shall be lawful for the inhabitants of any parish who shall be assembled and present at any vestry, or the major part of the inhabitants so assembled and present at any such vestry, of which notice shall have been given upon two successive Sundays preceding the meeting of such vestry, or for two third parts of such of the persons exercising the powers of vestry in such parish as shall be assembled at any meeting of which due notice shall have been given according to the mode of giving notices for the assem-

Rate not exceeding 1s. in the pound in any one year, or 5s. in the whole, may be raised for building or

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enlarging a
church or
chapel, without
such propor-
tion of con-
sents of pro-
prietors, &c.
as is required
by recited act.

Commissioners
may assign the
pew rents to
the parish,
and order a
fixed stipend to
the minister.

Surplus of pew
rents, after
payment of
stipend, how
to be disposed
of.

bling of such persons, to order and direct the making and raising of any rate, not exceeding the amount of one shilling in the pound in any one year, or the amount of five shillings in the pound in the whole, upon the annual value of the property in the parish, for the purpose of building or enlarging any church or churches, or chapel or chapels, either wholly or in part, by means of rates, without any further or other or any greater number of consents of any inhabitants or proprietors, or occupiers or other persons; anything in the said recited act to the contrary notwithstanding: provided always, that no greater or larger rate than aforesaid shall be ordered or directed to be made or raised in relation to any application or offer to build or to enlarge any church or chapel, either wholly or in part, by means of rates, if any such proportion of dissents as are in this act specified are signified in writing in manner directed by this act; and every such order and direction so made as aforesaid under the provisions of this act shall be imperative upon the churchwardens or chapelwardens of the parish in which such order shall be made, who shall forthwith make and raise, and levy and collect, the rate so ordered, for the purpose of the said recited act and this act, anything in the said recited act or any other act or acts of parliament to the contrary notwithstanding; and every such rate shall be made, raised, levied, collected, received, and accounted for in like manner, and with all such powers, authorities, provisos, and regulations, and under and subject to such penalties and forfeitures, as are in law applicable to the making, raising, levying, and collecting any church rate in any parish.

“XXVI. And be it further enacted, that it shall be lawful for the commissioners, in any case in which they shall deem it expedient, from time to time to order and direct that the rents of the pews in any church or chapel built, acquired, or appropriated under the provisions of the said recited act or this act, shall be assigned to the parish or district, and received by the churchwardens or chapelwardens in such parish or district, who shall thereupon be required to pay the stipend which from time to time may be assigned or fixed under the provisions of this act to the minister and clerk: provided always, that the parish shall not in any such case be answerable to such minister or clerk for any greater sum in each year than the amount of the rent of the pews which shall have been actually let during the preceding year in any such church or chapel; and any surplus of pew rents remaining after payment of such stipend and other expenses shall, except in any of the cases next hereinafter mentioned, be invested in government securities in the name of trustees to be appointed by the bishop of the diocese, and suffered to accumulate for the purpose of forming a fund for the building or purchasing of a house, with the consent and approbation of the bishop, for the residence of the spiritual person serving the church or chapel, and after the completion of such purpose, then to the augmentation of the stipend of such spiritual person, or to the reduction of the pew rents, or the increase of the accommodation in any such church or chapel, in such manner as shall be directed by the bishop of the diocese for the time being.

“XXVII. Provided always, and be it further enacted, that the surplus of such pew rents remaining after payment of such stipend and other expenses shall, in any case in which the commissioners shall think it expedient, be charged and chargeable with and applied towards the payment of any sum or sums of money which may be borrowed or advanced by way of loan at interest, or by way of annuity or otherwise, for or towards the building of any such church or chapel, or for the purchasing any site or sites for the same, and defraying all expenses relative thereto, and in keeping such church or chapel in repair; and the residue of such pew rents, if any, shall be paid and applied in manner hereinbefore directed, or in aid of the church rate to be raised in such parish, if the commissioners shall so think fit; and that it shall and may be lawful for such churchwardens or chapelwardens, with the consent of the commissioners, to borrow and take up at interest, or by way of annuity or otherwise, any sum or sums of money for or towards the building such church or chapel, or purchasing such site or sites, or defraying the expenses relative thereto, upon the credit of such pew rents, and by writing under their hands to charge such pew rents, subject to such stipend and

expense as aforesaid, with the payment to any person or persons of any such sum or sums of money, with interest, or with any such annuity or annuities as aforesaid, in such manner as such churchwardens or chapelwardens shall from time to time think fit.

“XXVIII. And be it further enacted, that every assignment of any stipend to any minister or clerk under the provision of the said recited act and this act shall be registered in the registry of the diocese to which the parish shall belong.

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3, c. 134.

Assignment of
stipend to be
registered.

“XXIX. And be it further enacted, that the clerk in every church and chapel erected, built, or acquired or appropriated under the provisions of the said recited act or this act, shall be annually appointed by the minister of the church or chapel.

Appointment
of clerk.

“XXX. And be it further enacted, that in every district parish or division of any parish, or district chapelry or consolidated chapelry, in which any church or chapel shall be built, acquired, or appropriated under the provisions of the said recited act or this act, in which there shall not be a distinct vestry belonging to such district or division, a select vestry, consisting of so many persons as shall be directed by the commissioners in that behalf, shall be appointed by the commissioners, with the advice of the bishop of the diocese, out of the substantial inhabitants of the district or division, or district chapelry or consolidated chapelry, for the care and management of the concerns of the church or chapel (1), and all matters

Appointment
of select vestry
for the man-
agement of
new churches,
and who shall
appoint church
or chapel
wardens.

(1) *Care and management of the concerns of the church or chapel*.—In *Cockburn v. Harvey*, (2 B. & Ad. 797,) it was holden, that a select vestry appointed pursuant to Stat. 59 Geo. 3, c. 134, s. 30, had no power to impose a rate for the repair of the district church; Lord *Tenterden* observing, “This case depends upon the construction of the 30th section of the 59 Geo. 3, c. 134. The church was built under the powers of the act of the 58 Geo. 3, c. 45; by the 70th section of which it is enacted, ‘that the repairs of all such district churches or chapels shall be made by the districts to which they respectively belong, by rates to be raised within the district, in like manner as in case of repairs of churches by parishes; and every such district shall be deemed in law a separate and distinct parish for that purpose.’

“Rates for the repairs of churches in parishes, by the common law, are to be made by the churchwardens and the vestry, that is, by the churchwardens and inhabitants in vestry assembled, if there be not a select vestry established by usage or act of parliament. So that, if this statute had remained unaltered, the rate in question, being made by the churchwardens and persons acting as a select vestry, would undoubtedly be bad. A select vestry, for purposes connected with the church, is established by the 30th section of the 59 Geo. 3, c. 134, which enacts, ‘that in every district, parish, &c., in which any church shall be built, acquired, or appropriated, under the provisions of the said recited act, (58 Geo. 3, c. 45,) or this act, in which there shall not be a distinct vestry belonging to such district or division, a select vestry, consisting of so many persons as shall be directed by the commissioners in that behalf, shall be appointed by the commissioners, with the advice of the bishop of the diocese, out of the substantial inhabitants of the district, &c., for the care and management of the concerns of the church or chapel, and all matters and things relating

thereto; and such select vestry shall annually elect or appoint the churchwarden or chapelwarden to be named on the part of the parish or chapelry, and shall elect new members of such vestry as vacancies may arise by death, resignation, or ceasing to inhabit the parish; and proper pews shall be assigned and provided in every such church for the use of the churchwardens thereof.

“It was contended, for the plaintiff, that the powers given to the select vestry by that section did not extend to the making a rate for the repairs of the church; and it was urged, that acts of parliament, by which any charge may be brought upon the subject, or the subject be deprived of his rights in derogation of the common law, are to be construed strictly; and several cases were quoted in support of that proposition; I shall notice only two of them, as we consider the principle to be clear. In *Flud-der v. Sir T. Lombe*, (C. T. H. 307,) Lord *Hardwicke*, (then chief justice of this court,) says, ‘It has been rightly said, that this being a law to take away people’s franchises, should be strictly construed.’ So in the case of *Buckeridge v. Flight*, (6 B. & C. 49,) Mr. Justice *Holroyd* says, ‘Where acts of parliament vary, or take away the rights of parties, they ought to be strictly construed.’ Many cases on the construction of the stamp acts have been determined upon this ground. And this principle must be kept in view in putting a construction upon this 30th section. Under the authority of this section the select vestry was established, and such vestry, therefore, must have the care and management of the concerns of the church, and all matters relating thereto; and the question is, whether the power of making church rates be included in those words, and given thereby? Now, there are many concerns of the church, and many matters relating thereto, independent of the making rates for its repairs; and the power of making such, not being

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3, c. 134.

and things relating thereto; and such select vestry shall annually elect or appoint the churchwarden or chapelwarden to be named on the part of the parish or chapelry, and shall elect new members of such vestry as vacancies may arise by death, resignation, or ceasing to inhabit the parish; and proper pews shall be assigned and provided in every such church and chapel for the use of the church or chapelwardens thereof.

Churchwardens may alter pew rents, with consent of bishop, &c.

“XXXI. And whereas circumstances may arise in which it may become expedient and necessary to alter the rents at which pews may be let in any churches or chapels built or provided under the provisions of the said recited act and this act; be it therefore further enacted, that it shall be lawful for the churchwardens and chapelwardens of any such church or chapel, and they are hereby required, when ordered and directed so to do by the bishop of the diocese, with the consent of the patron and incumbent, and in any case in which the pew rents shall have been assigned to the parish, then with the consent of the vestry of the parish, to make such alteration in any such pew rents as shall be directed or approved of, with such consent as aforesaid.

Pews to be let to parishioners only, and not by auction; and rates to be payable in advance.

“XXXII. And be it further enacted, that it shall not be lawful for the churchwardens or chapelwardens of any additional church or chapel to let or sell any pews and seats, except to parishioners, during the time such parishioners shall continue to be inhabitants of the parish; and every sale of any pew or seat shall be subject to such reserved rent as shall have been fixed under the provisions of the said recited act or this act, and shall be by private contract, and not by public auction; and all pew rents under the said recited act and this act shall be payable in advance; (that is to say,) one year’s rent shall be paid on the admission to the pew or seat if such admission shall be given at Lady Day or Michaelmas, or if at any intermediate period, then the proportion of the half year to Lady Day or Michaelmas, as the case may be, and a half year’s rent over and above such proportion; and thereafter half-yearly payments shall be made in advance, commencing on the Lady Day or Michaelmas immediately following the taking of such

expressly given, can only be deemed to be given by inference and implication; if it be given at all. And, accordingly, the argument for the defendants put their case on that ground, and it was urged, that the inconvenience of allowing the power to make a rate to exist in a body distinct from the persons who have the care and management of the concerns of the church, would be so great, that the legislature must be understood to have intended to give that power by the general words used on this occasion. The court, however, can know the intention of the legislature only from the language of a statute, and it is to interpret that language according to the rules and principles of law. The inconvenience in this case does not appear to be greater than that which must take place under the statute 59 Geo. 3, c. 134, whereby a select vestry may be appointed for the concerns of the poor, leaving the power of making rates to the persons who before possessed it, that is, to the churchwardens, and overseers.

“The tenth section of the 3 Geo. 4, c. 72, does certainly afford an argument in favour of the defendants; for it is thereby enacted, that in every case in which a parish shall be divided into separate parishes for ecclesiastical purposes, or separate districts, in which select vestries shall be appointed by the commissioners, all the members of the select vestry of the original parish, residing in the district of the original church, &c., shall continue to act as the vestry of such

district and church, in all matters relating to such church and the repairs thereof, or to any other ecclesiastical matters, or in distributing any proportion of any charities, &c., which may, under this act, be assigned to such district; provided, that no member of any select vestry of such parish shall, after such division, act in any matters relating to any church, &c., or any repairs thereof, or any matters relating thereto, except such as are within, or relate to the division in which he shall reside; and that all members of the select vestry of such parish, resident in any other divisions of such parish, shall be members of the vestries to be appointed for the divisions where they reside. But it is obvious, that this section is confined in terms to the previous existence of a select vestry in the original parish; and it is by no means a necessary consequence, that because the legislature thought fit to give the power of making rates, (assuming such power to be thereby given,) to the select vestry of a new parish taken out of an old parish wherein a select vestry had that power before, therefore the select vestry of such a new parish shall have that power, where it was not previously vested in a body of the same description in the old parish; so that the giving of that power, in a case like the present, can at most be considered only as a matter of doubtful, and by no means of necessary, or even clear, implication. For these reasons, we are of opinion the judgment of the court must be for the defendant.”

pew; and every such pew and seat shall be forfeited and become vacant by the discontinuance of any such payment in advance for two following half years; anything in the said recited act to the contrary notwithstanding. STAT. 59 GEO. 3, c. 134.

“XXXIII. And be it further enacted, that it shall be lawful for the commissioners to discharge any subscribers towards building any church or chapel, wholly or in part, from the payment of pew rents in the said church or chapel, for a limited time or for life, in such proportion to the amount of their respective subscriptions as the commissioners shall see fit, and to allow any such subscriber, if he shall remove from the parish, to assign the remainder of such term to any other parishioner inhabiting the parish. Commissioners may discharge subscribers from payment of pew rents, and allow them to assign.

“XXXIV. And be it further enacted, that if any lands, tenements, or hereditaments which shall have been acquired by the commissioners under the said recited act and this act, whether by gift or otherwise, shall happen to remain unconsecrated at the end of the term of ten years therein mentioned, or at any other determination of any commission granted by his majesty under the said recited act or this act, such unconsecrated lands, tenements, and hereditaments shall be immediately vested in his majesty, his heirs and successors, to be applied to the uses, intents, and purposes for which they were acquired under the direction of his majesty in council, unless or until any other provision respecting the same shall be made by authority of parliament. For disposal of unconsecrated lands, &c. acquired by the commissioners.

“XXXV. And be it further enacted, that it shall be lawful for the commissioners for managing the duties on stamped vellum, parchment, or paper, to allow the full amount of the stamp duties upon any deeds, bonds, contracts, agreements, or instruments made in relation to the purchasing or procuring of any sites, or building any churches, or purchasing or providing any materials for any such buildings, under and subject to such rules, regulations, and restrictions as shall be made in that behalf by the lord high treasurer, or the commissioners of his majesty's treasury of the United Kingdom, or any three or more of them, for the time being; any thing in any act or acts of parliament to the contrary notwithstanding. Stamp duties on contracts, &c. relating to building churches, may be allowed.

“XXXVI. And be it further enacted, that all such parishes and extra-parochial places as shall be required by the commissioners for executing the said recited act and this act shall furnish lands for enlarging such existing churchyards or burial grounds, or for making such additional churchyards or burial grounds, as the commissioners may deem necessary to be enlarged or set out, under the provisions of this act; and that as soon as the commissioners shall have fixed upon any parish or extra-parochial place as being one in which it is necessary that the churchyard or burial ground should be enlarged, or that a new burial ground should be made, under the provisions of this act, they shall give notice to the churchwardens thereof, by causing such notice to be left at their respective places of abode, of their intention to enlarge such churchyard or burial ground, or to set out a new burial ground, and of the extent of ground which will be required for any such purpose, and for making a proper access and approach thereto, and of the part of the parish or extra-parochial place within which the same is required to be provided; and the said churchwarden shall, within the space of fourteen days, call a meeting of the vestry of the parish or extra-parochial place, or the persons possessing under any act or acts of parliament the powers of vestry of the parish or extra-parochial place, for the purpose of taking all such measures as may be necessary for providing such additional churchyard or burial ground and approach thereto, as aforesaid; and in case such parish or extra-parochial place shall not be able to provide the same without purchase, then the vestry, or the persons possessing as aforesaid the powers of vestry, shall and are hereby required forthwith to proceed to treat for a piece of ground and approach thereto, according to such notice, but shall not conclude any bargain for the same without the approbation of the commissioners. Parishes and extra-parochial places to furnish lands when required by commissioners for burial grounds.

“XXXVII. And be it further enacted, that all the powers and provisions of the said recited act or of this act which authorize or relate to the grant, sale, conveyance, purchase, and re-sale of any lands, tenements, or hereditaments from or in the name of or on behalf of his majesty, or from any bodies politic, corporate, Powers of recited act, as to purchasing lands for building

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churches,
extended to
lands for
additional
churchyards.

or collegiate, corporations aggregate or sole, tenants for life or in tail, husbands, guardians, trustees, and feoffees in trust, committees, executors, and administrators, cestuique trusts, infants, lunatics, idiots, femmes covert, or any other person or persons whomsoever, to or by the said commissioners, for the purpose of building any additional churches or chapels, or the issuing, advancing, levying, or raising, or borrowing or taking up at interest, of any money, for any such purpose, shall be and are hereby declared to be extended to and be applicable in all respects, *mutatis mutandis*, for the grant, sale, conveyance, purchase, or re-sale of any lands, tenements, or hereditaments which may be necessary for enlarging any churchyard or burial ground, or for making any new burial ground and approaches thereto, under the provisions of this act, and for the issuing, advancing, levying, and raising, or borrowing and taking up at interest, of any money which may be required for any of those purposes, and for repaying the same by instalments or otherwise, in like manner as if all such powers and provisions had been fully repeated and re-enacted in this act.

Additional
burial grounds
to be conse-
crated.

“XXXVIII. And be it further enacted, that any piece or parcel of land or ground which shall under the provisions of this act be added to any existing churchyard or burial ground, or be appropriated and set apart as and for a new burial ground, shall be, as soon as conveniently may be, consecrated for the burial of the dead, according to the usage of the united church of England and Ireland, and shall for ever thereafter be used as and for an additional burial ground; and the freehold of the land which shall be so consecrated shall, from and after the consecration thereof, vest in the person or persons in whom the freehold of the ancient churchyard or burial ground of any such parish or chapelry where the same may be situated shall from time to time be vested.

Commissioners
may alter
fences of
churchyards,
and turn foot-
paths, &c.

“XXXIX. And be it further enacted, that it shall be lawful for the said commissioners, if they should think fit, to alter, repair, pull down, and rebuild, or order or direct to be altered, repaired, pulled down, and rebuilt, the walls or fences of any existing churchyard or burial ground of any parish or chapelry, and to fence off with walls or otherwise any additional or new burial ground to be set out or provided by virtue of this act; and also to *stop up and discontinue, or alter or vary* (1), or order to be stopped up and discontinued, or altered or varied, any entrance or gate leading into any churchyard or burial ground, and the paths, footways, and passages into, through, or over the same, as to them may appear useless and unnecessary, or as they shall think fit to alter or vary; provided that the same be done with the consent of any two justices of the peace of the county, city, town, or place where any such entrance, gate, path, or passage shall be stopped up or altered, and on notice being given in the manner and form prescribed by an act passed in the fifty-fifth year of the reign of his present majesty, intituled, ‘An Act to amend an Act of the thirteenth year of his present Majesty for the Amendment and Preservation of the Public Highways, in so far as the same relates to Notice of Appeal against turning or diverting a Public Highway; and to extend the Provisions of the same Act to the stopping up of Unnecessary Roads.’

55 Geo. 3, c. 68.

Rates may be
laid on any
parish for
rebuilding or
enlarging the
church.

“XL. And be it further enacted, that when any parish shall be desirous of extending and increasing the accommodation in the parish church, and it shall be found necessary or expedient to that end to take down the existing church, and to rebuild the same on the same site, or on a more convenient site, it shall and may be lawful for the churchwardens of any such parish, with the consent of the vestry, or persons possessing the powers of vestry, and with the consent also of the ordinary, patron, incumbent, and lay impropriator, if any such there be, to take down such existing church, and to rebuild the same upon the same or upon a new site; and the said churchwardens are hereby authorized and empowered to borrow and

(1) *Stop up and discontinue, or alter or vary*:—In *Regina v. Stock*, (8 A. & E. 405,) it was held, that Stat. 59 Geo. 3, c. 134, s. 39, though incorporating the form of notice annexed to Stat. 55 Geo. 3, c. 68, did not thereby give an appeal against an order of

the commissioners for stopping a footway; for that an appeal cannot be given by implication only: and that, if such power had been given by reference to Stat. 55 Geo. 3, c. 68, the repeal of that statute, would not have taken it away.

raise, upon the credit of the church rates, or any rates made under the said recited act or this act, of any such parish, such sum or sums of money as shall be necessary for defraying the expense or any part of the expense of the taking down and rebuilding such church, and to make rates for the payment of the interest of such sum or sums of money so to be borrowed and raised, and for providing a fund of not less than the amount of the interest of the sum advanced for the *repayment of the principal*(1) thereof, or for repaying such principal in such manner, and at such times, and in such proportions as shall be agreed upon with the persons advancing any such money; provided always, that no church shall be so taken down and rebuilt by means of any rates upon any parish if such proportion of dissenters as are in this act specified in relation to any application to build or to enlarge any church or chapel, either wholly or in part, by means of rates, are signified in writing in manner directed by this act; and such church, when *consecrated*(2),

STAT. 59 GEO.
3, c. 134.

(1) *Repayment of the principal*:—If money be borrowed to rebuild a church under Stat. 59 Geo. 3, c. 134, s. 40, the court will issue a *mandamus* to overseers to levy a rate for its repayment. *Rea v. New Windsor* (*Overseers of*), 1 Jurist, 592.

In *Regina v. Brancaster* (*Churchwardens of*), (7 A. & E. 458,) a *mandamus* was issued to the churchwardens, to raise a rate to pay principal and interest of money borrowed on the credit of parish and church rates, under the church-building acts, 58 Geo. 3, c. 45, and 59 Geo. 3, c. 134; to which a return was made, stating that, since the security was given, the lender, who was the prosecutor, had become bankrupt; to which it was pleaded, that the prosecutor had lent the money as trustee for a party named, out of monies vested in him as trustee, and in which he had no interest except as trustee, and on demurrer, assigning for cause, that the nature of the trust did not appear: it was held to be good.

(2) *Consecrated*:—In *Warner v. Gater*, (2 Curt. 315,) it was holden, that a church rate for defraying the expense of the consecration of a church rebuilt under Stat. 59 Geo. 3, c. 134, s. 40, was valid, although no faculty had been granted:—Sir Herbert Jenner observing, “I think it now perfectly clear, that the proper consents were obtained, within the 40th section of the act, and that the libel and the additional articles are proper to be admitted.

“The libel pleads, that on the 26th March, 1835, a vestry meeting was held pursuant to notice, when it was resolved to take down the old church and rebuild a larger church nearer to the body of the village, and that in pursuance of this resolution, a new church, affording better accommodation to the parishioners, was built on a more suitable site, the expense being borne by a subscription, aided by the church-building society; that on the 22nd August, 1836, the new church was consecrated, and was resorted to by the parishioners as the parish church; that on the 18th August, (prior to the consecration,) a vestry meeting was called by regular notice, to make a rate for general church purposes; that a rate of one shilling in the pound, to meet the expenses of opening the new church, was agreed to; that the greater part of the inhabitants had paid the rate, and that Mr. Gater had been duly assessed

in 10l. 9s. 5½d., and had refused to pay the same.

“When the libel was before the court on the former occasion, some important questions arose, as to the authority of the parish to pull down and rebuild the church; whether or no a faculty was requisite; and these questions were a good deal discussed; and the court, considering that difficulties might arise, and that it might be exceedingly inconvenient if it held the opinion, that in this case a faculty was necessary for the transfer of the parish church to a different site, suggested, whether it might not turn out that it was done under one of the church building acts, which might take it out of the usual course of the general law. Accordingly, inquiry has been made, and this turns out to be the fact, and additional articles have been brought in, pleading, that the consents of the necessary parties had been obtained, letters from the bishop of the diocese (the ordinary), and from the patron of the living being annexed, and the incumbent having been himself the chairman at the vestry, and the other conditions of the 40th section of the 59 Geo. 3, c. 134, having been complied with. What does the act provide? That the churchwardens, with the sanction of the vestry and the consent of the ordinary, the incumbent, and the patron, (there being no lay impropriator here,) may pull down and rebuild the church on the same or another site. They got the consent of the vestry by the vote; the consent of the ordinary and of the patron are also obtained, and the incumbent was chairman of the meeting; and it also appears, from the additional articles, that half of the additional accommodation has been set apart as open sittings, so that it seems to me, that all the provisions of the act of parliament have been complied with, and that this church has become the parish church of Botley.

“Then the question is, whether the rate was properly made or not? The first objection is, that there was not sufficient notice of the purpose for which the vestry was assembled; it was ‘for making of a church rate and other purposes.’ Certainly there is no specification of the exact object or purposes to which the rate was to be applied; but there is a notice, that the meeting was to be for the making of a church rate, and it is hypercritical to say, that every particu-

STAT. 59 GEO.
3, c. 134.

shall be to all intents and purposes the parish church of such parish for the celebration of divine offices, and the solemnization of marriages, according to the rites and ceremonies of the church of England; provided always, that one half of the additional accommodation which shall be obtained by the rebuilding such church shall be set apart for free and open sittings; and provided also, that all persons enjoying any pews or sittings within such church so to be taken down in virtue of any faculty or prescription shall have a pew or pews, sitting or sittings, as near as may be in the same situation, and of like dimensions, allotted and set apart for them in such new church; and that all tomb stones, monuments, and monumental inscriptions in such church so to be taken down shall be carefully preserved by the churchwardens, and when the said church shall be rebuilt on the same or a more convenient site, the said tomb stones, monuments, and monumental inscriptions shall be set up by the said churchwardens at the charge of the parish in such new church, as near as circumstances will admit, in the situations from whence they were removed in the said church so to be taken down.

Commissioners
may discharge
the parlia-
mentary fees of
obtaining cer-
tain acts.

“XLI. And whereas particular and special circumstances may in certain cases render it necessary, for the more effectually carrying into execution the beneficial purposes of this act in certain parishes, divisions of parishes, or extra-parochial places, that particular acts of parliament should be passed for such parishes, divisions, and places; be it therefore enacted, that it shall be lawful for the said commissioners, in any such case in which they shall deem it proper, to pay or advance money for the payment of any fees which may become due and be payable in either house of parliament in respect of the passing of any such act or acts of parliament; and that such fees may be paid out of any money in the hands of the commissioners arising out of any exchequer bills under the provisions of this act; and that such acts shall in all other respects be considered as public acts.”

Acts to be
public acts.

STAT. 60 GEO.
3 & 1 GEO. 4,
CAP. II.

DC. STAT. 60 GEORGII 3 & 1 GEORGII 4, CAP. II. - A.D. 1819.

“An Act for regulating and supporting a new Church or Chapel within the Town of Liverpool, in the County Palatine of Lancaster, and for the Solemnization of Marriages therein.”

STAT. 60 GEO.
3 & 1 GEO. 4,
c. 8.

DCI. STAT. 60 GEORGII 3 & 1 GEORGII 4, c. 8 (1). A.D. 1819.

“An Act for the more effectual Prevention and Punishment of Blasphemous and Seditious Libels.”

Court to make
order for the

“Whereas it is expedient to make more effectual provision for the punishment of blasphemous and seditious libels; be it enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the passing of this act, in every case in which any verdict or judgment by default shall be had against any person for composing, printing, or

lar circumstance and object is to be stated in the notice. Mr. Gater was present at the meeting, and he proposed a rate of a fourth part of what was proposed by the churchwarden; but a shilling rate was carried by a large majority of the vestry, for the purpose of making provision for the consecration of the church. I am of opinion, therefore, that the notice was sufficient, and that no one could have been taken by surprise.

“Now, the rate was for the consecration of the parish church, and it could not be a parish church till it was consecrated, and I should be glad to have it pointed out to me by whom the expense of consecration was to be defrayed. There is nothing in the resolution of the vestry, that it should be defrayed by voluntary subscription. If

the church had been rebuilt on the same site, still it would not have been a parish church till it was consecrated, and the parish must have been charged with the expense of consecration of such a church. I am of opinion, that a rate for consecration of the church is one, which it was incumbent on the parishioners to make, and being carried by a large majority of the vestry, (all but two,) I think it is a legal and valid rate, and that every parishioner is bound to contribute to it; and being of opinion, that it is a good and valid rate, legally and validly made, I shall hold, if the facts stated in the libel are proved, that Mr. Gater is liable to the rate. I, therefore, admit the libel and additional articles.”

(1) Amended by Stat. 11 Geo. 4 & 1 Gul. 4, c. 73.

publishing any blasphemous libel, or any seditious libel, tending to bring into hatred or contempt the person of his majesty, his heirs or successors, or the regent, or the government and constitution of the United Kingdom as by law established, or either house of parliament, or to excite his majesty's subjects to attempt the alteration of any matter in church or state as by law established, otherwise than by lawful means, it shall be lawful for the judge, or the court before whom or in which such verdict shall have been given, or the court in which such judgment by default shall be had, to make an order for the seizure and carrying away and detaining in safe custody, in such manner as shall be directed in such order, all copies of the libel which shall be in the possession of the person against whom such verdict or judgment shall have been had, or in the possession of any other person named in the order for his use; evidence upon oath having been previously given to the satisfaction of such court or judge, that a copy or copies of the said libel is or are in the possession of such other person for the use of the person against whom such verdict or judgment shall have been had as aforesaid; and in every such case it shall be lawful for any justice of the peace, or for any constable or other peace officer acting under any such order, or for any person or persons acting with or in aid of any such justice of the peace, constable, or other peace officer, to search for any copies of such libel in any house, building, or other place whatsoever belonging to the person against whom any such verdict or judgment shall have been had, or to any other person so named, in whose possession any copies of any such libel, belonging to the person against whom any such verdict or judgment shall have been had, shall be; and in case admission shall be refused or not obtained within a reasonable time after it shall have been first demanded, to enter by force by day into any such house, building, or place whatsoever, and to carry away all copies of the libel there found, and to detain the same in safe custody until the same shall be restored under the provisions of this act, or disposed of according to any further order made in relation thereto.

STAT. 60 GEO. 3 & 1 GEO. 4, c. 8.

seizure of copies of the libel in possession of the persons against whom verdicts shall have been had, &c.

"II. And be it further enacted, that if in any such case as aforesaid judgment shall be arrested, or if, after judgment shall have been entered, the same shall be reversed upon any writ of error, all copies so seized shall be forthwith returned to the person or persons from whom the same shall have been so taken as aforesaid, free of all charge and expense, and without the payment of any fees whatever; and in every case in which final judgment shall be entered upon the verdict so found against the person or persons charged with having composed, printed, or published such libel, then all copies so seized shall be disposed of as the court in which such judgment shall be given shall order and direct."

Copies of libels so seized to be restored if judgment for defendant; otherwise to be disposed of as the court shall direct.

[Court of Justiciary in Scotland empowered to seize copies of libels, &c. s. 3.]

"IV. And be it further enacted, that if any person shall, after the passing of this act, be legally convicted of having after the passing of this act composed, printed, or published any blasphemous libel or any such seditious libel as aforesaid, and shall, after being so convicted, offend a second time, and be thereof legally convicted before any commission of Oyer and Terminer or gaol delivery, or in his majesty's court of King's Bench, such person may, on such second conviction, be adjudged, at the discretion of the court, either to suffer such punishment as may now by law be inflicted in cases of high misdemeanors, or to be *banished* (1) from the United Kingdom and all other parts of his majesty's dominions, for such term of years as the court in which such conviction shall take place shall order."

Punishment of persons convicted of second offence.

[Persons not departing within thirty days after sentence of banishment, may be conveyed out of his majesty's dominions, s. 5. Persons banished found at large within his majesty's dominions, to suffer transportation. s. 6.]

"VII. And be it further enacted, that the clerk of assize, clerk of the peace, or other clerk or officer of the court having the custody of the records where any offender shall have been convicted of having composed, printed, or published any

Certificate to be given of conviction of former libel.

(1) *Banished*.—The punishment of banishment was repealed by Stat. 11 Geo. 4 & 1 Gul. 4, c. 73.

STAT. 60 GEO.
3 & 1 GEO. 4,
c. 8.

blasphemous or seditious libel, shall, upon request of the prosecutor on his majesty's behalf, make out and give a certificate in writing, signed by him, containing the effect and substance only (omitting the formal part) of every indictment and conviction of such offender, to the justices of assize, oyer and terminer, great sessions, or gaol delivery, where such offender or offenders shall be indicted for any second offence of composing, printing, or publishing any blasphemous or seditious libel, for which certificate six shillings and eight pence and no more shall be paid, and which certificate shall be sufficient proof of the conviction of such offender.

Limitation of
actions.

"VIII. And be it further enacted, that any action and suit which shall be brought or commenced against any justice or justices of the peace, constable, peace officer, or other person or persons, within that part of Great Britain called England, or in Ireland, for anything done or acted in pursuance of this act, shall be commenced within six calendar months next after the fact committed, and not afterwards; and the venue in every such action or suit shall be laid in the proper county where the fact was committed, and not elsewhere; and the defendant or defendants in every such action or suit may plead the general issue, and give this act and the special matter in evidence at any trial to be had thereupon; and if such action or suit shall be brought or commenced after the time limited for bringing the same, or the venue shall be laid in any other place than as aforesaid, then the jury shall find a verdict for the defendant or defendants; and in such case, or if the jury shall find a verdict for the defendant or defendants upon the merits, or if the plaintiff or plaintiffs shall become nonsuit, or discontinue his, her, or their actions after appearance, or if, upon demurrer, judgment shall be given against the plaintiff or plaintiffs, the defendant or defendants shall have double costs, which he or they shall and may recover in such and the same manner as any defendant can by law in other cases.

General issue
may be plead-
ed.

Double costs.

[Limitation of actions, &c. in Scotland. Not to alter the law of Scotland in respect to punishment for libels. ss. 9 & 10.]

STAT. 60 GEO.
3 & 1 GEO. 4,
c. 9.

DCII. STAT. 60 GEORGII 3 & 1 GEORGII 4, c. 9(1). A.D. 1819.

"An Act to subject certain Publications to the Duties of Stamps upon Newspapers, and to make other Regulations for restraining the Abuses arising from the Publication of Blasphemous and Seditious Libels."

(1) *Vide* Stat. 11 Geo. 4 & 1 Gul. 4, c. 73; and Stat. 6 & 7 Gul. 4, c. 76.

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